

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant. The tenant sought;

- Money owed or compensation for damage or loss under the Act regulation or tenancy agreement in the amount of \$6000: for loss of *quiet enjoyment* due to lack of or insufficient heat, and an apparent presence of silverfish.
- To recover the filing fee in the amount of \$100.

Both parties appeared in the conference call hearing and participated with their submissions and testimony. Both parties acknowledged receiving their respective evidence. The hearing was advised that the tenant vacated the rental unit on December 31, 2009.

Issue(s) to be Decided

Is the tenant entitled to the monetary amount claimed for loss of *quiet enjoyment*?

Background and Evidence

The testimony of the landlord and the tenant is that the tenancy began May 01, 2009. Rent in the amount of \$1500 per month was payable in advance on the last day of the month for the following month. Under the tenancy agreement heat, electricity and hot water and telephone are the responsibility of the tenant.

The tenant's relevant testimony is that the main heating system of the rental unit – a purported (*electric*) *radiant panel system above the finished ceiling of the unit* – failed to provide sufficient heat into the unit, and at the end of October 2009 the tenant notified the landlord of the problem. According to the landlord, they responded by dispatching a contractor to check on the system 2 weeks later; and, as well, provided the tenant with 2 plug in heaters, and destined a third heater which was received at the end of November 2009.

On the contractor's assessment the landlord determined that the heating system was operating as it was intended and was providing some heat to the unit. However, the landlord acknowledged that the heating system has some inherent drawbacks which can hinder the provision of sufficient heat. For example, the heating panels are in inside the ceiling cavity of the unit, with the roof above them – counter to providing heat to areas below, as heat rises. The landlord acknowledged that the limitations of this system had them considering a possible replacement. In spite of the landlord's attempts to remedy the lack of sufficient heat, the tenant found that the plug in space heaters did not provide sufficient or uniform heat in the 2000 square foot unit and also contributed to extra electrical utility consumption.

The tenant was not able to provide any temperature discrepancies between the temperature in the unit and common room temperature, but testified that at times they would be more comfortable wearing more clothing or jackets. The landlord disputed that the rental unit was as cold as the tenant claims – providing testimony that the tenants had windows open during the period in dispute of November and December 2009. The tenants claimed this was for ventilation and that only the windows to the solarium were open – not directly to the unit.

The tenant also testified that they notified the landlord in June 2009 that silverfish had been noticed in the rental unit. The landlord investigated and did not notice silverfish, and the matter was never resolved. Regardless, the tenant claims that the presence of silverfish persisted to the end of the tenancy.

The tenant claims that after experiencing the alleged discomfort of insufficient heat and the presence of silverfish, the tenant determined to vacate at the end of December 2009.

The tenant provided a quantum of pages of e-mail correspondence between the tenant and the landlord in respect to the heating and silverfish issues.

Analysis

In summary, the tenant is seeking compensation for loss of quiet enjoyment of the rental unit as it was not sufficiently warm since the end of October to the end of the tenancy December 31, 2009. The hearing has not been provided with any supporting or corroborating evidence in this regard as to the degree of discomfort experienced by the tenant; but, the landlord agreed the heating system has inherent issues which would impede the provision of sufficient heat: large unit, heating system in the ceiling cavity. Based on the testimony of the landlord and the tenant and on preponderance of all the evidence in this matter, I prefer the testimony of the tenant and find that the rental unit was lacking in sufficient heat for the months of November and December 2009.

The tenant is also seeking compensation for loss of quiet enjoyment of the rental unit as it experienced the presence of silverfish to the end of the tenancy December 31, 2009. Based on the testimony of the landlord and the tenant and on preponderance of all the evidence in this matter, I prefer the testimony of the tenant and find that the presence of silverfish in the rental unit contributed to the loss of quiet enjoyment.

I find the tenant is entitled to compensation for loss of quiet enjoyment for the period for the unresolved silverfish presence during the tenancy in the amount of **\$175**, and **\$250** for the lack of sufficient heat during the tenancy. I further find that the tenant should be compensated for the expense of additional electrical utility in the amount of **\$50**.

As the tenant was partially successful in their application I grant the tenant partial recovery of their filing fee in the amount of **\$50**, for a total entitlement of **\$525**.

Conclusion

I grant the tenant a monetary order under section 67 of the Act for the amount of **\$525**. If necessary, this order may be filed in the Small Claims 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*.
