



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LA DAWN APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, TH ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to represent the landlord company named in this Application as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing notice. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's application notice.

The landlord confirmed that he did not receive the tenant's written evidence package and the tenant could not recall exactly when he served this evidence upon the landlord. The tenant indicated that he left a copy of the written evidence in the landlord's mailbox, probably sometime in mid-March 2015. The tenant indicated that no one witnessed this service. However, the landlord confirmed that he had a copy of the written tenancy agreement, and had previously received a letter, dated September 12, 2014, from the tenant to the landlord. As the landlord reviewed the tenancy agreement and the letter prior to this hearing, I find that in accordance with section 71(2)(c), the landlord was sufficiently served with these documents from the tenant's written evidence package, for the purposes of the Act.

I find that the landlord was not served with the remainder of the tenant's written evidence package, including a printout of a cellular phone bill and a receipt for the purchase of a heater. The landlord indicated that he did not receive these documents, the tenant was unable to confirm the exact date of service and the tenant did not have a witness or other proof of service. During the hearing, I advised the tenant that I would not be able to consider the above two documents at this hearing or in my decision, as I find they were not served upon the landlord in accordance with the *Act*. In any event, I do not find these documents to be necessary in making my decision.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this tenancy began on September 1, 2013 for a fixed term ending on March 1, 2014, after which it reverted to a month-to-month tenancy. Monthly rent in the current amount of \$1,126.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The tenant originally sought a monetary order for \$122.99 for a heater he had to purchase for the rental unit. At the hearing, the tenant amended his claim to seek \$111.99 for the heater. The tenant also seeks a monetary order of \$50.00 for the inconvenience of a loss of heat and \$50.00 for the filing fee for his application.

The tenant stated that he experienced a loss of heat in his rental unit from September 11, 2014 and for the following 10 days. The tenant stated that when he tried to increase the temperature using the thermostat in his rental unit, that it would not work. The tenant indicated that the temperature fell below 22 degrees Celsius in his rental unit during this time. The tenant noted that he is entitled to heating, as per his tenancy agreement, as it is included in his rent each month for this rental unit. The tenant indicated that the outside temperature during this time in September 2014 was approximately 17 to 18 degrees Celsius in the morning and 20 to 21 degrees Celsius during the day. The tenant explained that he expects his rental unit temperature to be between 22 to 24 degrees Celsius at all times, as this is room temperature.

The tenant stated that he reported the heat issue to the landlord's caretaker on September 11, 2014 as well as the next day, when he placed a phone call to the caretaker and provided a written letter, dated September 12, 2014, regarding this issue. The tenant indicated that the caretaker advised him that the landlord had turned off the heating and that it would not be turned back on by the landlord. The tenant stated that he purchased a heater the next day on September 12, 2014, in the amount of \$99.99 plus tax, totaling \$122.99. The tenant explained that because the landlord refused to turn the heat back on and he did not know how long he would be experiencing a loss of heat, he purchased the heater in order to warm up his rental unit. The tenant stated that the heating began working suddenly after eleven total days of no heat.

The landlord stated that he received the tenant's letter regarding a heating issue and that he spoke with the caretaker who was dealing with the tenant. The landlord denied the tenant's allegations that the caretaker advised the tenant that the heater was turned off and that the landlord refused to turn it back on. The landlord noted that the caretaker has difficulty with the English language and that there may have been communication issues with the tenant.

The landlord indicated that the heater was turned on in the entire rental building and the tenant's rental unit, the heating was adequate and the boiler was working during the entire month of September 2014. The landlord noted that the tenant has an individual thermostat in his rental unit, which he can control himself. The landlord stated that no other tenants complained about a heating problem during that time and there have been no other applications or hearings at the Residential Tenancy Branch ("RTB") regarding a heating issue in this rental building. The landlord stated that he fulfilled his obligations towards the tenant by providing adequate heating for this rental unit.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 32(1)(b) of the *Act* discusses the landlord's obligation to maintain the rental unit in a state of repair that, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that loss and order that party to pay

compensation to the other party. In order to claim for loss under the *Act*, the party claiming the loss bears the burden of proof. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused him a loss of heating or failed to repair the heating, and that it is a compensable loss.

The tenant must satisfy the following four elements in order to meet his burden of proof:

1. Proof that the loss exists;
2. Proof that the 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 being claimed.

I find that the tenant has not met his burden, on a balance of probabilities, to show that there was a loss of heat in his rental unit, caused by the landlord or the landlord's negligence. The tenant did not provide any independent witness testimony to support his evidence that the landlord turned off the heat in his rental unit. A problem with the boiler or turning off a boiler would likely affect other rental units in the same building, yet the tenant did not produce any other tenants to testify that their heat was affected during this time period. No other tenants testified that they observed or experienced that the heat was turned off in the tenant's rental unit. The landlord stated that no other complaints were received by other tenants in the building. The tenant did not produce the caretaker as a witness at this hearing, to support the tenant's testimony regarding what the caretaker advised the tenant. I attach very little weight to the tenant's evidence regarding the caretaker's statements, as this is hearsay evidence. The tenant did not participate in conversations between the landlord and the caretaker, while the landlord did and the landlord denies these facts.

The tenant did not provide any independent documentary evidence to show that the heating was not working in his rental unit. The tenant simply provided a letter to the landlord the next day on September 12, 2014, indicating that there was a problem with heating but no further documentation was provided for the following 10 days that the tenant said there was no heat in his rental unit. The tenant bought a heater the next day on September 12, 2014, indicating that the landlord would not fix the problem, so he was required to buy a heater. The tenant did not provide a copy of the receipt to the

landlord at any time after he purchased the heater and prior to this application, asking for reimbursement from the landlord.

I accept the landlord's evidence that the heater was turned on during the dates of complaint in September 2014. I accept that the landlord made necessary inquiries after the tenant complained to the caretaker about a heat problem. I accept the landlord's testimony that there was no problem with the boiler, the heating or any other tenants' rental units in the same building.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for a monetary order of \$161.99 for the purchase of a heater and the inconvenience of the loss of heat.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the \$50.00 filing fee from the landlord. The tenant must bear the cost of his own filing fee.

Conclusion

The tenant's entire application is dismissed.

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 23, 2015

Residential Tenancy Branch

