



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This was an application by the tenant, amended in the in-person hearing by the applicant, seeking compensation for issues contributing to a loss of quiet enjoyment by the tenant, including an allegation of harassment by the landlord.

Both parties participated in the hearing with their submissions, document and material evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started in May, 2011 and is ending February 01, 2012 by contractual agreement of the parties. Rent is in the amount of \$425 per month. The tenant rents a room and shares washroom facilities within, what the parties described to be, "a rooming house". The tenancy agreement includes furnishings and utilities of water, electricity and heat for the unit.

It should be noted that the tenancy relationship has been an acrimonious one, and the tenant testified that, from at least their perspective, communication and trust has suffered as a result, and interfered with resolution to problems.

The tenant claims they suffered a lack of heat to their rental unit from early to mid-December 2011 for a period of ten (10) days. The tenant claims the lack of heat caused

them a degree of discomfort, especially at night, at which time they found it colder than they usually experienced the unit. The tenant notified the landlord, and the landlord provided the tenant with a fan-forced electric heater. The tenant claims it stopped functioning within five minutes of turning it on and they notified the landlord. The landlord asked for the heater to be returned stating they would replace it. The tenant testified that they determined to keep the heater as evidence for this hearing. The parties agreed that the heat to the rental unit was remedied two days subsequent. The parties agreed the tenant was likely without heat to the unit for 10 days. The tenant claims the temperature within the rental unit did not rise above 14 degrees Celsius.

The tenant claims that on December 28, 2011 they experienced a single episode of water ingress into the rental unit. They testified water flowed down from the ceiling along a door frame for about one hour and pooled on the floor – an area, the tenant visually displayed with his hands, to be approximately two (2) square feet. The tenant did not notify the landlord and the landlord testified he was not aware of a water leak, although the landlord did not deny the possibility of such an occurrence as they are sometimes called upon to deal with similar episodes of water ingress into other suites.

The tenant claims that the mattress supplied with the tenancy has been generally deficient since the outset of the tenancy, but improved after the tenant installed a firm barrier under the mattress. However, in the past month, the mattress spring frame has shown additional wear and the frame has begun to protrude through the mattress covering. At the hearing, the landlord acknowledged the mattress is not a newer unit but they were not notified of an unsuitability of the mattress, and first learned of the tenant's issues with it from the details of dispute resolution in the hearing application.

The tenant testified that they have evidence the landlord has harassed them. The tenant played a short video file (2 minutes) on their laptop which was viewed by all hearing participants. The video file was taken by the tenant during a visit by the landlord and it is clear from the content of the video that the landlord was aware of the video being taken. The video displays the parties in midst of conversation pertaining to issues of the rental unit, including a lockset within the unit. The landlord is the primary speaker in the video, which ends with the landlord leaving the unit. Upon viewing the video, the landlord offered comment that he was likely "annoyed".

The tenant claims \$333.75 – which the tenant explained represents 75% of their rent amount. The landlord acknowledged the tenant should be compensated for a lack of heat for 10 days in December 2011.

Analysis

Under Section 7 of the *Act*, the party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the landlord)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred. In respect to the water ingress, and the mattress, I find that the tenant failed to notify the landlord of a problem. In respect to the heat, the tenant did not allow the landlord to, in part, remedy the problem and exchange the purportedly malfunctioning heater to mitigate the tenant's loss. The tenant has not provided evidence which meets the above test in respect to these claims. However, I accept the tenant's argument that their evidence establishes they suffered some loss of quiet enjoyment. Specifically, I find the lack of heat for 10 days entitles the tenant to an abatement of rent, as heat is included in the rent. In this regard, I find the tenant is entitled to \$10 per day for 10 days in the sum of **\$100**, for lack of heat in December 2011, and I grant this amount without leave to reapply.

I find that the tenant's evidence purporting to harassment by the landlord is not sufficient to advance a claim for compensation. On viewing the video evidence I found the landlord may well have presented as annoyed, especially in respect to being videoed, but I did not view the landlord being abusive, loud or inappropriate to the tenant, and that the landlord's conduct appeared relevant to the discussion presented. The test for

harassment is a high one, and I find I prefer the landlord's testimony that they were, simply, "annoyed". As a result, I **dismiss** the tenant's claim for compensation for harassment, without leave to reapply.

As the tenancy is ending, I decline to consider any other claim for which the tenant may have applied pertaining to a continuing tenancy.

Conclusion

The tenant has been granted compensation in the amount of **\$100**. As the tenancy is ending, the tenant will not have opportunity to deduct this amount from a future rent. Therefore, I grant the tenant an order under Section 67 of the Act for the amount of **\$100**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 23, 2012.

Residential Tenancy Branch