



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application filed by the Tenant for a monetary claim for money owed or compensation for loss of quiet enjoyment and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenant seeks a monetary claim of \$2,588.10, which consists of \$300.00 for cleaning from the beginning of the tenancy, \$306.00 for the loss of use of a stove due to no propane fuel, \$547.00 for hydro due to heating the Landlord's portion of the rental, \$50.00 for travel costs to deposit a cheque from the Landlord, \$900.00 for the loss of quiet enjoyment and the Landlord breaching an agreement to sell the house and \$435.00 for the loss of quiet enjoyment due to privacy from a different rental provided by the Landlord.

The Tenant states that at the beginning of the tenancy the rental was left dirty requiring her to clean the unit for approximately 12 hours. The Tenant states that a local cleaning service charges \$25.00, so she seeks a claim of \$300.00 as she had cleaned the rental herself. The Landlord disputes this stating that this is the first that they have been notified that the Tenant was not satisfied after the beginning of the tenancy. The

Landlord also states that when the Tenancy began the Tenant had notified them of insufficient cleaning and that a cleaner attended on May 29 and again on May 30 after they were notified by the Tenant at the beginning of the tenancy. The Landlord states that the Tenant never notified them that the second cleaning was not satisfactory. The Landlord has submitted copies of two cleaning invoices for cleaning done at the beginning of the tenancy. The Landlord states that at no other time were they notified that there were any further issues. The Tenant stated that she did not ask for any further cleaning.

The Tenant seeks \$306.00 for the loss of use of a stove for 18 days at the beginning of the tenancy due to a lack of propane fuel at \$17.00 per day. The Tenant stated that she could not cook anything. The Landlord disputes this and clarified that at the beginning of the tenancy it was reported by the Tenant that there was no propane fuel and that an order was immediately made, but that fuel shipments only came to the island every two weeks. The Landlord stated that upon being notified a small portable propane stove was given to the Tenant for temporary use until the next fuel shipment. The Tenant confirmed this in her direct testimony and then stated that her earlier comment that no cooking was possible was in error and that she had to use the portable stove outdoors. The Landlord stated that this is the first time during the dispute application that the Tenant has expressed any issues over that incident.

The Tenant seeks \$547.00 for recovery of hydro costs due to heating the Landlord's portion of the rental property (basement storage). The area is a storage area being heated under the Tenant's heating costs and that Tenant states that the heater must be faulty for her to incur a larger than normal heating bill. The Tenant states that the bills were high as shown by her submitted hydro calculations and that she stopped using the heat in April and May of 2013. The Tenant also states that the costs were approximated based upon her previous usage and the average cost of her winter heating bills. The Landlord disputes this stating that the Tenant has never expressed any issues with the heater prior to this hearing and that they were never notified any problems with the heater. The Landlord states that the heating element is "set on low because the owner had some furniture down there. When Ms. Sherlock mentioned that basement heat should not be her responsibility, the owner reduced her rent in the next to last month by \$200.00, to compensate." The Landlord states that electricity is not included and there is nothing wrong with the heater.

The Tenant seeks a claim of \$50.00 consisting of \$33.50 for ferry costs and \$16.60 for mileage to deposit a cheque because of the Landlord's accounting error. The Landlord states that this was an error by the Landlord and concedes the claim of \$50.00 for the Tenant's inconvenience in travelling by ferry to the bank.

The Tenant seeks a claim of \$900.00 for a breach of an agreement by the Landlord to not put the house up for sale and for the loss of privacy during the Landlord's showings and visits to the rental property. The Tenant states that on 20 occasions she was disturbed by the Landlord's actions (in emails, telephone calls and on approximately 8 times intruded upon by the Landlord's personal visits to the rental unit). The Landlord disputes this claim stating that there was no agreement to not sell the house. The Landlord stated that the Tenant prior to signing a tenancy agreement with the Landlord. The Landlord stated in the written response, "...she agreed to rent Galleon Way house on the terms offered by the owner." Both parties confirmed in their direct testimony that both parties entered in the signed tenancy agreement as shown by the copy submitted by the Landlord.

The Tenant has withdrawn her claim of \$435.00 for loss of quiet enjoyment. The Tenant clarified that this was for a previous rental with the same Landlord. As such no further action is required for this portion of the claim. Both parties were notified that as this was due to another rental address that it could be applied for under the Residential Tenancy Act in a separate application by the Tenant.

Analysis

I accept the disputed testimony of both parties. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the Tenant's first portion of the claim, I find that the Tenant has failed. The Tenant has failed to provide sufficient evidence that the rental unit was not in satisfactory condition at the rental unit requiring additional cleaning. The Tenant did not notify the Landlord after the second cleaning service that it was not satisfactory and therefore did not allow the Landlord to resolve any issues. This portion of the claim for cleaning of \$300.00 is dismissed.

In the second portion of the Tenant's claim, \$306.00 for the loss of a stove, I find that the Tenant has failed. Both parties have confirmed that at the beginning of the tenancy that there was a lack of propane fuel for the house. The Landlord upon being notified immediately placed another for re-fueling, but that the next available shipment would not be for two weeks. Both parties confirmed that the Landlord provided a temporary stove for the Tenant's use during that period. The Tenant has failed to satisfy me how her claim of \$17.00 per day in this portion of the claim was established. However, the Tenant has established based upon the Landlord's admission that an inconvenience has taken place. A house stove replaced by a portable stove is a loss in facilities as promised in a tenancy agreement. On this basis, I grant a nominal award for the inconvenience of \$75.00.

On the third portion of the claim of \$547.00, I find that although the Tenant has established that she was paying for electricity to heat the Landlord's storage area the Tenant has not established a claim for the amount of \$547.00. The Tenant's has failed to provide sufficient evidence to satisfy me that the heater in the basement was faulty and how much she incurred as a result of the faulty heater. Both parties agreed that the Landlord upon being notified did compensate the Tenant, \$200.00 at the end of the tenancy. This portion of the claim is dismissed.

On the fourth portion of the claim, the Landlord has conceded the Tenant's claim of \$50.00. As such, the Tenant is successful in this portion of the claim for recovery of transportation costs.

On the fifth portion of the Tenant's claim, I find that the Tenant has failed to satisfy me that an agreement existed to not list the house for sale or of any details of the monetary claim of \$900.00 at \$150.00 for 6 months. As well, the Tenant has failed to provide sufficient evidence to satisfy me that the Landlord's proper notices of entry were improper and intrusive beyond what is considered an inconvenience. The Tenant's monetary claim is an arbitrary amount as stated in her direct testimony and is not proven. The Tenant has failed to establish sufficient grounds that the Landlord acted improperly causing a loss of peace that was beyond an inconvenience. This portion of the application is dismissed.

As the sixth portion of the Tenant's application was withdrawn no further action is required.

The Tenant has established a total monetary claim of \$125.00. The Tenant is entitled to recovery of the \$50.00 filing fee. I grant a monetary order to the Tenant under section

67 for the balance due of \$175.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$175.00.

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: March 06, 2014

Residential Tenancy Branch

