



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on May 30, 2015, and ended on August 15, 2017. Monthly rent was set at \$2,058.00. The tenant paid a \$1,000.00 security deposit at the beginning of this tenancy, which the tenant applied to cover the August 2017 rent.

The tenant is making a monetary claim for \$400.61 for reimbursement of the oil that the tenant had pre-filled prior to the end of this tenancy. The tenant testified that the tank was automatically filled in April 2017, prior to having knowledge that the tenancy was going to end pursuant to a 2 Month Notice to End tenancy effective August 15, 2017, which was issued to her on June 11, 2017. The tenant moved out as per the 2 Month Notice, and did not dispute the 2 Month Notice.

The landlords responded that they were not responsible for the tenant's decision to fill the tank, nor was there any agreement that the landlords would be responsible for the filling of the tank or any unused oil. A copy of the tenancy agreement was submitted as part of the tenant's evidence which states that "Utilities will be paid by the tenant as follows: electricity, water, sewage, and oil".

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." The tenant applied for reimbursement of the cost of oil that was not used during this tenancy.

Although I sympathize with the tenant and the fact that she was unable to use all the oil in the tank by the end of this tenancy, I find that she did not establish how this loss was

due to the deliberate or negligent act or omission of the landlords. I find that the tenancy agreement clearly indicates that the utilities, including the oil, were to be paid by the tenant. I find that there was no agreement between both parties for the landlords to reimburse the tenant any unused oil, nor did I find that the tenant sufficiently demonstrated that the landlords had failed to comply with any term of the tenancy agreement or the *Act*. I find that this tenancy ended on the basis of the 2 Month Notice, and that the tenant had moved out on the effective date of the 2 Month Notice, and did not dispute file any applications to dispute the Notice. I find that the tenant did not provide sufficient evidence to establish that the landlords failed in their obligations as landlords, or how the tenant was not provided services or facilities as agreed on for this tenancy. On this basis, the tenant's application for monetary compensation is dismissed.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in her application, the tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire application 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 8, 2018

Residential Tenancy Branch