



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNR MNDC RR FF

Introduction

This hearing dealt with an application by the tenant to dispute a rent increase, as well as for monetary compensation and a reduction in rent. One landlord, the tenant, an advocate for the tenant and a witness for the tenant all participated in the teleconference hearing.

In regard to the rent increase, the landlord issued a notice of rent increase in September 2010 for an increase in rent from \$777 to \$800, to be effective January 1, 2011. In September of each year, the Residential Tenancy Branch provides information regarding the permissible rent increase amount for each year. The permissible rent increase for 2011 is 2.3 percent. The rent increase on the landlord's notice in this case exceeded the permissible amount. The notice was therefore invalid. The landlord's evidence was that he became aware that the amount exceeded the permissible amount, and the tenant continued to pay \$777 per month after January 1, 2011. I accordingly dismiss this portion of the tenant's application. It is open to the landlord to issue a new notice to increase the rent within the permissible amount, or to make an application to increase the rent beyond the permissible amount.

The landlord submitted documentary evidence that he did not serve on the tenant. I therefore did not allow or consider that evidence in reaching my decision in this matter. The landlord gave verbal testimony under affirmation, which I considered in determining the tenant's claim.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began approximately 15 years ago. The rental unit is a single-family house.

The tenant's evidence on her claim was as follows. On July 3, 2010, there was a fire in the rental unit. The tenant's testimony was that she used a lighter to look for a flashlight under her bed, when the underside of her mattress caught on fire. The tenant believed that the furnace ducts were not clean, and that oil was therefore being blown under the bed and that was the cause of the fire. The tenant also stated that there were no smoke detectors in the house at the time of the fire.

As a result of the fire, several of the tenant's possessions were damaged. Further, the tenant believed that her health had been affected by the poor air quality in the rental unit. The tenant submitted a doctor's report which indicated that the tenant has high levels of carbon in her blood. The tenant acknowledged that she has been a smoker for more than 40 years, and that she has scarring on her lungs from pneumonia and bronchitis, which she suffered in 1998 to 2001.

On November 29, 2010, the tenant gave the landlord a written request for several repairs, including cleaning and sanitizing the furnace vents, repairing steps, repainting, fixing the toilet drain, replacing the stove, and moving the oil tank. The landlord did nothing except put in a stove the day before the hearing for this matter.

The tenant has claimed \$25,000 in monetary compensation to replace her damaged items, compensation for her work to clean after the fire, moving costs if the tenant is forced to move, and damages for carbon monoxide poisoning and high stress.

The landlord's response was as follows.

The Fire Marshall determined that the fire was likely caused by the tenant smoking in bed. The tenant's mattress and headboard were burned at the top and head of the bed, not at the bottom as the tenant claimed. The tenant ought to have had tenant insurance to cover the cost of damage to her belongings, but she did not. In July 2010 the landlord purchased two smoke detectors, and the tenant said she would install them. The landlord did not know if the house had smoke detectors prior to that.

There have been ongoing communication problems between the landlord and the tenant. The landlord has attempted to accommodate the tenant's repair requests, but the tenant either would not inform the landlord of the problem, such as in the case of the stove, or would not allow the landlord to do the work, such as the painting. The landlord acknowledged that the back porch steps needed attention, and stated that this work

would be done by the end of June. The landlord's position was that the tenant was not entitled to any monetary compensation.

Analysis

In considering all of the documentary and testimonial evidence, I find that the tenant is not entitled to any monetary compensation.

I do not find it likely that the fire in July 2010 was caused, as the tenant claimed, by the landlord's failure to clean the furnace ducts. The tenant did not provide sufficient evidence to establish that the ducts were not clean and were therefore affecting the air quality in the rental unit. I find it likely that the carbon levels in the tenant's blood, as indicated in the doctor's report, are a result of the tenant's smoking habit.

I found the landlord's testimony credible, and I accept his version of events regarding the tenant's request for repairs. If an item in a rental unit requires repair or replacement, and that item is the landlord's responsibility, the tenant must first inform the landlord of the problem, and then allow the landlord access to the unit to do the work. It is open to a tenant to make an application for an order for repairs, but the tenant did not do so in this case.

Conclusion

The application is dismissed. As the application was not successful, the tenant is not entitled to recovery of her filing fee for the cost of the application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 24, 2011.

Residential Tenancy Branch