



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, RR

Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation for the cost of emergency repairs and authorization to reduce rent payable. The tenant named two landlords in filing this Application and neither appeared or were represented at the hearing. I heard that after the Application was filed the tenant passed away on May 4, 2017. The Executrix of the estate of the deceased tenant appeared at the hearing.

The Executrix submitted that the tenant's Application for Dispute Resolution and evidence was sent to the landlord via registered mail on February 1, 2017. A registered mail receipt was provided, including tracking number, indicating the registered mail package was addressed to the male landlord only. I was satisfied that the male landlord was served with the hearing package in a manner that complies with section 89(1) of the Act and I continued to hear the claims against the male landlord. However, an applicant must serve each respondent with a hearing package and I was unsatisfied that the female landlord was sufficiently served with notification of this proceeding and I excluded the female landlord as a named party to this dispute.

The style of cause for this decision and the Monetary Order that accompanies it has been amended to name the Executrix as the personal representative of the deceased tenant's estate.

I also heard that the tenancy has since ended. Accordingly, I find the tenant's request for authorization to reduce rent payable is now moot and I do not further consider that request. I proceed to consider whether the tenant is entitled to a Monetary Order for repairs to the rental unit.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for repairs to the rental unit?

Background and Evidence

The Executrix submitted that the tenancy started more than 17 years ago. The tenant was paying rent of \$350.00 on the first day of every month. The tenant moved out of the rental unit at the end of February 2017.

The tenant applied for compensation for furnace repairs, duct and furnace cleaning, and furnace fuel amounting to \$1,078.97. I was provided a receipt for furnace servicing on November 22, 2016 in the amount of \$228.90; and, a receipt for \$450.00 for duct and furnace cleaning in the amount of \$450.00. No receipt was provided for the purchase of furnace fuel. I was also provided a copy of a letter written by the tenant on August 31, 2016 which served as a “follow up to the previous conversations about the necessary repairs to the rental unit”, including a request for repair/replacement of the furnace.

The tenant had submitted in the details of dispute that he had asked the landlords to clean and repair or replace the furnace starting in July 2016. After three months of asking the landlords to take care of this the tenant took it upon himself since winter was quickly approaching.

The Executrix submitted that the tenant was an elderly gentleman and that in years prior he had used the wood stove to heat the rental unit but given his age and deteriorating health the carrying and loading of wood into the woodstove became too cumbersome and he needed to use the furnace in the rental unit for heat. Accordingly, the furnace had not been used in many years; the furnace was not working; and the furnace and ducts needed cleaning and servicing to be used safely. Since the landlords would not respond to the tenant's requests for this matter to be addressed, the tenant had the work performed and paid the expense to do so. Since this is a landlord responsibility the tenant sought compensation for the amounts expended.

The Executrix explained that the tenant sought recovery of the furnace fuel because it was necessary to have fuel in the tank to service the furnace.

Analysis

Section 32 of the Act provides for a landlord's and a tenant's obligation to repair and maintain a rental unit. As provided under section 32(1) of the Act, a landlord is required to repair and maintain a rental unit so that it meets health and safety laws and makes it suitable for occupation by the tenant.

Residential Tenancy Policy Guideline 1 provides policy statements and additional information with respect to the cleaning and repair obligations of a landlord and tenant.

With respect to furnaces and heating ducts, the policy guideline provides as follows:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.
2. The tenant is responsible for cleaning floor and wall vents as necessary.

I find I am satisfied by the undisputed evidence before me that the landlord failed to repair and maintain the rental unit so that it met health and safety requirements and was suitable for occupation in failing to have the furnace and heating ducts serviced and cleaned at reasonable intervals.

Where a tenant is in need of repairs, the tenant is expected to bring the matter to the landlord's attention so as to allow the landlord the opportunity to do make the appropriate repair or servicing. If a landlord does not make an appropriate repair, and the repair is not an emergency repair, the tenant's remedy is to file an Application for Dispute Resolution and seek a repair order or other remedy from an Arbitrator. However, as provided under section 33 of the Act, if the need for a repair is an emergency the tenant may proceed to make the repair if the landlord does not respond despite giving the landlord two opportunities to do so and the tenant may recover the cost from the landlord by providing the landlord the receipt(s).

Emergency repairs are defined in section 33 of the Act and are those that are urgent and necessary for the health and safety of the tenant or protection of the property. Examples of emergency repairs include:

- Major leaks in pipes or the roof
- Damaged or blocked plumbing fixtures or sewer pipes
- Malfunctioning electrical systems
- Broken central or primary heating systems
- Defective locks that let anyone enter the rental unit without a key

Having heard the furnace had not been used in many years and was not working, I am of the view that it would have been dangerous to start using it without it being inspected and serviced by a qualified technician first. I am also satisfied by the unopposed evidence before me that the tenant request the landlord make the necessary repair or servicing on multiple occasions to no avail. I further accept that by November 2016,

when the tenant finally had the servicing and cleaning performed, the matter had become urgent since the cold months were upon the tenant. The tenant also produced receipts to support the amounts claimed for furnace and heating duct cleaning and servicing. Therefore, I grant the tenant's request to recover the furnace and heating duct servicing and cleaning costs from the landlord in the amounts of \$ 450.00 and \$228.90, as requested.

I deny the tenant's request to recover the cost of heating fuel in the amount of \$400.07 as the tenant did not provide a receipt to corroborate the expenditure and it is unusual for landlords to have to pay for heating fuel. While I accept that some heating fuel would have been necessary to service the furnace I highly doubt \$400.00 worth of fuel was necessary to service the furnace. In the absence of a tenancy agreement that points to the landlord being responsible to supply heating fuel to the tenant, I find I am not satisfied that the failure to purchase heating fuel for the rental unit was a violation of the Act or the tenancy agreement on part of the landlord. Therefore, I deny this portion of the tenant's claim.

In light of the above, the tenant is provided a Monetary Order in the sum of \$678.90 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$678.90 to serve and enforce upon the landlord.

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: August 10, 2017

Residential Tenancy Branch