



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant and the landlord's agent, (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Issue(s) to be Decided

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

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on March 1, 2014 a fixed term until August 31, 2014 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$875.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$417.50 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant testified that she did not have hot water for the month of October and because hot water is included in her rent she seeks \$295.00 in compensation.

In reply, the landlord testified that although there was an interruption in hot water services during the month of October as a result of ongoing repairs, the tenant was not without hot water for the entire month. The landlord testified that upon notification of the water issue the landlord acted in a timely fashion to rectify the issue. To support her position the landlord has provided invoices of boiler repairs and two witness statements from other residents in the complex.

Analysis

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

In this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

The tenant seeks a monetary order in the amount of \$295.00. The tenant contends that the she went without hot water for a month whereas the landlord denies this.

The tenant has provided insufficient evidence to establish a loss of hot water for the entire month of October. The tenant has failed to provide sufficient evidence to support the amount being claimed.

I find the tenant has failed to meet the burden of proof to prove the landlord violated the *Act, Regulation* or tenancy agreement and has failed to prove the value of this claim. Therefore I dismiss the tenant's entire claim due to insufficient evidence, without leave to reapply.

As the tenant was not successful in this application I find she is not entitled to recover the filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: January 23, 2017

Residential Tenancy Branch