



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Was the landlord negligent in responding to the tenant's requests for repair and restoration of the hot water supply? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on December 01, 2016. The rental unit is located in the basement of a house. The upper level is rented out separately. Both units are serviced by the same hot water tank. The landlord explained that the tank supplied hot water on demand, was built on new technology and was approximately 4-5 years old.

The tenant testified that on June 12, 2017, she was unable to get a continuous flow of hot water. She informed the landlord who was on his way back from overseas. The landlord gave the tenant the contact information of a plumber.

The plumber attended the home and found the hot water supply was in working order. However the tenant stated that later that day, the problem reappeared. The tenant contacted the plumber but he was unavailable.

The landlord stated that the plumber was not fully knowledgeable about the new technology and therefore he contacted the company that he had purchased the tank

from. They referred the landlord to a company who was unable to provide service for a week but who recommended another company who made themselves available for June 15. The landlord accompanied the plumber on June 15, 2017 to the rental unit and observed him flushing out the system and carrying out maintenance work. The landlord ran the hot water for 20 minutes and stated that it was in good working order.

On June 16, 2017, the tenant contacted the landlord to inform him that the water was no longer hot and that there was an odour of gas. The landlord was advised by the company that he had purchased the tank from, to disconnect the unit in the interest of the safety of the occupants. The landlord immediately ordered a replacement which was delivered and installed on June 21, 2017.

The tenant stated that she was without hot water for the period of June 12 to June 20 as the hot water supply was restored on June 21. The tenant stated that it was very inconvenient and time consuming for her to boil water for her bath. The tenant is claiming compensation in the amount \$360.00 for the loss of the facility and an additional \$150.00 for her time spent boiling water.

Since utilities are included in the rent, the tenant agreed that she did not incur any extra utility costs. The landlord stated that the upstairs tenant did not complain or request compensation.

Analysis

Based on the documentary evidence and sworn testimony of both parties, I find that the hot water supply was interrupted when the hot water tank was not operating in an efficient manner and the supply stopped when the tank was removed and waiting for a replacement. I further find that the landlord took immediate action to have the repairs and ultimately the replacement of the hot water tank done, in a timely manner.

In order to prove an action for a breach of the covenant of quiet enjoyment and an entitlement to compensation, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control.

In this case, I find that the landlord carried out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing

standards. However in order to carry out this duty, the landlord inconvenienced the tenant by cutting off the hot water supply completely for five days. I also find that the tenant had intermittent hot water for the period of June 12 to June 16, 2017.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that a breach of contract occurred resulting in inconvenience to the tenant and a reduction of the value of the tenancy. Therefore I find that the tenant is entitled to compensation for the days that she suffered the loss of the hot water supply.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a facility even if the landlord made every effort to minimize disruption to the tenant.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the loss of the hot water supply. Therefore I find that the tenant is entitled to nominal damages.

Since the tenant continued to occupy the rental unit during the period that the hot water supply was intermittent and then completely unavailable, I find that she did have access to hot water by boiling it. I find it appropriate to award the tenant \$100.00 as a minimal award for the inconvenience suffered during these times.

Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$200.00. The tenant may make a one-time deduction of \$200 from a future rent.

Conclusion

The tenant may make a one-time deduction of **\$200.00** from a future rent.

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: December 13, 2017

Residential Tenancy Branch