



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*. Regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application. The tenant withdrew their request to recover the filing fee as the filing fee had been waived by the Residential Tenancy Branch.

The tenant along with an advocate and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

- Is the tenant entitled to an Order for the landlord to make emergency repairs?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit?

Background and Evidence

The parties agree that this month to month tenancy started on August 01, 2012. Rent for this unit is \$1,450.00 per month and is due on the 1st day of each month.

The tenants advocate states that in the middle of November, 2012 the tenant's furnace stopped working. The tenant's advocate states that the tenant called the landlord to inform the landlord of this issue and explained that the tenant and the tenant's children were freezing. The tenant's advocate states that the landlord said she would get a friend to look at the furnace as they may be able to repair it. The tenant's advocate states that the tenant waited for three weeks and when no one came to the unit the tenant started to send text to landline messages to the landlord as the tenant does not have long distance dialling on her cell phone. The tenants advocate states that the tenant had to purchase three space heaters to heat her home.

The tenants advocate states that as she is also the tenants outreach worker. A case management meeting took place as the Ministry was becoming concerned about the lack of heat as the tenant's children were becoming sick. After a few months the tenants advocate called the Residential Tenancy Office on behalf of the tenant to see what could be done to get heat for the tenant. The tenants advocate states she also called the landlord however the landlord became hostile and hung up the phone.

The tenant testifies that the landlord did not leave the tenant any messages and neither did the friend of the landlord who was supposed to come and look at the furnace. The landlord did respond to the text to land line message which the tenant left. The tenant's advocate states that they have always been able to get hold of the tenant and was concerned that the landlord was not getting back to the tenant about this problem. The

tenants advocate states that after they filed an application for dispute resolution the landlord came and served the tenant with a hand written eviction notice.

The tenants advocate states that the tenant's dryer also stopped working a little over a month ago. The tenant's advocate states that both the tenant and the advocate flipped the breaker however the dryer still did not work. The tenant has some disabilities and had to carry wet laundry to the Laundromat in order to get it dry. The tenant's advocate states that some time later the landlord did get someone in to look at the dryer and that repair man informed the tenant that the dryer had an electrical problem. The landlord accused the tenant of blowing the dryer up however this was not the case. When the landlord eventually came to the unit the landlord flipped the breaker and the dryer started to work. In the mean time the tenant had bought a second hand dryer. The tenant seeks compensation for the following amounts:

Three Space heaters - \$130.00

Laundry costs at \$6.00 per days for 28 days - \$168.00

Rent receipt of \$300.40 per month for five months living without heat - \$1,502.00

The tenant also seeks to keep the rent for May in compensation on top of the \$300.40 claimed.

The landlord disputes the tenants claim for compensation. The landlord testifies that the tenant did not inform the landlord about a problem with the furnace until December 31, 2012. The landlord testifies that the tenant called the landlord and said the furnace had been making loud noises since Mid November. The landlord states she asked the tenant why the tenant had not informed the landlord sooner and the tenant responded by saying she could not find the landlords number or the tenancy agreement. The landlord testifies that she asked the tenant if the tenant had changed the filters in the furnace each month as directed. The tenant responded by saying no she had not and the landlord had not instructed her to do so.

The landlord testifies that she told the tenant to turn on the baseboard heaters while the landlord contacted a furnace company. The landlord testifies a repair man fixed the

furnace that day and told the landlord the furnace was now working but the landlord should look at rebuilding the motor or replacement the furnace later on.

The landlord testifies that she went to the unit on January 05, 2013 but the tenant was not at home. On February 08, 2013 the tenant called the landlord to say the tenant had called the gas company as the tenant could smell gas and the tenant was instructed to turn off the furnace by the gas company. The landlord testifies that she asked the tenant if the tenant still had the space heaters she used for her ferrets and to use those with the baseboard heaters to provide sufficient heat. The landlord testifies that as the landlord pays the utilities this usage would not affect the tenant monetarily.

The landlord testifies that she informed the tenant that she would get a repair man to look at the furnace again and the repair company would contact the tenant to set up a time to call. The landlord testifies that after two weeks the landlord heard from the repair company who stated that they had not been able to get hold of the tenant and asked the landlord to find another company to do the repairs.

The landlord testifies she informed the tenant that she would do an inspection on March 05, 2013. Over the next four weeks the landlord testifies that she called the tenant and left messages but the tenant did not return the landlord's calls. The landlord testifies that she had another repair company waiting to do the repair who also could not get hold of the tenant. The landlord agrees that the tenant's caseworker called the landlord on April 02, 2013 to ask if the landlord had heard from the tenant. The landlord testifies that she informed the tenant's caseworker that she had not heard from the tenant and the tenant's caseworker informed the landlord that the tenant's dryer was not working. The landlord testifies that the tenant had not notified her of this.

The landlord testifies that after the tenant was given the eviction letter the tenant called and asked the landlord why the landlord was evicting the tenant. A discussion took place about the dryer and the landlord informed the tenant that a repair man was coming but not for two weeks. On April 24, 2013 the furnace repair man and the dryer

repair man met the landlord at the unit. The landlord testifies that they went to the back yard to check the dryer exhaust as the exhaust in the basement had a dent and a crack in it. The landlord testifies that the furnace repair man was not willing to go into the house due to the tenants dogs, the dryer repair man called the landlord later and said he could see that the tenant had taken the dryer apart but he could not see why the dryer was not working. The landlord testifies that when she went to the unit she flipped the breaker and the dryer started to work.

