



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

The tenants apply to recover reimbursement for the value of heating oil remaining at the end of the tenancy.

The landlord wished to advance a counter claim for the value of excess Hydro electrical usage during the tenancy. The landlord had not brought her own application for that relief and the tenants did not consent to that issue being determined at this hearing. As a result, the landlord must bring her own application for dispute resolution in order to clothe the Residential Tenancy Branch and its arbitrators with the power to determine that claim.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are the tenants entitled to recover money for heating fuel left at the premises? If so, how much?

Background and Evidence

The rental unit is the two bedroom main floor of a house. During the tenancy the landlord also rented out to others a small suite on the upper floor of the home.

The tenancy started in September 2014 and ended in May 2016. The monthly rent was \$1500.00. The tenants paid a security deposit and pet damage deposit which were returned at the end of the tenancy.

There is a written tenancy agreement. It provides that the landlord will pay for power (Hydro) and that the oil heat is to be the responsibility of the tenants.

The rental unit is heated by an oil furnace. The upper suite is heated electrically.

At the start of the tenancy the tenants paid the landlord \$1431.00 for the heating oil then in the tank on the premises. At the end of the tenancy the tank was left full. The landlord calculated the value of that heating oil at the then current price, to be \$1026.92.

The tenants say that they should receive the full \$1431.00 back. Their position is that the money paid for the heating oil was a "deposit."

Analysis

In order for money to form a deposit, it must be clear that the money is advanced for the purpose of forming security for the performance of an obligation.

In this case there is no such clarity. Indeed, the correspondence surrounding the heating oil payment makes it clear that the tenants were purchasing the heating oil.

I find that the \$1431.00 paid by the tenants for the heating oil at the start of the tenancy was not a deposit.

The communication between the parties surrounding the purchase makes it clear that the landlord would be obliged to buy back heating oil left by the tenants at the end of the tenancy at the current rate. If the value was more than the tenants paid, the tenants would get more than \$1431.00. If less, then they would be paid less.

As it turns out, the cost of heating oil had fallen between the start and the end of tenancy. The tenants are entitled to the lower amount: \$1026.92.

Conclusion

The tenants' application is allowed. They will have a monetary order against the landlord for \$1026.92 plus recover of the \$100.00 filing fee, for a total of \$1126.92.

This decision was rendered orally at hearing and 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 11, 2017

Residential Tenancy Branch