



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside, and a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant and entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about June 1, 2009. Rent in the amount of \$1150.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.00 and a pet deposit of \$550.00.

The tenant gave the following testimony:

The tenant stated that on April 17, 2014 she discovered that there wasn't any hot water or heat in her unit. The tenant stated that she sent a text message to the landlord advising of such. The tenant stated that she was without hot water and heat until April 22, 2014. The tenant is seeking \$600.00 for having to contact a lawyer to be informed of

her rights and to communicate with the landlords and \$120.00 for the six days she was without heat and hot water.

The landlord gave the following testimony:

The landlord stated that upon being informed of the problem, his wife attended to the house immediately to investigate. The landlord stated that due to it being the Easter long weekend it was difficult to get a hold of a technician that would attend to the home. The landlord stated that five different companies had been contacted. The landlord stated that one technician did attend on the Saturday of the long weekend and advised that the furnace may need to be serviced. The landlord stated that the technician had made some adjustments and that the water temperature improved. The landlord stated that they contacted another company that did attend on Tuesday April 17, 2014. The landlord stated the technician replaced a pump on the furnace that rectified the situation. The landlord stated that he made all attempts to address the matter as fast as he could but was hindered by the fact it was a long weekend.

Analysis

At the outset of the hearing the tenant advised that she moved out on May 25, 2014, accordingly I dismiss her request to have the notice to end tenancy set aside.

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.

The tenant has failed to satisfy me of all four grounds as required, specifically #2 and #3. I find that the landlord was conducting their business in accordance with the Act and made all reasonable attempts to mitigate the loss in a timely fashion. In addition, the tenant did not provide sufficient evidence as to why a lawyer was required in this matter. Based on all of the above and on the balance of probabilities I dismiss the tenants' application in its entirety.

Conclusion

The tenants' application is dismissed in its entirety.

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: June 04, 2014

Residential Tenancy Branch

