



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, FF, O

Introduction

This matter dealt with an application by the Tenants for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement, to make repairs to the unit, site or property to recover the filing fee for this proceeding and for other considerations.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 25, 2014. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there losses or damages and is the Tenant entitled to compensation?
2. Are repairs required and who should pay for them?

Background and Evidence

This tenancy started on May 1, 2013 as a fixed term tenancy with an expiry date of May 1, 2015. Rent is \$1,250.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$625.00 in advance of the tenancy. I should be noted no Tenancy Agreement was submitted into evidence for the hearing.

The Tenants said the Landlord rented them the upstairs unit in a house and the Landlord kept control of the basement or lower level as the landlord said they were going to develop it as a second rental unit. The Tenants continued to say they have had difficulty with the heating system in that it does not produce sufficient heat to heat all of the upstairs rent unit. The Tenants also said they discovered their hydro bill were higher than they had expected by a considerable amount and they found out when they investigated the hydro costs that they were also paying for the lower unit’s hydro even though they had not rented it or had control of that space. As a result the Tenants have

made an application for the Landlord to pay part of the hydro bills from the start of the tenancy as the Landlord has control of the lower part of the rental unit. The Tenants said they are requesting compensation of \$528.11 which represents 40% of the hydro costs from the start of the tenancy.

Further the Tenants said they are requesting that the Landlord repair the furnace as it does not work properly. The Tenants said it does not heat their children's bedrooms. The Tenants said when they told the Landlord the furnace was not working properly the Landlord did send a maintenance person who cleaned the furnace which helped, but the maintenance person said he was not authorized to make any repairs. The Tenants allege that the furnace element is not sufficient to heat the house and there are issues in how the furnace is set up. The Tenants requested that a furnace repair company is hired to repair and certify the furnace is working as it should and it is adequate for the house. The Tenant said he provided a letter to the Landlord dated February 23, 2014 asking the Landlord to pay 40% of the hydro costs and requesting the furnace be repaired.

The Landlord agreed the Tenants only rented the upstairs unit and the Landlord will be developing the lower unit in time, but the Landlord said the tenancy agreement says the utilities are not included in the tenancy and there is no shared utility agreement so the Tenants are responsible for the full utilities for the house. The Tenant said there was no discussion about the lower unit utilities when the tenancy agreement was signed so the Tenants thought they were only paying the utilities for their unit. The Landlord said the Tenants knew they were responsible for all the utilities. In addition the Landlord said they only have 2 vents of a total of 9 vents open in the basement so the basement does not take very much heat. The Landlord said it was like venting or heating the crawl space in a house.

The Landlord continued to say that they have had the furnace repair company to the rental unit 3 times and they have letter that the furnace is working correctly. Unfortunately the Landlord said that he did not understand that he needed to send in evidence like the furnace company letter to prove the furnace was working correctly. As a result the Landlord did not send any evidence in to support his claims that the Tenants' claims are unjustified.

During the hearing both parties said they wanted to end the tenancy and the parties were given the opportunity to make a settlement agreement to end the tenancy. The Tenant wanted to give the Landlord 2 months notice and move out on July 31, 2014. The Tenant said he would pay the rent up to July 31, 2014. The Landlord requested rent to July 31, 2014 and compensation of 2 month's rent in addition to end the fixed term tenancy agreement. Both the Tenants and the Landlord declined each other's offers.

The Tenant said in closing that they should not pay the utilities for space that they are not renting and they want the furnace repaired so it heats their rental unit correctly. The Tenants said they submitted all the hydro bills for the property and they believe the Landlord should be responsible for 40% of the hydro costs.

The Landlord said the Tenants signed a contract and they are responsible for the utilities.

Analysis

During the hearing it was apparent the parties have not submitted much or any evidence to prove their claims. The Tenants submitted a written statement, a letter to the Landlord dated February 23, 2014, about the heating issues and copies of the hydro bills. The Landlord did not submit any evidence. The Tenants' evidence shows what they think happened and how much the hydro bills are but it does not prove their claim of 40% of the hydro costs should be paid by the Landlord. It just shows that they are paying the utility costs for a space that they are not renting and because no tenancy agreement was provided it is not possible to determine what the arrangement was regarding the payment of the utilities. The arrangement for the payment of the utilities in the tenancy agreement is the Landlord's responsibility and the Landlord should have told the Tenants that part of the tenancy agreement is to pay the utilities for the lower unit or not. From the testimony of the parties I find the Landlord did not put this in the tenancy agreement. I accept the Tenants' testimony that they did not know they were paying the utilities for the lower unit until they made investigations with the hydro company. Consequently I find that the Landlord owes the Tenants some amount for the utilities, but there is no definitive evidence to prove what amount. In these types of situations an Arbitrator can make a decision based on the balance of probabilities or what seems to be a reasonable. I find, as the Landlord has control of the lower unit and it is not rented to the Tenant then it is the Landlord is responsible for the heating the lower unit. I order the Landlord to pay \$20.00 per month of the hydro costs. As this tenancy started in May, 2013 the amount owed to the Tenants for hydro is $12 \times \$20.00 = \240.00 and I order the Tenants to reduce their rent by \$20.00 per month starting July, 2014 for the balance of the tenancy or until an arrangement is made between the Landlord and the Tenant on how the payment of the hydro account will be done. I order the Tenants to deduct the \$240.00 of past hydro costs from the June 2014 rent making the June, 2014 rent $\$1,250.00$ less $\$240.00 = \$1,010.00$.

Further as the rental unit is rented with a furnace and furnace system and it is the responsibility of the Landlord to maintain that system. I accept the Tenants testimony and application that there are issues with the furnace system. Therefore I order the Landlord to hire a furnace company for a full inspection, full maintenance and to repair any deficiencies with the furnace system by June 30, 2014. The furnace company is to

provide that Landlord with a letter of certification that the furnace is working correctly and is adequate to heat both the lower and upper rental units. Further I order the Landlord to provide the Tenants with a copy of the certification letter. The Landlord is responsible for all costs associated with the furnace inspection and repair.

As the Tenant was successful in this matter I order the Tenant to recover the filing fee of \$50.00 from the Landlord by reducing the June, 2014 rent by an additional \$50.00. The June, 2014 rent will be reduced to \$1,010.00 - \$50.00 = \$960.00.

Conclusion

The Tenants will reduce the June, 2014 rent to \$960.00 as full compensation for past hydro costs and the recovery of the filing fee.

The Tenants will reduce future rent by \$20.00 per month starting July, 2014 or until an arrangement is made between the Landlord and the Tenants on how the hydro costs are to be shared.

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: May 12, 2014

Residential Tenancy Branch

