



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit and a cross-application by the tenant for a monetary order and an order compelling the landlord to return the deposit. The hearing was originally scheduled for August 4 at which time the landlord requested an adjournment. I granted an adjournment to give the landlord opportunity to submit further evidence and the hearing was reconvened on October 19. Both parties participated in the conference call hearing on August 4 and on October 19, the tenant participated in the hearing and the landlord did not, although he was represented by counsel.

At the hearing, the landlord's counsel withdrew claims for cleaning and loss of income, leaving only a claim for the cost of repairs due a water line failure.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Does the landlord have the right to retain the security deposit?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute, although the parties disagree as to where liability should fall. The tenancy began on April 16, 2014 at which time the tenant paid a \$325.00 security deposit and ended in January 2015. The tenant was obligated to pay rent in advance on the 15th day of each month. The rental unit is a manufactured home owned by the landlord and its only source of heat is a wood stove. At the outset of the tenancy, the landlord advised the tenant that if he left the rental unit during the winter, he should ensure that the hot water was dripping in the kitchen and a heater was left on under the sink in order to prevent the water lines from freezing.

In November 2014, the tenant left the rental unit for work and returned at the end of the day to discover that the water lines had frozen. The landlord arranged for a plumber to thaw the pipes and the tenant stated that some of the insulation had been removed. The tenant advised the landlord that the plumber had removed the insulation and the landlord responded that it would be fixed "in the Springtime."

The landlord advised the tenant to put a heater under the sink and when the tenant told the landlord that he did not have a heater, the landlord promised to provide him with a heater. The landlord did not provide the heater and the tenant was able to locate a heater which he used throughout November and December. When the tenant used the heater, it would trip the breaker and when he advised the landlord of this, the landlord agreed to provide both a heater and a 25 amp breaker. The tenant testified that he reminded the landlord approximately 3 times before Christmas and the landlord did not provide the heater or breaker.

The tenant left the unit on Christmas day to spend time with family and had planned to stay away for just one day, but due to unforeseen circumstances, did not return to the rental unit for 5 days. On December 30 when the tenant returned, he discovered that the pipes were frozen. He lit a fire in the wood stove and kept the unit heated throughout the night. On January 1, the lines ruptured in the bathroom, bedroom and at the hot water heater joint. Flooding resulted and the landlord attended and arranged for repairs to be conducted. Repairs were completed on January 13 and the tenant did not have use of water prior to that date.

On January 4, the tenant gave the landlord notice that he would be vacating the rental unit on January 12 as his water service had not been restored. The tenant provided evidence showing that he secured alternative accommodation on January 5, paying rent at the new location beginning on that date. The tenant seeks to recover the rent paid from December 31 – January 15 (the end of that rental period) as well as hotel, food and laundry expenses, mileage for moving, the cost of removing a vehicle from the residential property, lost wages and rent paid at his new location from January 5 – 15.

The landlord submitted evidence showing that he spent \$822.15 to repair the water lines and seeks to recover this amount from the tenant.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 32(1) of the Act provides as follows:

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.

I find that in order to ensure that the rental unit was suitable for occupation, the landlord had to at the very least ensure that the tenant had the equipment required to ensure that the rental unit was adequately heated to prevent the water lines from freezing. The landlord did not deny that he had promised to provide both a heater and a breaker with amperage sufficient to run the heater and that he failed to do so. I find that the landlord had an obligation to provide this in order to make the rental unit habitable as the landlord was well aware that the water lines were at risk of freezing.

However, I find that the tenant was negligent in that he too was aware that the water lines were at risk of freezing and that he failed to mitigate his losses as required under section 7 of the Act. Although the tenant did not intend to stay away for several days when he left his home on Christmas day, when he realized his return would be delayed, I find he had an obligation to inform the landlord that the property was at risk. Further, there is no evidence that the tenant reported to the landlord that the pipes were frozen when he discovered that this was the case on December 30. Rather, it appears that he waited until the pipes had actually burst before he contacted the landlord. Although the tenant suffered losses as a result of the landlord’s failure to meet his obligation to keep the unit in good repair, I find that the tenant was contributorily negligent.

I find that both parties were to some extent the authors of their own misfortune. They both breached their obligations under the Act. For this reason, I find that each should bear the cost of their respective losses. I note that the tenant claimed that his losses were significantly higher than those of the landlord, but I note that he failed to provide evidence showing the actual value of those losses by failing to provide invoices or proof of payment and would therefore have failed in much of his claim in any event. The claims of both parties are dismissed.

As the landlord has no right to retain the security deposit, I order him to return the deposit to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$325.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claims are dismissed and the landlord is ordered to return the security deposit to the tenant. The tenant is granted a monetary order for \$325.00.

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 19, 2015

Residential Tenancy Branch

