



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC 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 or loss and to recover the filing fee from the Landlord for the cost of filing this application.

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 compensation for oil left in the oil tank?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 01, 2012; that it ended on June 30, 2013; and that their tenancy agreement required the Tenant to pay for oil used to heat the rental unit.

The Tenant stated that the oil delivery company informed her that the oil tank had a 550 litre capacity. She stated that she added 536.4 litres of furnace oil to the tank on September 05, 2012 so she estimates there was approximately 14 litres in the tank at the start of the tenancy. The Tenant submitted receipt to corroborate her testimony that she purchased 536.4 litres of oil on September 05, 2012.

The Landlord stated that she does not know the capacity of the tank, although she believes it is between 500 and 600 litres. She stated that in July of 2012 the Landlord added 30 gallons of furnace oil to the tank.

The Landlord and the Tenant agree that when this tenancy ended a person who works for a heating company inspected the tank in the presence of both parties. The Landlord stated that this individual informed her that there was oil in the tank; she did not see him measure the oil in the tank; and he did not tell her the measurement of the oil in the tank. The Tenant stated that this individual measured the tank with a tape measure and he informed both parties that there was 39" of oil in the tank.

The Tenant stated that she has been informed that 39" of oil is the equivalent of 462 litres of oil. She is seeking compensation for the oil that was left in the tank.

The Tenant stated that after filling the tank in September of 2012 she regularly had the tank "topped up". She stated that she last "topped up" the tank on February 28, 2013, at which time she added 168.1 litres. The Tenant submitted receipts to show that she purchased oil on November 19, 2012, December 23, 2012, January 25, 2013, and February 28, 2013.

The Landlord stated that she initially informed the Tenant that she would compensate her for the oil left in the tank in an effort to be accommodating; that she asked the Tenant for proof of the amount of oil in the tank; that the Tenant has never provided her with proof of the amount of oil in the tank; and that she does not now believe that she should compensate the Tenant for the oil left in the tank, as the Tenant should have planned to leave with the same amount of fuel in the tank as was present at the start of the tenancy.

The Tenant stated that she had periodic problems with the furnace and that after March 01, 2013 the furnace simply stopped working and she could smell oil fumes when she attempted to start it; that she reported the problem to the Landlord; that the Landlord had a furnace technician inspect the furnace; and that the technician informed her that it could not be repaired; that she was unable to use the furnace after March 01, 2013; and that she subsequently heated the rental unit with two space heaters provided to her by the Landlord.

The Landlord stated that the furnace was serviced in October of 2012; that the Tenant did report a problem with the furnace in March of 2013; that she had a furnace technician inspect the furnace in March of 2013; that the technician informed her that the furnace was old but still functioning; that the technician never informed her the furnace was unsafe; that she provided the Tenant with two space heaters because the Tenant informed her that she did not wish to continue to use the furnace; that her daughter moved into the rental unit after this tenancy ended and she used the furnace in the rental unit; and that the furnace was replaced in October of 2013.

Analysis

Section 67 of the *Residential Tenancy Act (Act)* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord failing to comply with a term of the tenancy agreement of the *Act*. The burden of proving a claim rests with the party making the claim which, in these circumstances, is the Tenant.

Residential Tenancy Branch Policy Guidelines stipulate that a tenant must leave an oil tank in the condition that it was found at the start of the tenancy, half full for example. There is no suggestion that the Tenant has not complied with this policy guideline.

I find that the Tenant has failed to establish that the tenancy agreement or the *Act* requires the Landlord to pay the Tenant for fuel left in a tank at the end of the tenancy if the Tenant leaves more fuel in the tank than was present at the start of the tenancy. I therefore dismiss the Tenant's claim for compensation for fuel left in the tank. In essence, a tenant is not entitled to compensation for "improvements" made to a rental unit unless the parties have made an agreement regarding those improvements.

In reaching this conclusion I was influenced, in part, by section 7(2) of the *Act*, which stipulates that a tenant who claims compensation must do whatever is reasonable to minimize their loss. In my view, it would have been reasonable for the Tenant manage her fuel consumption to ensure that there was the same amount of fuel left in the tank at the end of the tenancy as there had been at the start of the tenancy.

Even if I were to conclude that the Landlord was obligated to pay for the excess oil left in the tank, I would dismiss the Tenant's claim for compensation as the Tenant has provided insufficient evidence to establish how much oil was left in the tank. In reaching this conclusion I was influenced, in part, by the absence of evidence that corroborates the Tenant's testimony that there was 39" of oil left in the tank and/or that 39" is the equivalent of 462 litres of oil.

In determining that the Tenant has provided insufficient evidence to establish how much oil was left in the tank, I was also influenced by the absence of evidence that oil was purchased in October of 2012. Although the evidence shows that the Tenant purchased between 168.1 and 188.6 litres of oil on a monthly basis between November 19, 2012 and February 28, 2013, it is entirely possible that there was a significant amount of oil used in October that was never replaced. In reaching this determination I specifically note that there is no documentary evidence that corroborates the Tenant's testimony that the tank was "topped up" every time oil was purchased.

In determining this matter I have placed little weight on the Tenant's testimony that the furnace did not work after March of 2013, as there is no evidence to corroborate the Tenant's claim it did not work or to refute the Landlord's claim that it did work.

Conclusion

As the Tenant has failed to establish the merits of the Application for Dispute Resolution, she is not entitled to recover the fee for filing the 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: November 19, 2013

Residential Tenancy Branch

