



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC ERP RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, make emergency repairs for health or safety reasons, and to allow the Tenants reduced rent for repairs, services or facilities agreed upon but not provided.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlord's breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain orders pursuant to sections 32, 65, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed the month to month tenancy began on May 1, 2009. Rent is payable on the first of each month in the amount of \$1,000.00 and on or before April 1, 2009 the Tenants paid \$500.00 as the security deposit. The Tenants have provided notice to vacate the property early as of December 31, 2011, after being served a 2 Month Notice for Landlord's use. Compensation for receiving the Notice pursuant to section 51 of Act was used for December 2011 rent.

The Tenants confirmed they were withdrawing their request to obtain an Order to have the Landlord complete emergency repairs to the furnace and for future reduced rent as this tenancy will be ending at the end of this month. They wished to proceed with their claim of \$1,000.00 for having to reside in the rental unit since October 27, 2011 without use of the furnace.

The Tenants confirmed they were reimbursed the cost for the electric heaters that were purchased to heat the house once the furnace was turned off. They stated they are of the opinion that they should be compensated for the increase costs in electricity due to use of the electric heaters, for safety concerns because the heaters are blowing the breakers, for having to live in the house which is very cold in the upstairs bedrooms and cold in the mornings when they go downstairs, and because their two young daughters can't stay in the house with them because it gets down to plus 4 degrees.

The Landlord affirmed there was no evidence provided in support of his testimony that a new furnace could not be placed inside the rental unit because of the size of a new furnace. After a brief discussion the Landlord acknowledged that compensation was warranted in this case however he felt because the Tenants continue to occupy the rental unit, without any periods of vacancy, that compensation in the amount of \$250.00 would be adequate. The Landlord noted that there was no evidence to support an increase in electricity and that there would have been a decrease in the amount of the natural gas bill once the furnace was turned off.

The Tenants did not wish to settle this matter and confirmed they are seeking \$1,000.00 as it will be two full months without use of the furnace and they have two small children.

Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 (1)(c)(iii) of the *Act* provides that required repairs to the primary heating system meet the definition of emergency repairs.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the

continuous breakdown of the building would deteriorate occupant comfort and the long term condition of the building.

I accept the Tenants' evidence and testimony that they took all reasonable steps to have the Landlord conduct emergency repairs to the furnace and when that failed they agreed to pick up electric heaters to try and heat the house with. I accept the Tenants' evidence that the two electric heaters, while increasing the electricity bill, are not adequate to heat the entire three level house. I find it undeniable that the Tenants suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenants are entitled to compensation for that loss.

I make note that the furnace was turned off October 27, 2011 leaving the house entirely without heat until November 4, 2011 when electric heaters were approved and purchased; which provide only a limited amount of heat. I accept the Landlord's position that the Tenants have continued to occupy the rental unit and have had full use of the property from October 27, 2011. I find it reasonable to conclude the Tenants have an increased electricity bill due to the use of the two electric heaters.

As per the aforementioned and pursuant to section 67 of the Act, I hereby award the Tenants compensation in the amount of **\$500.00** which includes loss of quiet enjoyment and compensation towards increased electricity costs for the period of October 27, 2011 to December 31, 2011 at which time this tenancy will end.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$500.00**. This Order is legally binding and must be served upon the Landlord.

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 15, 2011.

Residential Tenancy Branch