



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the tenants and both landlords.

Prior to the close of the hearing the landlords indicated that they had an local fire department inspection and solid fuel burning appliance permit that they would like to submit into evidence recording the condition of the fireplace and chimney at the start of the tenancy.

I allowed the landlord until the end of business on September 19, 2014 to submit copies of this evidence to both the tenant and to the Residential Tenancy Branch. I also allowed the tenant until the end of business on September 26, 2014 to submit any responses to the landlord's additional submissions.

On September 12, 2014 the landlord submitted into evidence a copy of a Solid Fuel Burning Appliance Permit dated December 11, 2009 showing the inspection was completed on December 14, 2009 and a copy of an Inspection Request dated December 14, 2009 showing woodstove and chimney meet the guidelines set out in the Residential Wood Heating Guide and attached diagram.

On September 15, 2014 the landlord submitted another copy of the Solid Fuel Burning Appliance Permit dated December 11, 2009 however this copy has a statement written at the bottom stating "Tenant agrees to clean chimney" with two initials "CB" and "KT".

Included also in this submission is a typewritten document addressed to me and dated September 15, 2014 that provides additional information on what the landlord's expectations were of the tenants in regard to the woodstove and oil furnace. As this information was not part of what I allowed the landlord to submit after the end of the hearing I have not considered in this decision.

On September 18, 2014 the tenant submitted all of the documents the landlord served to her and states that the initials on the Solid Fuel Burning Appliance Permit are not hers and that she had never seen these documents before the landlord provided them as evidence.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for repairs made to the rental unit by the tenants, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on December 27, 2009 as a month to month tenancy for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$475.00 paid. The tenancy ended on April 30, 2014.

The tenant submits that the landlords required that she have the oil furnace chimney cleaned at a cost of \$80.00 and that she pay to have the chimney from the woodstove repaired at a cost of \$3,418.03. The tenants seek reimbursement of these costs. The tenant provided a receipt for the oil furnace chimney cleaning.

The tenant also submitted 4 receipts for chimney repairs:

- Dated October 25, 2012 for grey brick and mortar in the amount of \$197.62;
- Dated October 30, 2012 for labour in the amount of \$1,344.00;
- Dated October 25, 2012 for clay flue liner in the amount of \$134.37; and
- Dated either September 2010 or September 2013 (copy is unclear) for roofing supplies in the amount of \$1,743.04.

The landlords submit that the tenants were aware they were not suppose to use the fireplace for more than a small portion of their heating needs but that they used it for all of their heating needs. The landlords submit as a result and failure of the tenants to clean the chimney they tenants caused a fire in the chimney that required repairs.

The landlords also submit that the receipt for roofing supplies is unrelated and the tenants only paid the landlord the amounts listed in the receipts dated October 25, 2012 and October 30, 2012.

Analysis

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Residential Tenancy Policy Guideline #1 states that the landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heat ducts and ceiling vents as necessary.

The Guideline also goes on to say that the landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals and the tenant is responsible for cleaning the fireplace at the end of the tenancy if they have used it.

While I accept that the landlord had a permit at the start of the tenancy that allowed the use of solid fuel in the fireplace and that an inspection was completed prior to the tenancy, there is no evidence before me that the tenants misused the fireplace in any way.

Despite the landlords' position that the tenants were informed to use the fireplace only for a small portion of their heating needs I find that the landlords have not provided any documentation to show that the tenants were in agreement, such as the tenancy agreement.

Even if such an agreement was made, I find those terms to only use one of the services available to heat the rental unit for a restricted and limited time to be unenforceable as the term as the term is unconscionable and, from the evidence before me, is not expressed in a manner that clearly communicates the rights and obligations under it.

In addition, as noted above, it is the landlords' obligation under Section 32(1) of the *Act* to ensure the rental unit remains in a state of repair that complies with health, safety and housing standards required by law and make it suitable for occupation by a tenant. Further, the Residential Tenancy Policy Guideline specifically notes that landlords are responsible for cleaning and maintaining fireplace chimneys.

I also note that the landlords have provided no evidence at all as to what caused the damage to the chimney in the first place. Despite the landlords' submission that there had been a chimney fire that was investigated by the fire department, the landlords did not provide a copy of the fire department's report.

As such, I find that even if a fire occurred in the chimney during the tenancy, the landlord has provided no evidence that it was the tenant's fault through their usage of the fireplace. I also find that the failure to clean the chimney was a result of the landlords failing to fulfil their obligations under the *Act* and Policy Guidelines. As such, I

find that if the fire occurred because the chimney was not cleaned the tenant's cannot be responsible for any repairs that were required.

As such, I order the landlords must return monies paid to them from the tenants for the repairs to the chimney. However, as the tenant has provided no evidence to establish the amount paid I must rely upon the evidence before me to determine the value of those payments.

I am accept the landlords' position that the invoice for re-shingling the roof of the rental unit are not related to the chimney repairs and I find it unlikely the tenants would have paid any amounts towards the re-shingling. As such, I find the tenants have established the value of the repairs for the chimney total \$1,675.99.

I also find that the tenants were not required to have the oil furnace chimney cleaned out but rather that the Section 32(1) of the *Act* and the Policy Guidelines require the landlords be responsible for this work. As such, I find the tenants are entitled to the return of the payment of \$80.00 established for this work completed.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,755.99** comprised of \$1,675.99 chimney repairs and \$80.00 for furnace chimney cleaning.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 30, 2014

Residential Tenancy Branch

