



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

Issues

Is the tenant entitled to compensation for damage or loss?

Is the tenant entitled to a return of the security deposit?

Background and Evidence

The tenancy began on November 1, 2017 and ended on February 27, 2018. The monthly rent was \$450.00 per month. The rental unit for this dispute is a trailer (unit #5) which is owned by the landlord. The tenant originally rented a different trailer (unit #20) on the same property. The tenancy for unit #20 ended as the landlord needed that trailer for his own use. The tenant could not find alternative accommodation and was provided the option to switch to unit #5.

The tenant submits that she paid a security of deposit of \$225.00 for unit #5. The tenant testified that she paid this amount in cash and did not have any receipt for the

payment. The tenant submits that her security deposit for unit #20 was returned in the form of a rent reduction for her first rent payment for unit #5 but then the new security deposit was added back to the rent payment.

The landlord submits that the tenant was issued receipts anytime she paid rent or a security deposit. The landlord submits that the tenant was never issued and receipt for a security deposit on unit #5 and the landlord has no record of any security deposit payment for this unit. The landlord testified that the tenant's security deposit for unit #20 was returned and no deposit was collected for unit #5.

The tenant is claiming an amount of \$2550.25 in compensation for increased hydro usage, reimbursement for furnace oil purchased and a rent reduction equivalent to two months' rent. The tenant testified that the furnace in the rental unit was not working for the duration of her tenancy and she used electric heaters and kept the oven on to heat the unit. The tenant submits that the temperature outside got down to minus 27 degrees. The tenant submits that she purchased oil for the furnace as the landlord said he would get it working. The tenant submitted a receipt for the oil purchase in the amount of \$686.75. The tenant testified that the furnace was never fixed and the oil was left unused in the rental unit. The tenant submitted hydro bills and claims the increased usage as a result of the furnace not working was \$963.50. The tenant was not able to describe how she arrived at this increased usage amount other than to state that this was the amount billed over the monthly equal installment amount. The tenant is also claiming the equivalent of two month's rent as the rental unit was freezing all winter long.

The landlord argues that the tenant was only offered unit #5 as she was unable to find alternative accommodation after her tenancy in unit #20 ended. The landlord argues that the tenant was not forced to take this unit but rather chose it with her own free will. The landlord testified that at the outset he advised the tenant that he did not know if the furnace was working or not. The landlord further argues that even in the previous unit which had a working furnace, the tenant mostly utilized electric heating. The landlord testified that the tenant could have purchased only \$100.00 in oil to test the furnace and is not sure why she purchased so much. The landlord testified that he had a service technician come and take a look at the furnace but was told it was not repairable. The landlord testified that he advised the tenant that he would not be able to replace the furnace over-night. The landlord testified that he would have reimbursed the tenant her rent had she moved out but she continued to reside in the unit and utilized electric heating instead.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution.

The onus is on the tenant to establish that a security deposit has been paid. I find the tenant has not provided sufficient evidence to support that a security deposit was paid on unit #5 after her security deposit for unit #20 was returned. The landlord was adamant that a security deposit was not paid and that he had no record of such payment. The tenant failed to provide any evidence in support of this payment such as a cash receipt or bank records.

The tenant's claim for return of the security deposit is dismissed without leave to reapply.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant. A landlord's obligations under this section apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the evidence provided by the parties, I find that the landlord only offered this unit as a rental to the tenant as her tenancy was ending and she was not able to secure alternative accommodation. I find the tenant knew going into the tenancy that the furnace may not be functioning. Having said that, I find that as the landlord provided the unit as a rental, it was still incumbent on the landlord to repair or replace the furnace in a timely manner, in accordance with section 32 of the Act.

As the tenant did not have a functioning furnace for the duration of this four month tenancy, I find the tenant did suffer a loss and a reduction in the value of the tenancy for this period.

As the tenant continued to occupy and otherwise make use of the rental unit during the entire four month tenancy, it is difficult to quantify the loss and reduction in the value of her tenancy. I find the tenant was able to mitigate the reduction in the value of the tenancy by the use of electric space heaters. The tenant provided insufficient evidence that with the use of electric heaters, the heat in the rental unit was still below safety and housing standards required by law. Further, I find the tenant did not clearly demonstrate how much of a loss she suffered as a result of the increased hydro bills. The tenant provided no explanation as to what the monthly equal instalment amount was based upon and by how much the usage increased due to using electric heaters. The duration of the rental was very short and there was no comparison of electricity charges previous to the furnace not working.

Additionally, I find the tenant did not take reasonable steps to mitigate any potential loss as required by section 7 of the Act. The tenant could have filed an application requesting the landlord to make emergency repairs to the furnace soon after the start of the tenancy. But rather, the tenant made no such application and continued to utilize electric heaters throughout the duration of the four month tenancy.

Based upon the above factors, I find the tenant is entitled to the nominal amount of \$50.00 per month for a total of \$200.00 in compensation for the reduction in the value of the tenancy and the increased hydro costs.

With respect to re-imbursement of the furnace oil, I find the tenant did purchase the oil at the landlord's request in order to attempt to get the furnace working. Purchasing this oil should have been the landlord's responsibility. However, I find the tenant was not obligated to purchase the amount that she did. I find the tenant could have purchased a lesser amount of \$100.00 as argued by the landlord, especially since it was not even known if the furnace would work or not. I award the tenant \$100.00 for this loss.

The tenant is entitled to a monetary order in the total amount of \$300.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$300.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 09, 2018

Residential Tenancy Branch