



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, PSF, LAT, RR, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order compelling the landlords to make emergency repairs and provide services, an order authorizing the tenant to reduce her rent and an order authorizing her to change the locks on the rental unit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the landlords be compelled to perform repairs or provide services?
Should the tenant be permitted to reduce her rent until repairs are completed and services restored?
Should the tenant be permitted to change the locks on the rental unit?

Background and Evidence

The parties agreed that the rental unit is comprised of the main and upper floors of a heritage home in which the lower floor is used as a clubhouse by a rugby club. The parties agreed that the unit is heated by means of a gas fireplace. The tenant testified that the fan in the fireplace insert has not worked properly since the beginning of the tenancy in 2005 and as a result, heat is not distributed throughout the house. The tenant claimed that the fireplace radiated heat which affected only the area in the immediate vicinity and that the fan was required to distribute heat further than 3'.

At the hearing, the landlords advised that they had obtained an insert which would be installed as soon as possible. The tenant confirmed that the fireplace insert was the only repair sought through this application.

The tenant seeks to recover \$118.00 as the cost of window kits, which she purchased to install plastic over the single pane windows. The tenant testified that the house was too cold without the use of the window kit and claimed that the landlord had offered to pay

for that cost. The landlords testified that they spoke with the tenant's former roommate and asked him if he expected to be reimbursed for this cost and were told that he would cover the cost himself. They denied having offered to reimburse the tenant.

The tenant seeks to recover \$210.00 as the estimated cost of 6 heaters purchased during the winters of 2011 and 2012. She testified that she purchased 3 small heaters each winter, ran them continuously and was unable to use the same heaters in the subsequent winter. The landlords testified that they had offered to provide heaters for the tenant, but she declined. The tenant claimed that she declined because the electrical system in the house could not accommodate more than 3 heaters.

The tenant seeks to recover \$67.00 as the cost of replacing a faucet and pipes in the kitchen of the unit. She testified that these required replacement and that in the past, the landlords have not hesitated to reimburse her for work performed, but this time would not reimburse her because she did not have receipts. The landlord S.M. testified that he is a plumber and could have performed the work himself had the tenant advised him that it was required.

The tenant seeks to recover \$225.00 of the rent paid in the winters of 2011 (January, February, March, October, November and December) and 2012 (January, February and March) as she was unable to fully enjoy the rental unit during this period due to the lack of heat.

The tenant seeks to recover \$1,800.00 in lost income as she said that due to the lack of heat, she was unable to secure a roommate to pay part of the rent. The landlords testified that the tenant does not have permission to sublet, although they are aware that she has done so in the past.

The tenant also seeks to recover the \$100.00 filing fee paid to bring her application. The tenant had originally claimed more than \$11,000.00 in compensation, which attracted a \$100.00 filing fee, but later amended her claim to \$4,445.00, which would have required a \$50.00 filing fee.

Analysis

As the landlords agreed that they had already secured and intend to install a fireplace insert, I find it appropriate to order them to do so no later than April 30, 2012.

The tenant chose to move into a heritage house with single pane windows. I find that the landlords cannot be held responsible for the cost of placing plastic on the windows as the tenant knew or should have known that a 100 year old home with single pane

windows would not be as heat efficient as a newer home with double glazed windows. I dismiss the claim for the cost of the window kits.

I find that the landlord was obligated to provide the tenant with adequate heat during the tenancy. I find that because the fireplace insert was not working and the landlords delayed in replacing the insert, the landlords had an obligation to provide the tenant with an alternate heat source. I find that the tenant should recover the cost of heaters and I find the \$210.00 claim to be reasonable. I award the tenant \$210.00.

I dismiss the tenant's claim for the cost of replacing the kitchen faucet and pipes. The tenant had an obligation to first approach the landlords with a request that they perform repairs. Having failed to do so and having failed to keep all of the receipts, which the landlords would have needed for tax purposes, the tenant prejudiced the landlords with respect to the repair.

The tenant was paying \$1,200.00 in rent each month for a unit in which she did not receive adequate heat during the winters. She seeks to recover \$225.00 per month, which represents less than 20% of the rent paid. The landlords were aware of the problem for more than 6 years and did not act diligently in attempting to repair it. I find that the tenant lost quiet enjoyment of the unit as a result and that the landlords breached their contract with the tenant as they did not provide adequate heat, which I find to be an implied term of the contract. I find it appropriate to grant the tenant an award and I find her claim to be reasonable. I award the tenant a total of \$2,025.00 which represents \$225.00 for each of the months of January, February, March, October, November and December 2011 and January, February and March 2012.

I dismiss the tenant's claim for loss of income. The tenant had no agreement with the landlord that she could sublet rooms in the rental unit and I find that absent such an agreement, the landlord cannot be held liable for lost income.

I find that the tenant should recover \$50.00 of the filing fee paid to bring her application as it was her own error which led her to pay a \$100.00 filing fee due to her original calculations resulting in a significantly higher claim.

Conclusion

The landlord is ordered to install the fireplace insert no later than April 30, 2012. The tenant is awarded \$2,285.00. The tenant may deduct this amount from future rent owing to the landlords.

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: April 20, 2012

Residential Tenancy Branch