



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHEENAJAY HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural and preliminary matters

I determined the landlord had not served its evidence package upon the tenant and the documentation was excluded from consideration. The landlord was provided the opportunity to make oral submissions in support of its position.

I amended the Application to exclude the former resident manager as a named party as his employment had ended before the tenant served his Application for Dispute Resolution at the landlord's office. The landlord had contacted the former manager and notified him of this proceeding. I considered the former manager's participation as that of a witness for the landlord. I also amended the application to correct the spelling of the landlord's name.

Issue(s) to be Decided

Has the tenant established an entitlement to receive monetary compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement in the amount claimed?

Background and Evidence

The tenancy was set to commence June 1, 2012 although the tenant was provided possession of the unit on May 26, 2012 without having to pay pro-rated rent. The parties had entered into a one-year fixed term tenancy requiring the tenant to pay rent

of \$720.00 on the 1st day of every month. The tenant vacated the rental unit July 26, 2012.

The tenant paid the equivalent of two month's rent during his tenancy or \$1,440.00. The tenant is seeking recovery of the \$1,440.00 in rent he paid.

The tenant's basis for this claim is that the hot water supply drastically fluctuated between hot and cold at various times of the day. As a result he took baths instead of showers. The tenant preferred to take showers and the need to take baths interfered with his usual grooming habits. The tenant submitted that this situation lead him into a deep depression and a suicide attempt.

The tenant submitted that he verbally informed the resident manager of the lack of sufficient hot water almost immediately after his tenancy started. The resident manager confirmed that the tenant had made him aware of this issue shortly after the tenancy started.

The manager testified that in response to the complaint he attended the rental unit and changed the shower head, but at the time the hot water supply appeared sufficient. Changing the shower head did not appear to make a difference in the long run as the tenant continued to experience fluctuations.

The manager testified that he notified the landlord about the tenant's complaint in early June 2012 and requested instructions as to what further tests or remedies should be undertaken.

The manager explained that he lived on the same floor as the tenant and experienced slight fluctuations in temperature during peak usage times, such as early morning hours or supper time. The fluctuations did not stop the manager from taking showers; however, the manager was aware of other tenants complaining of this issue.

The landlord initially testified that he recalls hearing of complaints about a lack of hot water in August 2012. When I pointed out that the manager's testimony was that he notified the landlord of the complaint in June 2012 the landlord acknowledged that he may have been made aware earlier than August 2012.

I heard that hot water was a service supplied to tenants by way of three central boilers. The landlord had the boiler system evaluated and it found to be sufficient; however, the storage capacity has since been increased and has resolved the issue of insufficient hot

water. The landlord testified that the extra storage capacity was installed in January 2013.

The landlord pointed out that the tenant was provided early occupation of the rental unit without a requirement to pay pro-rated rent and that the tenant was released from his fixed term tenancy with a full refund of his security deposit.

I heard that the tenant had given notice to end his tenancy effective at the end of July 2012 but then the tenant withdrew his notice. In early July the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of August 31, 2012 due to complaints about the tenant from another tenant. Although the tenant disagreed with the allegations against him, the tenant did not file to dispute the 1 Month Notice. Rather, the parties reached an agreement that the tenancy would end at the end of July 2012 with the tenant receiving a full refund of his security deposit. This agreement was fulfilled.

Analysis

Upon consideration of everything presented to me I provide the following findings and reasons.

Based upon the undisputed submissions of the parties, I accept that hot water was to be supplied to the tenant as an included service under his tenancy agreement.

Considering the manager experienced some fluctuations in hot water and the landlord's eventual installation of extra hot water storage capacity I am satisfied that the tenant did experience some loss of hot water during his tenancy. I find the manager's explanation that the loss of hot water was during peak hours to be reasonable considering the landlord's installation of extra storage capacity apparently resolved the issue. Therefore, I find it likely that the tenant's loss of hot water was intermittent rather than continuous.

Nevertheless, I find it reasonable to expect that fluctuations in hot water may result in a person taking baths instead of showers. While taking baths was not preferable to the tenant I find that a reasonable person would not anticipate a deep depression and/or suicide attempt as a foreseeable result of fluctuating hot water temperatures. Therefore, I reject the tenant's claim for compensation under the law of negligence.

Where a tenant suffers a loss of a service that is to be provided to them under their tenancy agreement the tenant may be entitled to compensation from the landlord due to a breach of contract, even if the breach is no fault of the landlord. Temporary discomfort or temporary loss of a service is usually not a basis for awarding compensation beyond a nominal amount. However, repeated loss of a service, or for more than a temporary period of time, is grounds for compensation to the tenant.

Where a tenant experiences an issue that requires repairs or upgrades it is expected that the tenant notify the landlord and then the landlord take sufficient action to investigate the problem and make necessary repairs or upgrades within a reasonable time frame. I accept the manager's testimony that he notified the landlord of the tenant's complaints in early June 2012. I find the landlord's eventual installation of extra storage capacity seven months later, in January 2013, to be an excessive delay.

I find that an appropriate measure of loss of the service to be based upon the devaluation of the tenancy as provided under section 27 of the Act [*Terminating or Restricting services or facilities*]. I find the tenant's request for return of 100% of the rent he paid during the tenancy to be an unreasonable estimate of the devaluation of the tenancy considering the unit was still suitable for occupation and the tenant benefited from use of the unit and other services. I find it reasonable to estimate that a fluctuating supply of hot water devalues a tenancy by approximately \$75.00 per month.

With respect to the end of the tenancy I find I was not provided evidence that the agreement reached between the parties involved a settlement agreement that precluded the tenant from making a claim against the landlord for loss of hot water. Upon hearing from the parties, I find it likely the landlord was motivated to the tenancy to end early to resolve the issue of complaints from another tenant. I also find that the tenant's early occupation of the unit on May 26, 2012 was offset by him departing early on July 26, 2012. Therefore, I have made no allowance or deduction from the tenant's award for these factors.

In light of the above, I award the tenant a total of \$150.00 for the two months he occupied and paid rent for this rental unit and I provide him with a Monetary Order in this amount to serve upon the landlord and enforce as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$150.00 to serve upon the landlord and enforce as necessary.

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 05, 2013

Residential Tenancy Branch

