



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF RP OLC MNDC FF

Introduction

This was an application by three tenants under the *Residential Tenancy Act* (the Act) seeking compensation for deprivation of heat for 4 days, for the loss of a kitchen sink for several days, for loss of water for one day while a leaking pipe was fixed, for the removal of a bed from the furnished premises and for lack of timely repair.

SERVICE: All parties and a witness were present at the hearing and the landlord confirmed receipt of the Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act.

Issues(s) to be Decided

Have the tenants proved on the balance of probabilities that they are entitled to compensation for loss of heat, loss of a sink, loss of water for a day, removing a bed from one tenant's room and for non repair? If so, to how much compensation have they proved entitlement and are they entitled to recover the filing fee for this application?

Background and Evidence

The tenancy of the present tenants began on September 1, 2013. Four persons signed the fixed term tenancy agreement which is to expire on April 30, 2014 but two of the tenants had been living there before the lease was signed. The tenant, S., said that the tenant, J., had lived there for 4 months prior to the lease, the place was unfurnished but other girls had left furniture behind saying they would come back and collect it when they finished their travels. Rent was \$1680 and the security deposit was \$840. The Application was brought by only three of the tenants, S., J., and Y.

The tenants testified that they lost heat during the coldest weekend in February, they texted the landlord on February 6, 2014 but she did not come to see the problem. She said the landlord said the oil tank was empty when it was not, the landlord said they should buy electric heaters if they did not want to pay for more oil and they, being students could not afford that. Then she said the landlord promised an electric heater on Sunday but never came with it and on Monday, said they would have to pay \$25 for

it. They had no heat from Friday to Monday. They went to the downstairs tenants on Monday and he found there was a breaker tripped; he reset it and the heat came on. The tenant testified that she is an international student from a tropical climate and this loss of heat devalued the tenancy during a critical exam time and she became ill.

The tenant, S., said she had electric heat in her room and she opened her door in the cold snap to try to warm some of the other rooms and they all wore winter clothes. She said they had no access to downstairs so could not check the breakers.

The landlord essentially agreed that the tenants had been without the oil heat for four days. She said the lease makes the tenants responsible for the oil bill, the furnace had been thoroughly checked mechanically when it had been filled in the Fall so she asked the tenants to check the oil level as they had only half filled it in the Fall to save money. She said the downstairs tenant who had been there 3 years said all was fine. She agrees that the breaker must have been tripped accidentally resulting in a loss of heat. The downstairs tenant gave a written statement that he had no control over the heat, the furnace was working fine as it is next to his room, the heating panel was upstairs and these tenants turned off the heat all the time while they were at school and this was unfair as he paid 50% of the heating costs.

The tenant, Y., said she thought she was renting a furnished room, then on January 1, 2014, a former tenant came and removed the bed. The landlord offered her only a mattress to replace it. The landlord said they rented the main floor unfurnished but some tenants had left furniture behind. When Y. called her about the bed removal, she offered her son's mattress to help her out but they had never supplied furniture to the tenants and it is not part of their lease agreement. In the lease agreement, it states after each tenant's name that she is responsible to remove certain items of furniture when she vacates. The tenants explained that this was inserted because of other tenants leaving the furniture behind, they wanted to use it so they agreed they would remove it when they left. A witness said that Y. was promised the furniture as part of the tenancy and referred to a text message. The text message in evidence was dated January 4, 2014 and said it wanted to confirm that the furniture in the room was now under "my responsibility" and if I move I should take them with me, right? And the answer text was "All furniture belong to u, u will move out when u leave".

The tenants also claim compensation for plumbing issues. They said they were without a working kitchen sink for 4-5 days for it was blocked. They said the first time the landlord cleared it herself, said she found chopsticks and warned them. The former two tenants said they had had problems before but always cleared them with Drano. On January 20, 2014, the tenants again had a clogged sink, the landlord was out of town and told them to clear it themselves and she would be back on Friday. The landlord

texted the tenants and had an appointment for 6 p.m. to enter but the plumber came early so she texted each of the tenants a number of times, waited half an hour outside, then went in with the plumber to repair. He found two chopsticks blocking the drain but she paid for it. The tenants also complained that they lost water on a Saturday from 9a.m. to 5p.m. The landlord provided evidence that she had notified them of this in advance and that the City had turned off the water to have a leaking main pipe fixed.

