



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage; for an order requiring the landlord to make repairs to the rental unit; and to recover the filing fee from the Landlord for the cost of filing this application. At the hearing the Tenant withdrew the application for an order requiring the landlord to make repairs to the rental unit, as they have vacated the unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to a refund of hydro costs as a result of the nature of the heat source in the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2012; that the Tenant agreed to pay monthly rent of \$900.00 by the first day of each month; that the Tenant was obligated to pay hydro costs; and that the rental unit is heated with an electric forced air furnace.

The Landlord stated that this is a poorly insulated older home and that the rent reflects the age/condition of the home. He stated that when he lived in the rental unit they paid annual hydro costs that were between \$3,500.00 to \$4,000.00. He stated that he informed the Tenant that hydro costs would average between \$250.00 and \$300.00 per month. The female Tenant stated that discussed hydro costs prior to the start of the tenancy and they were informed the costs would be between \$200.00 and \$250.00 per month.

The female Tenant stated that when they received their first hydro bill, in the amount of \$1,472.20, they contacted the Landlord and asked that the furnace be inspected to ensure it was functioning properly. The female Tenant stated that she asked the Landlord to inspect the furnace again on January 08, 2013.

The Landlord stated that the furnace was installed approximately 18 months prior to the start of this tenancy and it was serviced just prior to the start of the tenancy. He stated that he attempted to have the person who installed the furnace inspect the furnace after he received the initial request on December 08, 2012, but the installer was out of town. He stated that he did not have the furnace inspected when he received the second report on January 08, 2013, because at that point they were attempting to end the tenancy.

The female Tenant stated that in February of 2013 they hired an electrician to inspect the furnace. The Tenant submitted a letter from the electrician who inspected the furnace, dated February 25, 2013. In the letter the electrician declared that the furnace is equipped with four 5000 watt elements, two of which are not connected. He declared that the two functional elements are not connected to the correct size of breaker; that the furnace is wired with the incorrect size of wire; that the furnace is equipped with the wrong type of thermostat; that there is little insulation under the floor; that the furnace is undersized for the house; and that the electrical service needs to be upgraded.

The Landlord stated the furnace in the home is capable of heating a 3,000 square foot home, that this rental unit is only 1,200 square feet, and that two of the elements in the furnace were not used as the person who installed the furnace informed him the two operating elements were sufficient for the size of this home. He stated that he lived in the home for two years while this furnace was installed and that he believed it was sufficient to heat the home.

The Tenant submitted a copy of a hydro bill for the period between September 27, 2012 and November 30, 2012, in the amount of \$1,472.20. During this billing period the Tenant incurred "electric charges" of \$862.29. The bill included a connection charge of \$15.00 and a deposit of \$550.00.

The Tenant submitted a copy of a hydro bill for the period between November 30, 2012 and January 30, 2013, in the amount of \$2,427.90. During this billing period the Tenant incurred "electric charges" of \$1,166.86.

The female Tenant stated that the majority of the hydro costs were for heating the rental unit; that they kept the furnace low during the day and used space heaters to supplement the heat; and that the house was generally cold. The male Tenant stated that a friend stayed in their trailer in the yard for approximately week, but that electricity was only used to operate a radio and lights, as the trailer is heated with propane.

The Landlord agreed that the hydro costs incurred by the Tenant seem high, but he does not know how warm the Tenants kept the rental unit. He stated that most of the hydro costs he incurred when he was living in the rental unit were for heat, so his hydro consumption was drastically reduced in the warmer months.

Analysis

In the absence of evidence to corroborate the Landlord's testimony that the size of the furnace is adequate for this home, I accept the documentary evidence from the electrician, in which he declares the furnace is undersized for the house. In the absence of evidence to the contrary, I also accept the electrician's declaration that the furnace is not properly connected.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety, and housing standards and having regard to the age, character and location of the rental unit, makes it suitable for occupation. On the basis of the evidence from the electrician, I find it reasonable to conclude that the installation of the furnace does not meet the requirements of section 32(1) of the *Act*.

On the basis of the undisputed evidence, I find that this rental unit is an older home that is poorly insulated, which makes it difficult to heat. The Tenant has submitted no documentary evidence to show that the insulation does not comply with health, safety, and housing standards required by law and, given the age of the home, I cannot conclude that the insulation does not meet the requirements of section 32(1) of the *Act*.

Section 67 of the *Act* authorizes me to award compensation to a tenant only when the tenant can establish that they have suffered a loss as a result of landlord failing to comply with the Act. I find that the Tenant has submitted no evidence to corroborate their suspicion that the size of the furnace or the wiring of the furnace contributed to an excessive hydro consumption. In reaching this conclusion I was heavily influenced by the absence of evidence from a professional who clearly declares that the improper connection or the size of the furnace has a direct impact on hydro consumption.

In reaching this conclusion I was also heavily influenced by the nature of the insulation in the home. I find it entirely possible that the nature of the insulation greatly contributed to the high heating costs. As there is no evidence that the nature of the insulation breaches section 32(1) of the *Act*, I cannot conclude that the Tenant is entitled to compensation for heating costs arising from the nature of the insulation.

In determining this matter I was mindful of the impact personal choices have on hydro consumption. The temperature an individual maintains in a home; the decision to use space heaters rather than the furnace; the amount of hot water used; and the number of lights used all have a direct impact on hydro consumption. The hydro consumed by the Tenant may, therefore, simply reflect their personal lifestyle.

In determining this matter I was also mindful of the undisputed evidence that the parties discussed the anticipated monthly hydro costs prior to the start of the tenancy. Although the Landlord contends that he told the Tenant the costs would average between \$250.00 and \$300.00 per month and the female contends that they were informed the costs would be between \$200.00 and \$250.00 per month, I find that it would not be unreasonable for the Tenant to anticipate spending \$250.00 per month, which is \$3,000.00 per year.

Given that the Tenant incurred hydro charges of \$2,029.15 during October, November, December, and January, it is reasonable to conclude that they will consume no more than \$1,000.00 in February and March, which equals just over \$3,000.00. Given that they will use limited electricity for the remaining six months, when heat is rarely required, I cannot conclude that their annual hydro consumption would grossly exceed the amount they could reasonable anticipate spending and it is highly unlikely that it would exceed the amount that the Landlord contends he told them they would use.

When considered in its entirety, I find that the Tenant has failed to establish that they are entitled to compensation for hydro costs incurred during this tenancy.

Conclusion

The Tenant's Application for Dispute Resolution has been without merit and I decline to award compensation for the cost of filing this Application.

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 04, 2013

Residential Tenancy Branch

