



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order for return of the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenants stated that the Landlord had returned the security deposit in full and were no longer seeking its return. Accordingly, this part of the Tenants’ claim is dismissed.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 1, 2011 and ended on November 30, 2011 by way of a mutual agreement to end the tenancy. Rent in the amount of \$1,400.00 was payable monthly.

The Tenants state that at the time of entering the tenancy agreement, the Landlord informed the Tenants that the unit would be heated by propane and that the cost for this propane would be the Tenants’ responsibility. The Tenants state that the Landlord

informed them that there would be no problems making monthly payments to the company providing the propane. It is noted that the tenancy agreement does not include the provision of heat. The Tenants state that they did not contact the propane company to establish an account and that their first communication with the propane company occurred in October 2011 when the company sent the Tenants a bill for the entire cost of the propane and later called to enquire about the bill payment. The Tenants state that they offered to send post-dated cheques and that the company accepted these payment terms so cheques were sent with the first amount payable on November 30, 2011. On November 7, the Tenants state that they received a voice mail from the company informing them that if the entire bill was not paid by November 9, 2011 the propane would be discontinued. The Tenants state that they contacted the Landlord who offered to resolve the problem by buying the "debt" and taking scheduled payments from the Tenant on that debt. The Tenants state that the company agreed to this arrangement but arrived at the unit on November 8, 2011 and disconnected the propane. The Tenants state that the propane company informed them that the Landlord instructed them to discontinue the propane. The Tenants state that further, the propane was disconnected because the Landlord refused to buy the debt.

The Tenants state that Landlord promised the Tenants the propane service on a payment plan, that the Tenants relied on this promise and that the Landlord's subsequent refusal to "buy the debt" and take payments from the Tenant for the propane costs, and the direction of the Landlord to discontinue delivery resulted in the restriction of an essential service. The Tenants state that they were left with only enough heaters to heat four rooms out of ten. The Tenants state that they ended the tenancy with the Landlord under duress as the Landlord frightened them with the anger displayed in resolving the propane issue and they were concerned about living in a rural area. The Tenants state that the Landlord made them feel worthless and distressed and that ending the tenancy was not a choice they made without duress.

The Landlord states that the Tenants were informed on the date of signing the tenancy agreement that they had a choice of heating the unit either through electricity or

propane and that they choose propane. The Landlord states that he provided the Tenants with the contact information for the propane company and because he was informed by the company that the tank was filled and more would be delivered as required, he believed that the Tenants had created an account.

The Landlord supplied email correspondence with the Tenants dated November 4, 2011 wherein the Tenants first ask the Landlord for suggestions to help resolve the payment issue with the propane company and subsequently advise the Landlord that they would resolve the matter themselves and refer to misrepresentation by the propane company.

The Witness for the Landlord, a representative of the propane company states that the Landlord had contacted the company to set up the tank and deliver fuel and provided the company with the Tenants' name and address. The Witness states that the first communication with the Tenant occurred after the bill was sent. The Witness states the Landlord did not instruct the company to discontinue the propane delivery and that the propane delivery was discontinued due to the Tenants refusal to pay for the bill which was made out in the Tenant's name and sent to Tenants by the propane company.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, Regulation or tenancy agreement, the Landlord must compensate the tenant for damages that result. There is no dispute that the tenancy agreement does not include the provision of heat. Further, it is clear that the Parties understood that the Tenants would be responsible for the payment for such provision of heat. The Tenants argue that they relied on the representations of the Landlord that such payment could be made by installment and that by not enabling such payments, as through the purchase of "the debt", the Landlord acted contrary to the Act, Regulation or tenancy agreement. Given the evidence of the Landlord and the Witness, I find that the Landlord was not responsible for the discontinuation of the delivery of propane. I do not find that the Landlord's provision of the Tenants' name and address to the propane company to be determinative or even suggestive of an assumption of responsibility for the service that

was provided and discontinued by the propane company. Finally, given the email communications that indicate the Tenants position that the propane company misrepresented the billing arrangements, and given the Parties agreement that the Tenants would be responsible for the provision of propane, I find their reliance now in the Landlord's statements that the company would accept payments to be unreasonable. Accordingly, I find that the Tenants have not substantiated on a balance of probabilities that the Landlord has breached the Act, regulation or tenancy agreement. I further find that the Tenants have not substantiated an entitlement to compensation from the Landlord for the discontinuation of the propane delivery and I dismiss their application.

Conclusion

The Tenants' application is dismissed.

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: March 1, 2012.

Residential Tenancy Branch