The tenant disputes the landlord's testimony. The tenant testifies that when a repair man came on December 31, 2012, when the landlord was there, the tenant asked the repairman if they had been trying to get hold of the tenant but he said no it was the landlord they had been playing phone tag with. The tenant testifies that repair done on December 31, 2012 only lasted for two days and then stopped working again and from December 31 to February 28 the furnace never worked properly.

The tenant seeks an Order for the landlord to comply with the *Act* with regards to maintaining the furnace and dryer. The tenant also seeks emergency repairs to ensure the furnace is working correctly. The tenant states that if the landlord lets the tenant know when a repair man is coming then the tenant will ensure the dogs are tied up. The tenant also seeks an Order for repairs to the dryer.

The landlord calls her witness who is the landlord's book keeper. The witness testifies that she was present during some of the telephone calls between the tenant and landlord. The witness testifies that on December 31, 2012 she could hear a conversation between the parties where the tenant had called to say the furnace had broken down earlier and could the landlord get someone to fix it. The witness testifies that the landlord responded by asking the tenant why the tenant had not called the landlord sooner. The landlord then called a repair man. The witness testifies that she was also present during a telephone conversation between the parties that took place sometime at the end of February. The witness testifies that she was also present when a repairman called the landlord to say they could not get hold of the tenant and that they

had gone to the unit but the tenant was not home so the landlord would have to get another repair company to do the work. The landlord asks the witness when to the witnesses knowledge did the landlord first hear about problems with the dryer. The witness responds at the beginning of April. The repair man could not get hold of the tenant.

The tenants advocate states that the repair man did contact the tenant and made an appointment to come to the unit on April 24, 2013. The tenants advocate argues that the tenant does not have money to waste buying space heaters. Why would the tenant not have informed the landlord in November when the furnace broke down as she had children to keep warm. Seven months is sufficient time for the landlord to have got the repairs done. The landlord argues that she had told the tenant to use space heaters and the landlord offered to pay for them however the tenant said she had some.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenant's claim for money owed or compensation for \$1,800.00; in this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I am satisfied from the testimony before me that the furnace required repairs. The question is on which date did it break down and did the tenant notify the landlord immediately. The tenant argues that the landlord was notified in mid November, 2012 and the landlord argues that she was not notified until December 31, 2012. In this matter when it is one persons word against that of the other the tenant

would need to provide corroborating evidence to meet the burden of proof. Without any corroborating evidence from the tenant to show that the landlord was notified in Mid November I cannot determine that the tenant did notify the landlord in Mid November, 2012. The parties do however agree that the furnace required repair and the landlord did send a repairman out on December 31, 2012.

The tenant also argues that the repair only lasted for two days and the landlord then failed to send another repair man out. The landlord argues that the tenant did not inform the landlord of this until February 08 and then the repair company was unable to contact the tenant. The landlord does agree that the repairman had informed the landlord that the furnace would need to either have the motor rebuilt or be replaced.

Having considered these arguments and refer the parties to s. 32(1) of the *Act* which states:

A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Consequently, it is my decision that the landlord has not provided a furnace that is in good working order that is sufficient to provide heat for the tenant and the tenant's children. The landlord has provided no corroborating evidence such as statements from the repair companies that they were unable to contact the tenant to do the repairs; I therefore find the tenant is entitled to some compensation for this lack of heat. As I am unable to determine when the tenant first notified the landlord of the furnaces failure and must take into account the fact that the unit had some baseboard heaters along with some space heaters provided by the tenant, I must limit the tenants claim for

compensation in this matter. I therefore find the tenant is entitled to compensation for not having a fully functioning furnace from January, 2013 to May, 2013. The tenant has applied for \$300.40 for five months and I must limit the tenants claim to \$150.00 per month to a total sum of \$750.00.

With regard to the tenants claim for compensation due to the dryer and having to use the Laundromat for a 28 days. The tenant is required to provide evidence of the actual amount spent to dry laundry. The tenant has provided insufficient evidence to show that the tenant had to dry two loads of laundry a day for 28 days. I therefore limit the tenants claim to the sum of \$75.00.

With regards to the tenants claim for additional compensation for Mays rent. I find there is nothing to base this additional award on. As I have already awarded the tenant compensation for the landlord's failure to provide sufficient heat in the unit no further monetary award will be made and this section of the tenants claim for \$1,450.00 is dismissed.

With regard to the tenants claim to recover the cost for the space heaters; I am not wholly satisfied that the tenant had to purchase three space heaters. Furthermore the tenant has not provided receipts for the cost of these space heaters. Therefore the tenant has not met the burden of proof and this section of the tenant's claim is dismissed.

With regard to the tenants claim for an Order for emergency repairs; I HEREBY ORDER the landlord to arrange repairs to the furnace to be carried out within one month of receiving this decision. The tenant must make herself available to the repair company at a mutually agreed date and time arranged with the landlord and the tenant must ensure any dogs are secure.

With regards to the tenants claim for the landlord to repair the dryer; I HEREBY ORDER that the landlord have the dryer inspected and any repairs required must be carried out

within two weeks of receiving this decision. The tenant must make herself available to the repair company at a mutually agreed date and time arranged with the landlord and the tenant must ensure any dogs are secure.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$750.00** pursuant to s. 67 of the *Act*. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to comply with s. 32 of the *Act* with regard to repairs to the furnace and dryer as stated above.

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: June 05, 2013

Residential Tenancy Branch

