



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an order for the landlord to make emergency repairs for health or safety reasons and other issues.

During the hearing the tenant's advocate advised that the tenant will be vacating the rental unit on December 06, 2014 and the tenant therefore withdraws her application for an Order for emergency repairs.

The tenant, an advocate for the tenant, the landlord and the landlord's property manager attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The party's evidence was provided late however both parties wished to proceed with the hearing and agreed that both parties evidence would be included in the hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on March 03, 2014. Rent for this unit is \$700.00 per month due on the 1st of each month.

The tenant's advocate spoke on behalf of the tenant and testified that when the tenant moved into the unit the unit was not clean and was found in an awful condition. There were also bags of garbage and some furniture left in the unit by the previous tenants. The tenant had to pay two people \$100.00 each to help the tenant clean the unit before she could move in and one of these people charged the tenant \$60.00 to remove the garbage and furniture. The tenants advocate refers to the tenant's documentary evidence showing a receipt signed by both these people who helped to clean and for the garbage removal.

The tenant withdraws from her monetary claim the amount of \$104.22 for the cost of paint and supplies as the tenant agreed she did not go to the paint store with the property manager to choose paint.

The tenant's advocate testified that when she came to the tenant's unit she found it to be extremely cold in the unit. The tenant's advocate testified that she went and bought two thermometers to check the temperature in the unit. One morning one of these thermometers showed a reading of minus eight degrees. This was due to the old heating furnace which had caught on fire. Fortis came out and put a 'do not use' notice on the furnace and the hotwater heater on November 02, 2014. The hotwater tank was replaced on November 11, 2014 and furnace was removed and replaced with a heater. The tenant's advocate testified that the new heater did not heat the whole unit as the old

furnace had done and the landlord provided three electric heaters two of which did not work. Due to the inadequate heat the tenant's advocate testified they had no choice but to purchase the thermometers to record the temperature in the unit. The tenant seeks to recover the amount of \$13.42 for the thermometers.

The landlord disputed the tenant's claim. The landlord's building manager testified that she had spoken to one of the people who the tenant has said had helped clean the unit for \$100.00. This person informed the building manager that she had helped the tenant clean but was not paid for it. The building manager agreed that the move in condition inspection report indicated that the unit was not clean at the start of the tenancy but testified that the tenant understood it needed cleaning and was not concerned about it as she wanted to move in.

The landlord testified that some of the garbage was the tenant's garbage and the tenant's boyfriend informed the landlord that as he worked at the dump that he would take the garbage with him to work. If the tenant's boyfriend could not have taken it the landlord would have made arrangements to remove it. The landlord testified that there is also a weekly curb pick up at this property for garbage and the tenant could have put it out on the street.

The landlord testified that the tenant did not notify the landlord that she was still cold in the unit. There is a thermometer on site for such purposes and had the tenant discussed it with the landlord the tenant could have used the landlord's thermometer to confirm the temperature inside the unit. The landlord testified that he delivered two electric heaters to the tenant and his property manager had given the tenant another one. The gas man had provided another heater so the unit had sufficient heat. On November 10 when the landlord delivered the hotwater tank the landlord took his thermometer and recorded a temperature of 72 degrees in the tenant's unit. It was also noted that the tenant's kitchen window was open and when asked the tenant said it was opened because the tenant was too hot. There would have been sufficient heat in the unit if the tenant had turned on the four 15,000 watt electric heaters.

The landlord testified the new heater was installed on November 11. This is a powerful heater that is more than sufficient to heat this small unit.

The tenant's advocate asks the property manager if she delivered two heaters to the tenant. The property manager responded that she took one heater over and the gas man took another heater over. The tenant testified that both of these heaters worked but it was still minus eight in the bedroom. The tenant testified that of the two heaters the landlord brought over one sparked when it was plugged in and did not work.

The tenant's advocate testified that the tenant's boyfriend did work at the dump but did not tell the landlord he would take the garbage and furniture to the dump for free. He did not even have a truck to do so. The person who helped the tenant clean removed the garbage and furniture left by the previous tenants and had to borrow a truck and put gas in the truck so charged the tenant \$60.00 for this work.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

With regard to the tenant's claim for cleaning and garbage removal of \$260.00; I am satisfied from the evidence presented that the unit was not clean at the start of the tenancy. I refer the parties to s. 32 (1) of the *Act* which states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

S. 32(5) of the Act states:

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

This section of the Act refers to repairs and the cleanliness of the unit which would make a unit suitable for a tenant to move into even if the tenant knew the unit was not clean at prior to signing a tenancy agreement this does not negate the landlords responsibility to ensure the unit is cleaned. The landlord's building manager agreed that the unit was not clean at the start of the tenancy and I am satisfied from the tenant's documentary evidence signed by the two people who helped clean the unit that the tenant paid them \$100.00 each for this work. I therefore uphold the tenant's claim to recover **\$200.00** from the landlord for cleaning.

I further find the unit contained some garbage and furniture belonging to the previous tenants which was removed by one of the persons who helped the tenant clean the unit. These items should all have been removed by the landlord prior to the tenant taking occupancy of the unit and it is not the tenant's responsibility to have to arrange for the removal of these items or to have to put garbage out on the curb if the garbage does not belong to the tenant. Consequently, I am satisfied with the evidence presented that the tenant paid \$60.00 to have these items removed from the unit and I uphold the tenant's claim to recover this amount from the landlord.

With regard to the tenant's claim to recover the cost for the thermometers; the tenant's advocate testified that she purchased the thermometers to read the temperature in the unit. Had the tenant spoken to the landlord prior to purchasing these thermometers, I find it likely that the tenant would have been able to use the landlord's thermometer

instead of having to purchase any. I therefor find this section of the tenant's claim has no merit and is dismissed.

Conclusion

I HEREBY FIND in partial favor of tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$260.00**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable through the Provincial Court 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: December 03, 2014

Residential Tenancy Branch

