



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, PSF, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords make repairs to the unit, site or property; for an order that the landlords provide services or facilities required by law; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the conference call hearing, and the landlords were represented by legal counsel. The tenant gave affirmed testimony, however neither of the landlords testified. Both parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other prior to the commencement of the hearing, and counsel for the landlords was given the opportunity to cross examine the tenant on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for failure to make repairs to the furnace in the rental unit?
- Should the landlords be ordered to make repairs to the unit, site or property?
- Should the landlord be ordered to provide services or facilities required by law?

Background and Evidence

The tenant testified that this month-to-month tenancy began on June 1, 2007 and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. Prior to the commencement of the tenancy the landlords collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing. No move-in condition inspection report was completed at the beginning of the tenancy.

The tenant further testified that the furnace has not been working well and has been an on-going thing throughout the tenancy. It never worked, and when the tenant turned it on during the first winter it made whining and banging noises and wouldn't blow through the registers. The landlord was at the rental unit and asked what the noise was, and the tenant told him it was the furnace and it wasn't working.

Last winter, one of the landlords called the tenant on November 22, 2013 saying that they would get someone in to repair it. The landlord had been in and out of the rental unit about it, and the forecast was -14. By then it was too late and too cold for the duct cleaning which needed to be done before repairs could be completed.

The landlords have reduced rent by half a month in May to assist with hydro bills for February through April, 2014.

In September, 2014 when the tenant went to pay rent, she asked the landlords again to do it right away and before winter. The landlords agreed to make an appointment for the repairs, but the tenant never received a call.

On October 3, 2014 the duct cleaning was completed. The landlords were present, which was the first chance the tenant had to show the landlords about repairs required. The fellow who cleaned the ducts took photographs and found dead mice and insects. He put in a new furnace filter and the furnace seemed good and was quiet, and the parties all left. An hour ½ later the noises started again. The tenant called the landlords twice and left messages and put the phone to the heating vent so the noise would be picked up in the message. The tenant then called her friend and did the same to ensure that the noise was picked up and she said she heard it. The tenant turned off the furnace. The next day the landlord attended and told the tenant to turn it on, but the tenant refused saying that the duct fellow was not a repair person, only a duct guy. The tenant called the duct company and left a message on their phone.

On October 6, 2014 her call was returned, and the duct fellow said he'd get ahold of the landlord. The following day, the landlord called the tenant stating that a furnace person

would be by the following day and the rent would be collected then; the landlord wanted to see the work done. The landlords didn't show up despite calls and messages. The gas fitter looked at the furnace but couldn't fix it stating that it needed a new motor. Since the landlords couldn't be reached, he left the back off the furnace and left the rental unit.

The landlords called later in the day advising they were going to pick up the rent. One stayed in the truck and the other looked at the furnace and the tenant told her what the gas fitter had said and that he had advised the tenant to not turn it on.

Since then, the landlords have taken steps to fix the furnace; the landlord advised the tenant on October 9, 2014 that the gas fitter was authorized to fix it, on October 10 the gas fitter advised the tenant that the part has been ordered, and on October 16, 2014 the gas fitter called the tenant again with updates.

The tenant submits that the landlords knew the tenant was using electric heaters, which would be fine if it stays warm, but the tenant is afraid to leave them on when she goes out. The tenant claims aggravated damages for inconveniences moving heaters at night and having hot water bottles in her bed. She stated that she deserves something for the living conditions and her safety while the landlords knew full well about the furnace issues even though the tenant didn't put it in writing. The tenant claims \$13,650.00 for 3 months of rent for the months of December, January and February each year from 2007 to 2014 at the rate of \$650.00 per month.

The landlords called no evidence, however the landlord's counsel submits that the issue is whether or not the tenant mitigated any damage by notifying the landlords sooner about the furnace problems or by not moving out, considering it's a month-to-month tenancy, or the tenant didn't insist soon enough. Further, the tenant denied the landlords the opportunity to repair it in 2013, which amounts to refusal to mitigate any damages. Written submissions have also been provided wherein copies of recent decisions are attached, and the landlords' counsel suggests that the tenant ought to have considered the repair an emergency repair and under the *Act* had a right to have it fixed herself and deduct the amount from rent.

During the course of the hearing the parties agreed that the landlords will ensure that the furnace is fixed by November 10, 2014 or sooner.

Analysis

The issue before me whether or not the tenant has established the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate any damage or loss suffered.

In the circumstances, I am satisfied that the tenant suffered aggravated damages as a result of the landlords' failure to deal with the furnace, contrary to the *Residential Tenancy Act*. The landlords' counsel submits that the tenant ought to have had it fixed herself, but there is no evidence before me that she had the means to do so. The tenant testified that she used electric heaters so she had heat, but was inconvenienced for several winters. The landlords' counsel also submits that the tenant failed to notify the landlords in writing and that the tenant denied the landlords the opportunity to repair it in 2013, which amounts to refusal to mitigate any damages. I do not accept that. The tenant testified that the landlords knew about it and failed to deal with it. The landlords chose not to testify and therefore have not disputed the tenant's testimony.

I am not satisfied however that the tenant has established that full rent for 3 months of every year of the tenancy is justified. The tenant had a roof over her head and all other comforts of the rental unit. She testified that the landlords reduced rent by half a month for one of the years, and I am satisfied that a similar amount should be awarded for each year except for the year it was already given by the landlords, and except for 2014 because winter has not yet arrived and the landlords have undertaken to ensure repairs are completed by November 10, 2014. I find that the tenant has established a claim in the amount of \$2,100.00.

Since the tenant has been successful, the tenant is also entitled to recovery of the \$100.00 filing fee.

I hereby grant a monetary order in favour of the tenant as against the landlords in the amount of \$2,200.00, and I order that the tenant be permitted to deduct the amount from future rent payable until the amount is satisfied, or may otherwise recover the amount.

Conclusion

For the reasons set out above, I hereby order the landlords to ensure the furnace in the rental unit is in good working order by November 10, 2014 or sooner, by consent.

I further grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,200.00. The tenant is hereby permitted to reduce rent until the amount has been satisfied, or may otherwise recover it.

This order is final and binding and may be enforced.

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: October 31, 2014

Residential Tenancy Branch

