



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord").

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application and evidence and testified that they had not served any materials. Based on the testimonies I find that the landlord was served with the tenant's full materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This tenancy began on January 10, 2019 and ended April 30, 2019. Monthly rent was \$3,800.00 payable on the first of each month. The rental unit is a detached house and surrounding property. There was a previous hearing under the file number on the first

page of this decision pertaining to the landlord's application for a monetary award for damages and loss.

The tenant submits that when they initially moved into the rental unit the property was in disarray and they needed to commission a third party to perform cleaning. The tenant submitted into evidence a copy of an invoice for \$450.00 for cleaning.

The tenant testified that from the start of the tenancy the hot water and heating for the rental unit was malfunctioning. The tenant states that the issues persisted for the duration of the tenancy despite numerous requests made to the landlord to perform repairs and some cursory attempts. The tenant said that the rental suite was uninhabitable due to its temperature and lack of amenities. The tenant gave evidence that they spent the duration of the tenancy residing with their partner or friends and could only use the rental property for storage of items. The tenant submitted into evidence copies of correspondence with the landlord requesting repairs and reporting issues.

The tenant testified that due to the lack of heat during the winter months they were unable to use the rental unit, could not have family over, had to travel to and from the residences of their friends or partners and were unable to bathe, cook or use most of the facilities. The tenant gave evidence about the significant negative impact this had on their life.

The landlord testified that they commissioned and paid for repairs but they were not completed to the tenant's satisfaction. The landlord gave some evidence that they believed the tenants attended the rental unit regularly. The landlord also submits that the tenant's application has been dealt with in a previous hearing and they should be barred from further applications.

Analysis

In the earlier decision dated October 23, 2019 the arbitrator writes:

... the parties were informed that the hearing and resulting decision would be regarding the claims on the Landlord's application only. Both parties are at liberty to file a new application should there be any remaining claims regarding this tenancy.

Based on the earlier decision it is apparent that the tenant's application for a monetary award was not considered or conclusively determined and that the tenant was at liberty to file their application.

I find that the landlord's submission that the matter has been conclusively determined at the earlier hearing to be incorrect and not supported in any materials.

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/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. This section is read in conjunction with section 65 which allows me to order a retroactive reduction in rent for a reduction in the value of the tenancy agreement.

The tenant seeks a monetary award for the full value of the monthly rent for February and March 2019 stating that the tenancy was effectively without value due to the lack of heat or hot water. The tenant detailed the effect that the lack of the essential features of heat and hot water had as they were unable to use the rental unit. The tenant gave undisputed evidence that they were residing elsewhere for most of the tenancy, only attending at the rental unit for brief periods. I find the landlord's testimony that the lack of amenities had little impact to be unreasonable, unsupported in any documentary materials and contrary to what a reasonable person would consider as necessary for a property suitable for habitation.

I accept the evidence of the tenant that they were unable to reside in the rental unit due to the landlord's failure to perform necessary repairs and maintenance in a timely manner. I find that the evidence shows that the tenant made multiple requests which were acknowledged by the landlord. I accept the evidence that the landlord did not attempt repairs for some time and when they did their efforts were unsuccessful.

Based on the evidence I find that the landlord's failure to provide adequate heat and hot water in the rental unit had a significant detrimental effect on the value of the tenancy. I find that while the tenant was able to use the rental property to store personal items and

they attended on occasion, they were effectively unable to use the rental property for its intended purpose as a residence. Therefore, I find that the tenant is entitled to a monetary award in the amount of \$6,840.00 the equivalent of 90% of the monthly rent for this tenancy for a period of two months.

I accept the tenant's evidence that the rental unit was in a state of disarray requiring cleaning at the start of the tenancy. I accept the evidence that the cost of cleaning is \$450.00. Accordingly, I issue a monetary award in the tenant's favour in that amount.

As the tenant was successful in their application they may recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$7,390.00. The landlord must be served with this Order as soon as possible. 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: December 19, 2019

Residential Tenancy Branch