



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, RR, MNDC, FF

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim. The tenant applied to cancel the notice to end tenancy, for a rent reduction and for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing, the landlord requested that her application be amended to withdraw the portion of her application to retain the security deposit. She stated that she would deal with the return of the deposit directly with the tenant after he moves out.

The tenant confirmed that he had received the landlord's evidence by registered mail. The tenant did not file any evidence to support his application.

Issues to be decided

Is the landlord entitled to an order of possession and to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to a monetary order for compensation, a rent reduction and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on November 01, 2011. The rent is \$775.00 per month due on the first of each month.

The landlord testified that the complex contains several residential units and at the start of winter when everyone turns the heat on, some maintenance work is required. The landlord stated that on October 31, 2011 just prior to the start of tenancy, while preparing the unit for the tenant, she noticed that the heat was low in one room of the unit. The maintenance fees that the landlord pays, includes maintenance of the heating system. She contacted the company that provides the service and requested them to take care of it. She also provided the company with the contact information of the tenant. The landlord stated that she did not hear back from the tenant about any heating problems until she contacted him on December 06, to request payment of rent.

The tenant testified that he moved in on November 02 and noticed that the heat was low in one room but did not do anything about it. He stated that the repairman visited on November 09, 17 and 23 and was unable to fix the problem on each occasion. The tenant stated that the repairman visited twice a week thereafter and the problem was resolved by mid December.

The landlord filed a copy of an email from the company, which outlined the days that the repairman visited the unit. The dates differ from the tenant's version of events. The letter states that the repairman visited the unit on November 10, 21 and December 08. On November 21, there was partial heat on the lower level of the home while on the other days the service was performed and the heat was on. The letter also stated that the tenant was asked to contact the company if there was any problem with the heating and the tenant made no contact.

On December 06, as soon as the landlord found out that there was partial heating in the lower level, she purchased two heaters and offered them to the tenant. The landlord filed a receipt dated December 06 for the purchase of the heaters. The tenant refused to accept them. The landlord posted the notice to end tenancy along with a 24 hour notice to inspect the rental unit on December 06, 2011. The next day, the tenant denied access to the landlord for the purpose of conducting an inspection.

The tenant stated that since he did not have proper heating in the unit during the month of November and since the landlord did not inform him about the problem prior to his moving in, he is entitled to the return of his rent for November. The tenant is claiming \$775.00 as compensation and is also requesting a rent reduction.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In this case the tenant did not pay rent as of the date of this hearing on December 28, 2011. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$775.00 for unpaid rent. Since the landlord has proven her case she is also entitled to the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$825.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Section 6 of the *Residential Tenancy Policy Guideline*, also states that a landlord would normally not be held responsible unless the landlord was notified of the problem and failed to take reasonable steps to correct it.

I have reviewed the submissions of both parties and I find that the tenant by his own admission did not inform the landlord about problems with the heating. The landlord only found out when she contacted the tenant on December 06. The landlord took immediate steps to purchase heaters for the tenant's use until the problem was resolved.

Based on the testimony of both parties, I find that the landlord was not made aware of any problems with the heat but took reasonable steps to correct it in a timely manner, once she was notified. Therefore I find that the tenant is not entitled to compensation. Since the tenancy is ending, the tenant's application for a rent reduction is moot and accordingly dismissed. The tenant has not proven his case and therefore must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$825.00**.

The tenant's application is dismissed in its entirety.

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: December 28, 2011.

Residential Tenancy Branch