

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties have acknowledged receiving the evidence package of the other. As such, I am satisfied that each party has been properly served with the notice of hearing and evidence package under the Act.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

Both parties agreed that this Tenancy began on October 5, 2011 and that no signed tenancy agreement exists. Both parties agree that the monthly rent is \$950.00 and a security deposit of \$475.00 was paid.

The Tenant seeks compensation of \$9,400.00 consisting of \$7,500.00 for loss of wages due to the inability to have a license daycare and \$1,900.00 for compensation due to the termination or restriction of services regarding hot water and no heat.

The Tenant states that she could not have a license daycare because none of the repairs were made. The Tenant states that the repairs required for her to have a license day care are that the patio doors need to be replaced as some boards on the patio are rotten and need to be replaced. The hot water tank heat element needs to be replaced and the downstairs toilet is loose and needs to be fixed. The Tenant states because of this that she lost income from not being able to have 4 children to care for instead of the 2 that she has. The Landlord argued in their evidence that there was no understanding for the Tenant to have a business at the rental location but that it was for

the Tenant's residency only. The Tenant disputes this stating that there was an understanding to operate a license daycare at this location from the beginning of the tenancy.

The Tenant states that on November 2, 2011 a letter listing issues of repairs was reported to the Landlord. The Landlord confirms receiving the letter and states that the repairs were dealt with. The Tenant disputes this stating that all but three issues have been resolved. They are patio doors need to be replaced as some boards on the patio are rotten and need to be replaced. The hot water tank heat element needs to be replaced and the downstairs toilet is loose and needs to be fixed. The Tenant stated that there is hot water for approximately 1-2 minutes, but that it turns cold immediately after. The Landlord disputes this stating that a person named, Will (the Tenant's witness's husband) was paid \$50.00 in exchange to do some of the repairs. The Landlord has submitted an invoice from Fireside Mechanical dated January 23, 2012 that service was performed on the hot water tank, and parts were replaced on the furnace for a total amount of \$555.28. The Tenant disputes this stating that the furnace was fixed, but nothing else. Both parties agreed that the Landlord received the letter dated November 2 regarding the repairs. The Tenant states that subsequently that the Tenant informed the Landlord monthly (around the time of the monthly rent payment on the 10th of each month, November 10th and December 10th). The Landlord disputes this stating other than the letter dated November 2, 2011 and the letter dated January 6, 2012 from the Tenant, the Tenant has not made any further notifications regarding repairs. The Tenant disputes this.

The Tenant also seeks to be allowed to reduce rent for services (hot water tank and the repair of the patio doors) not provided.

Analysis

I find that the Tenant has failed to establish a claim for loss of wages. There is a lack of evidence from the Tenant to establish that a license day care was a term of entering into this tenancy. The Tenant has failed to provide any evidence that her license was refused by the licensing body because of the lack of repairs. The Tenant has also failed to provide any evidence of the basis for her monetary claim. There is no evidence of the refusal of accepting the additional clients or what income would have been lost because of this refusal. On this basis, I dismiss without leave to reapply this portion of the Tenant's monetary claim.

The Tenant's second monetary claim for \$1,900.00 has not been established. The Tenant has failed to establish what loss was incurred. The Tenant stated in her direct testimony that the amount claimed was an arbitrary one, not based on anything, just that it was fair. The Landlord has confirmed with their documentary evidence that work was performed on the hot water tank and the furnace. The Tenant disputes this relying on witness testimony from L.O. that no work has been performed on the hot water tank, but in the absence of any evidence to the contrary and on a balance of probabilities I find that work was performed on the hot water tank and furnace based upon the invoice from Fireside Mechanical. The Tenant has also sought compensation for the lack of repairs to the patio doors. The Landlord is in dispute of this. The onus or burden of proof is on the party making the claim, in this case the Tenant is responsible as she has made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Tenant has failed to provide any evidence regarding the patio doors. The Tenant's claim regarding the patio doors is dismissed without leave to reapply.

However, I do find that the Tenant suffered an inconvenience. The Landlord has not disputed the loss of hot water or furnace issues leading up to the repair invoice in January 2012 from October 2011. I find that the Tenant was without proper hot water or heat during these winter months. On this basis I find that the Tenant is entitled to a nominal award of \$600.00 (consisting of \$150.00 per month for the 4 months of October 2011 including January 2012).

As for the Tenant's request to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, I find that the Tenant has failed to establish a claim for a reduction. The Tenant has failed to satisfy me that repairs were not completed and as such is not entitled to further compensation. This portion of the Tenant's application is dismissed without leave to reapply.

The Tenant has established a claim for a nominal award of \$600.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. As the Tenancy is continuing, I order that

the Tenant be allowed to withhold one-time \$650.00 from the next months rent April 2012 from the Landlord.

Conclusion

The Tenant may withhold from the Landlord, one-time, \$650.00 from the April 2012 rent due to 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: March 12, 2012.

Residential Tenancy Branch