



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, OLC, ERP

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for damage or loss under the Act, to have the landlord comply with the Act and make emergency repairs to the unit, site or property. A decision was issued in favour of the tenants on November 8, 2012. The landlord submitted an application for Review and was successful in having another hearing scheduled. Both parties attended the original hearing date of January 22, 2013 where it became necessary to adjourn until today's date to complete the matter. Since the tenant's originally filed on October 2, 2012 they have since moved and have amended their claim to a monetary one only.

Issues to be Decided

Are the tenant's entitled to a monetary order?

Background and Evidence

The tenancy began on or about July 1, 2007. Rent in the amount of \$900.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$450.00.

The tenants gave the following testimony; they had always had a good relationship with the landlord up until September 2012, the tenant's stated the landlord had developed unusual and sometimes frightening behaviour, the female tenant stated that she didn't feel safe staying in the unit any longer and decided to stay with her mother for fear of the landlord harming her or her children, the male tenant didn't feel threatened; he just thought the landlord was "acting pretty weird", the landlord ripped out the wires that

were connected to the furnace, parked a motorcycle that was leaking gas in the basement next to their suite, would often walk around the yard “ranting and raving to himself”, shook the male tenant’s hand at one point and asked him to wrestle, would often start yelling at the female tenant and her children and any of her friends that would attend, put up flood lights that shined right on their door and windows, kept moving propane tanks around the yard, refused to repair the furnace for the entire last six weeks of their tenancy, the tenants are seeking \$3875.00 as compensation for dealing with these issues and the landlord.

The landlord gave the following testimony; he adamantly denies that he ever harassed the tenants, he disconnected the wires to the furnace because the wires had shorted it out and it was dangerous to keep them in that condition, he needed to remove them to see what parts he required to repair the furnace, denies ever leaving the motorcycle with leaking gas in the basement, was planning on giving the tenants three months notice to move out, he mentioned that to the tenants in a conversation, some days later he overheard the female tenant speaking to a friend and planning a “loophole” out of their tenancy and feels that all of the tenant’s allegations are just a conspiracy against him with no basis, he was totally fine with the tenant’s moving out early and saw no need for them to “make up the plan”, doesn’t feel the tenants suffered any hardship without the furnace as they had a space heater, he still has not repaired the furnace as he prefers the more affordable alternative of using a space heater.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenants must prove their case. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

All parties’ testimonies and evidence have been considered in making a decision. As this matter was conducted over two separate days and almost 3 hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in the application.

In the first hearing the tenants’ were seeking a monetary order of \$1590.00 and now seek \$3875.00.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As the tenant is the sole applicant I will address each of their claims and my findings as follows;

First Claim – The tenants are seeking \$450.00 for the security deposit they posted at their new location. The tenant stated she wasn’t sure what to write in her application and stated that she wish to abandon this portion of her application, accordingly I dismiss this portion of the tenants application.

Second Claim – The tenants are seeking \$500.00 for “Gas Smell Damage Cleaning”. The landlord adamantly denied this portion of the tenant’s application. The tenants did not provide any evidence of out of pocket costs associated with this claim and in addition were unable to satisfy me of this allegation. I dismiss this portion of the tenant’s application.

Third Claim – The tenant’s are seeking \$75.00 for two space heaters. The tenants later advised that they had actually borrowed a friend’s heater and that they did not incur any costs in this regard. I dismiss this portion of the tenant’s application.

Fourth Claim - The tenant is seeking \$150.00 for moving expenses. The tenant provided an estimate of costs but not an actual receipt to justify this amount and accordingly I dismiss this portion of the tenant’s application.

Fifth Claim - The tenant’s are seeking a partial rebate on the September rent of \$360.00, \$1000.00 for; loss of quiet enjoyment, pain, suffering and endangerment, and the \$900.00 reimbursement of Octobers rent for a total of \$2260.00. The landlord acknowledged that he had disconnected the furnace and never had it repaired. As of today’s hearing the landlord confirmed that he still uses a space heater to heat his home and that if it’s good enough for him it should be good enough for the tenant. This is in direct contravention of the Act. The landlord was erratic and excitable during the hearing. I asked the landlord on many occasions to attempt to provide his testimony in a clear and concise matter. The landlord was often confusing and would refer to items that were not relevant or helpful. The female tenant’s testimony was contradictory to her own testimony at times and when asked to clarify certain issues she would offer a different version from what she previously stated. The male tenant was clear and consistent throughout the hearing. There is no question the tenant was not provided heat as agreed upon in their tenancy agreement and that the male tenant’s quiet enjoyment was disrupted during his last month of his tenancy. Based on the evidence and the testimony provided to me and considering this claim as a whole, I find that a

reasonable and appropriate amount of compensation due to the tenants is half a month's rent of \$450.00.

As for the monetary order, I find that the tenant has established a claim for \$450.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$500.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$500.00.

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 06, 2013

Residential Tenancy Branch

