



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant states that the Landlord was served with the application for dispute resolution and notice of hearing to the address provided by the Landlord in the Landlord’s previous application. The service was by registered mail in accordance with Section 89 of the Act. The Landlord did not appear at the hearing. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amount claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on November 1, 2011 and ended on May 1, 2013. The Tenant consistently paid \$1,482.00 for rent and utilities each month during the tenancy. In mid May 2012, the Tenants had a grease fire in the kitchen however as there was no smoke detector in the kitchen, the Tenants did not become aware of the fire until smoke was billowing. The Tenants put the fire out before the fire department arrived. The kitchen was damaged and the Landlord claimed the repairs for the damage from the Landlord’s

insurance. A restoration company repaired the kitchen which became useable again at the end of August 2013. The Tenants paid their full rent during the restoration period.

The Tenants lost use of the kitchen, including the stove and sink, for this period of time. The fridge was moved into the living room area and the Tenants purchased a hotplate and used the microwave for this period of time. The laundry facilities were in the kitchen as well and although the washer and dryer were not damaged, the Tenant had no access to these facilities until the repairs to the kitchen were complete. The Tenant states that as the entire unit was painted, the Tenants had to repeatedly move their belongings to other areas of the house during the repairs. The Tenant states that their young children also spend most of their time at their grandparent's home due to the disruption in the unit. The Landlord did not replace the stove until October 15, 2013. The Tenants state that the Landlord failed to ensure the kitchen had a smoke detector and as a result, the Tenants were unable to detect and put out the fire. The Tenants are not claiming any loss of personal items only the loss of services and facilities paid for under the tenancy agreement. The Tenant claims \$4,882.50, an amount stated by the Tenant to be equivalent to 70% of the rent paid.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant 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. Based on the undisputed evidence that the Landlord continued to accept rent from the Tenants after the fire and noting that the tenancy did not end due to the fire in the unit, I find that the Landlord failed to provide the Tenants with the full use of the unit under the tenancy agreement and that the Tenants were without the use of a kitchen and laundry facilities for approximately 3.5 months (mid May to end August 2012) and without the

stove for approximately 5 months (mid May to mid October 2012). Although the Tenants claim compensation equivalent to 70% of the rent paid for the unit, as the Tenant's continued to use and have benefit of the remainder of the unit and as the Tenant's mitigated their loss by purchasing a hot plate and using the microwave, I find that the amount claimed by the Tenant exceeds the loss experienced. I therefore find that the Tenant is entitled to a reasonably proportional amount of \$300.00 per month for the loss of laundry facilities, sink, stove, and kitchen space for 3.5 months and to \$100.00 per month for the additional 1.5 months that the Tenants were without a stove. This amounts to **\$1,200.00** ($300.00 \times 3.5 + 100.00 \times 1.5$). As the Tenants have been successful with its application, I also find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,250.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,250.00**. 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: September 09, 2013

Residential Tenancy Branch

