



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70;
3. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Tenant confirmed that the tenancy had ended. As the tenancy has ended, the orders requested in relation to an ongoing tenancy are no longer relevant and I dismiss the Tenant’s claims for an order setting conditions on the Landlord’s entry into the unit and for a reduction in rent.

Issue(s) to be Decided

Is the Tenant entitled to the amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a basement suite started on June 15, 2007 and ended on June 16, 2013. Rent of \$800.00 was payable monthly. The tenancy ended as a result of the Tenant's failure to pay rent.

The Tenant states that throughout the tenancy the Tenant has not had heat in the unit for periods when the Landlord would not turn the heat on until November and would turn the heat off in March. The Tenant states that he used a heater during these periods to the extent that the heater burned out a cord. The Tenant states that he had to tell the Landlord to turn the heat back on during these periods but that the Landlord did not comply all the time. The Landlord states that the heat was turned off usually during the spring or fall on order to allow the radiant heating system to drain, that it generally took about 8 hours for the heat to be back to normal and that this drainage only occurred once a month. The Landlord states that this was only done during warm weather and only once a year and that the Tenant was not offered any compensation for this loss.

The Tenant states that his tenancy included cable and that between spring and fall 2012 he only had cable sporadically and that the numbers of channels were reduced. The Tenant states that he informed the Landlord several times and that on November 1, 2012 the Tenant asked for a replacement or to have the cable reinstalled. The Tenant states that in December 2012 the Landlord replaced the cable service with satellite service and as a result the Tenant had fewer and different channels. The Tenant states that he also lost service to his bedrooms and was left with only one television receiving service. The Landlord states that there were no problems with the cable and that the channels never changed while cable service was being used. The Landlord states that the service was changed to satellite on December 29, 2013 and that the same number and kind of channels were provided but that the channels were lined up in a different order. The Tenant states that proof of problems with the cable is noted in a receipt dated November 1, 2012 and included as evidence.

The Tenant states that the Landlord entered his unit on one occasion in December 2012 without permission while the Tenant was away from the unit. The Landlord states that they did enter the unit to install the satellite service but that a notice of entry was placed on the Tenant's door a day in advance. The Landlord states that as they knew the Tenant was at his mother's residence during this time, they also called and spoke to the Tenant's mother at the time of the service installation and obtained Tenant's permission to enter the unit. The Tenant agrees that the Landlord called but only to wish season greetings.

The Tenant states that he painted the unit in August 2012 with the permission of the Landlord and claims compensation for only the cost of the paint and supplies in the amount of \$152.00. The Tenant states that the painting itself was provided on good will. The Landlord concedes that the Tenant was given permission to paint but that there was no agreement to pay the Tenant for the cost of supplies. The Landlord states that the unit was not otherwise painted during the five year tenancy. The Landlord states that the Tenant has only provided a receipt for \$34.00 for the cost of a can of paint.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Accepting the Tenant's undisputed evidence that the tenancy included the provision of cable to more than one outlet and given the notes made on the November 1, 2012 rent receipt, I find on a balance of probabilities that the Tenant has substantiated that he experienced problems with the cable provision for a few months before the Landlord replaced the service. I also accept that following this replacement the Tenant's outlets

were reduced. Given that the Tenant did receive some service and considering that the Tenant placed no amount on this particular loss, I find that the Tenant has substantiated only a nominal amount of **\$100.00** in compensation.

Accepting that the tenancy included heat to the unit and based on the evidence of the Landlord, I find that the Tenant did experience some loss of heat at least one day out of the year for servicing. Although the Landlord states that this only occurred during warm weather, the Landlord contradicted this by stating that the heat was turned back on after the servicing. I therefore prefer the Tenant's evidence that he did experience heat loss to a greater degree than stated by the Landlord. However given that the Tenant was able to minimize his loss of heat by using a space heater and considering that this loss occurred over the length of the tenancy without further action by the Tenant, I find that the Tenant has only substantiated a nominal entitlement of **\$100.00**.

Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless, inter alia, the tenant gives permission at the time of the entry or not more than 30 days before the entry. While I accept that the Tenant may not have given permission for the Landlord to enter the unit while the Tenant was away, considering the Tenant's evidence of repeated requests the repair of the cable provision and considering that the Tenant has not provided evidence of any damage occurring from this entry, I find that the Tenant has not substantiated a loss with this entry and I dismiss this claim.

The Residential Tenancy Branch guidelines set the useful life of wall paint at four years. Based on the undisputed evidence that at the walls of the unit had not been painted for over four years at the time the Tenant painted the unit, I find that the Landlord was obliged to have the unit painted and that the Tenant is entitled to compensation for carrying out the Landlord's obligation. Given the receipts of **\$49.25** and **\$19.29** indicating paint supplies, I find that the Tenant has substantiated these costs and is therefore entitled to them.

As the Tenant's application has met with some success, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$318.54**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$318.54**. If necessary, this order may be filed in the Small Claims 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: July 12, 2013

Residential Tenancy Branch