The tenants complained also about lack of repair. The complaints were made in writing on February 8, 2014 after the dispute about the oil arose. On the lease, it states the hanger and shelf in S.'s room closet is to be repaired asap. S. said the shelf was fixed but never the hanger. The landlord said it was difficult to get the hanger parts and the tenant said it was okay for now. The tenant said it was very inconvenient for she had no place to hang up clothes properly.

The tenants also complained about loss of Wi-Fi in February with no warning and with their schoolwork to complete. The landlord said she had not agreed in the lease to provide Wi-Fi___33 but it was on the downstairs tenant's lease; when he left, it was discontinued.

Analysis:

The onus is on the tenant applicants to prove on the balance of probabilities that they suffered loss or damages due to act or neglect of the landlord and that they are entitled to compensation for their loss or damage.

I find problems with the heating system and plumbing items are defined in section 33 of the Act as emergency repairs and the landlord has the right to enter the property under section 29(1)(f) to do such repairs without giving the requisite 24 hour notice. I find the landlord legally entered the property with the plumber to repair the sink as the tenants were characterizing it as an emergency which was necessary to protect their health. I find the landlord texted them several times about this and only entered after waiting outside for half an hour with the plumber. I dismiss this portion of the tenants' claim for illegal entry.

In respect to the loss of heat for four days, I find the landlord's evidence credible that she honestly believed the furnace was off because of lack of oil and it was the tenants' responsibility to have the tank filled. However, I find she was wrong and because of this, the tenants suffered four days without heat; it was undisputed that it was because of a breaker being turned off in the lower area to which the tenants did not have access. I find they were without heat for an unacceptable period of time and that this negatively impacted the value of the tenancy. Therefore, I find them entitled to a rent rebate for 4 days (\$60 a day in February) for a total of \$240.

Regarding the plumbing issue, I find the landlord's evidence more credible and prefer it to the tenants' evidence. I find the blockage was caused by chopsticks and had happened in the Fall and been cleared by the landlord. Whether or not the tenants use chopsticks, I find the plumber found chopsticks blocking the sink drain again. I find the weight of the evidence is that this issue was caused by the tenants so I dismiss their Application for compensation from the landlord for loss of use of the kitchen sink. I find also that the tenants were advised in advance of the City turning off the water one Saturday for several hours to fix a leaking main drain. I find the landlord through act or neglect did not cause this problem, they had warning to collect water in advance and could have showered etc. before 9 a.m. when the water was turned off. I dismiss this portion of their claim.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement and also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms and other data including:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- which services and facilities are included in the rent;
- the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

However, in cases where there is no written contract, oral terms contained in verbal tenancy agreements may still be recognized and enforced. I find in this case that the lease does not specify that Y. is renting a furnished unit. Although she pointed to the sentence that states she must remove her furniture when she moves out, no furniture is specified and the other tenants explained that it was just furniture left behind by previous tenants which would be reclaimed. I find insufficient evidence of any oral agreement between her and the landlord that a bed was included in her rental unit. I dismiss Y's claim for the loss of a bed when the previous tenant reclaimed it.

Likewise, I find there is no free Wi-Fi___33 included in the lease terms and no evidence that there was an oral agreement to provide it. I find the landlord's evidence credible that the downstairs tenant had it in a lease term and it was discontinued when he moved. I dismiss the portion of the claim for loss of use of Wi-Fi___33.

I find the lease did provide that the landlord would repair a broken hanger and shelf in S.'s room. It was acknowledged by the landlord that although the shelf was repaired, she had never fixed the hanger for she thought the tenant agreed it was okay to wait. I find the tenant suffered inconvenience in not having a proper space to hang her clothing for 7 months (September to January) and I find her entitled to \$20 a month to

compensate her for the inconvenience (total \$140). I find the rest of the unit was acknowledged to be in good condition on the lease. I decline to consider other minor repairs raised in a letter in February which was after the dispute about the oil arose as they were not part of the Application, the landlord did not have an opportunity to respond to them and there appears to be a Mutual Agreement to end Tenancy early which makes the issues moot.

I find that the tenants entitled to total compensation of \$380 as retro-active rent abatement plus the \$50.00 cost of this application.

Conclusion

The tenant is successful in the application and is granted a retroactive rent abatement of \$380 for loss of value of the tenancy and is issued a Monetary Order of \$430 (rent abatement \$380 plus \$50 filing fee).

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 14, 2014

Residential Tenancy Branch

