



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, PFS, FF

Introduction

This matter dealt with an application by the Tenants for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlords to comply with the Act, for the Landlords to make repairs to the unit site or property, for the Landlords to provide services or facilities and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on February 3, 2012. Based on the evidence of the Tenant and the Landlords saying they received the hearing package, I find that the Landlords were served with the Tenant’s hearing package the hearing preceded with both the Landlords and the Tenant in attendance.

Issues(s) to be Decided

1. Are there loss or damage to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?
3. Has the Landlords complied with the Act?
4. Are there repairs to be made to the unit?
5. Have the Landlords provided services and facilities?

Background and Evidence

This tenancy started on September 1, 2011 as a fixed term tenancy for 8 months. Rent is \$1,500.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$750.00 in July, 2011.

The Tenant said the Landlords put a lock box on the thermostat during the December, 2011 when the Tenants were away from the unit on Christmas break from school. The Tenant said this was a result of problems with the heating system in the rental unit. The Tenant said the upper unit which they rented is too hot and the lower unit which is rented by a different tenant is too cold. The Tenant said their unit has the only

temperature control in the rental complex. The Tenant said they have had a number of discussions with the Landlords and the other tenant about how to fix the problem, but did not reach a conclusion that was acceptable with all parties. The Tenant continued to say that as a result of the heating problems the Landlord came into their unit while they were away on Christmas break and insulted a lock box over the thermostat so that the Tenants had no control over the temperature in their unit. The Tenant said the temperature was set first at 71 degrees F. and then at 70 degrees F.

As a result the Tenant said they made an application to be compensated for increased heating fuel costs and for loss of peaceful enjoyment of their rental unit. The Tenant said they are claiming \$100.00 per month for 5 months for increased heating fuel costs in the amount of \$500.00 and \$50.00 per month for 5 months for loss of peaceful enjoyment in the amount of \$250.00.

The Landlord said the tenancy agreement indicates that it is the Tenants responsibility to maintain and heat in the entire rental unit and that the Tenant is to be respectful of the needs of the tenant in the lower unit. The Landlord said the utilities are the responsibility of the Tenants and the utilities are to be shared $\frac{3}{4}$ of the bill to the upper unit and $\frac{1}{4}$ to the lower unit. The Landlord continued to say this problem arose when the tenant in the lower unit complained that his unit was cold because the upper unit Tenants were turning the heat down or off.

The Landlord said they had discussions with the Tenants of how to resolve this issue and the Landlord thought they had a mutual agreement to hold the temperature at 69 degrees F. The Landlord said there is no written agreement signed by both the Tenants and the Landlords. The Tenant said they did not agree to this. As a result the Landlord said they installed a lock box on the thermostat so that the Tenants could not adjust the temperature in the rental unit.

The Landlord continued to say that the Tenant had made some "falsehoods" in her application and that the Landlord was going to make an application for their damages against the Tenants.

On questioning the Landlords they agreed that there was a separate tenancy agreement with the tenant in the lower unit and there was only one heat source for the rental complex. The Landlord said it was the upper Tenants responsibility to control the heat in the lower tenant's rental unit. The Tenant said it was too hot in their unit when the lower unit was heated and too cold in the lower unit when they turned the temperature down in their unit when they were away or when they were trying to sleep.

The Landlords closed their remarks by saying they did not believe the Tenants' claim had any merit because they had not proven the increased cost of heating fuel and they were responsible to heat the entire rental unit. The Landlord said the heating bills were similar for the rental unit for this time period over the last three years at around \$1,700.00 for the time period in question.

The Tenant closed her testimony by saying that by installing a lock box on the thermostat the Landlords have removed facilities or service from the tenancy and the Landlords have not complied with the Act. As a result the Tenants have experienced increased heating fuel costs and they have loss peaceful enjoyment of their rental unit.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Tenant claim for \$500.00 for the estimated increases in heating costs. The Tenants have not provided any corroborating evidence that would support their position that they have actually paid more heating fuel costs than the rental unit costs normally to heat. The Landlord gave affirmed testimony that they have owned the unit for three years and the heating costs have been very similar each year at about \$1,700.00 for the time period in question. Consequently as the Tenants have not proven a loss has actually happened and they have not verified it with receipts or invoices; I find the Tenants have not established grounds to prove they have experienced a loss due to higher than normal heating costs. The Tenants claim for \$500.00 for 5 months of increased heating costs is dismissed with leave to reapply.

Further the Tenants said the Landlord has not complied with the Act and has restricted services and facilities by putting a lock box over the thermostat in their rental unit. The Tenant said the Landlord did this in the end of December, 2011 when the Tenants were away. As both the Tenant and the Landlords agree the lock box was put on the thermostat in the Tenants unit without the Tenants permission or agreement; I find the Landlord has restricted services and facilities by not providing access to the heating system that is in the Tenants name and which the Tenants pay for. As well the issue with the other tenant's heating problem is with the Landlord not the Tenants in the upper unit. There is no tenancy agreement between the upper Tenants and the lower tenant; therefore the responsibility of the heat in the lower unit is the responsibility of the Landlord not the upper Tenants. The Landlords should be able to provide heat to each unit they rent out independently of the other whether it is two separate heating systems or space heaters to assist with the heating in the lower unit. Consequently I find the Tenants have established grounds for compensation for loss of peaceful enjoyment of the unit as a result of loss in services for the Months of January and February, 2012. These were the months affected by the lock box on the thermostat. I award the Tenants \$50.00 for January, 2012 and \$50.00 for February, 2012. Further I Order the Landlord to remove the lock box on the Thermostat immediately. As well I order the Tenants to deduct \$100.00 per month for any future months in the tenancy starting in March, 2012 if the lock box is not removed.

With respect to the Tenants claim of \$50.00 per month for the three previous months prior to the installation of the lock box; I find the Tenants did have control of the thermostat and therefore the Landlord was not restricting any services. Consequently; I dismiss the Tenants claim for \$150.00 for the time period prior to the installation of the lock box over the thermostat.

As the Tenants were partially successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding from the Landlords. Pursuant to section 67 I order the Tenants to recover their monetary claim of \$100.00 for services and facilities being restricted and the \$50.00 filing fee in the total amount of \$150.00 by making a onetime rent reduction of \$150.00. The March, 2012 rent will be reduced from \$1,500.00 to \$1,350.00.

Conclusion

I Order the Tenants to recover their monetary claim by a onetime rent reduction for March, 2012 to \$1,350.00.

Further I Order the Landlord to remove the lock box from the thermostat in the Tenants' unit immediately.

Further I Order additional rent reduction of \$100.00 per month if the Landlord does not remove the lock box over the thermostat in the Tenants rental unit.

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*.

Residential Tenancy Branch