



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The tenant presented evidence showing that she served the landlords with the application for dispute resolution and notice of hearing via registered mail sent on May 15, 2012 but both letters were returned to her unclaimed. As she served the documents to the address for service listed on the tenancy agreement, I found that she had served the documents in accordance with the Act and the hearing proceeded in the absence of the landlords.

The tenant had originally named 2 parties as landlords. She entered into evidence a copy of a tenancy agreement which clearly identified J.M. as the sole landlord and provided no evidence to show that E.F. had ever acted as her landlord. In the absence of evidence showing that E.F. falls under the definition of “landlord” under the Act, I find that E.F. was improperly named as a respondent and I dismiss the claim as against her. The style of cause on this decision and the accompanying order reflects that change.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant’s undisputed evidence is as follows. The tenancy began on December 15, 2011 at which time the tenant paid a \$215.00 security deposit. Monthly rent was set at \$430.00. The tenant found that the temperature in the unit was excessively cold and used a portable heater in the unit during the month of December. In early January, the heater tripped a breaker and the landlord asked her not to use the portable heater. The tenant advised the landlord that the unit was uncomfortably cold and he promised to turn up the heat, but there was no appreciable difference in the room temperature.

The tenant vacated the unit on March 31, 2012 and the landlord withheld \$25.00 of her security deposit without her authorization. The tenant seeks to recover the monies

withheld and also seeks to recover \$775.00 in compensation for having to live with inadequate heat during the tenancy. The tenant provided her forwarding address in writing to the landlord on March 31, 2012.

Analysis

The landlord has not filed a claim against the tenant's security deposit and absent an order from this office or the agreement of the tenant, has no ability to withhold part of the security deposit. I find that the landlord wrongfully withheld \$25.00 of the tenant's security deposit. The tenant seeks to recover only the monies withheld and does not claim a penalty and therefore I award her \$25.00.

I accept the tenant's undisputed evidence that the rental unit was unreasonably cold during the tenancy. I find that the tenant lost quiet enjoyment of the unit as a result and I find that she is entitled to recover 20% of the rent paid during that period. The tenant paid a total of \$1,505.00 and I award her \$301.00.

As the tenant has been successful in her claim, I award her the \$50.00 filing fee paid to bring her application.

Conclusion

I grant the tenant a monetary order under section 67 for \$376.00. This order may be filed in the Small Claims Division of the Provincial 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: August 14, 2012

Residential Tenancy Branch