



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR, MNDC, FF

For the tenant – CNR, FF

Introduction

This decision was scheduled to deal with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. At the outset of the hearing the tenants confirmed that they have moved from the rental unit and they withdraw their application to cancel the Notice to End Tenancy and to recover their filing fee. The hearing continued for the landlord's application for a Monetary Order to recover unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlords also seek to recover their filing fee. The landlords withdrew their application for an Order of Possession.

The landlords served the tenant on June 15, 2011 with a copy of the Application and Notice of Hearing. The tenant attending confirmed receipt of these documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started with a different landlord on September 01, 2010. Rent for this unit was \$1,700.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$850.00 on September 01, 2010. These landlords purchased the property on November 30, 2010.

The landlords testify that the tenants only paid \$750.00 for rent for June, 2011. The tenants e-mailed the landlords to tell them they had deducted the security deposit of \$850.00 from the rent for June plus an additional sum of \$100.00 for a furnace repair they had paid for in November, 2010 which the previous landlord was supposed to reimburse them for.

The landlord's testify that they served the tenants with a 10 Day Notice to End Tenancy on June 02, 2011. This Notice informed the tenants that they had five days to either pay the outstanding rent or dispute the Notice or the tenancy would end on June 15, 2011.

The landlord states they were also seeking unpaid rent for July and August due to the fixed term tenancy but now withdraw their claim for these sums as the unit was re-rented on July 01, 2011. The landlord state that during the move out condition inspection the tenants agreed the landlords could keep their \$850.00 security deposit to offset against unpaid rent. The landlord states they now only seek to recover the \$100.00 the tenants deducted for the repair or cleaning or the furnace. The landlords states this work was done prior to them purchasing the house and they did not know anything about it until May 2011.

The tenants did apply to dispute the Notice however they did not serve the landlords with a copy of the application and Notice of hearing and have withdrawn their application. The tenants moved from the rental unit on June 30, 2011.

The tenant attending testifies that the landlords had a home inspection carried out when they purchased the property and the furnace repair was pointed out to them at that time. The tenant states they had an agreement with the previous landlord concerning repairs and

it was agreed that the tenant could make the repairs and he would reimburse the tenants. The tenant states he bought the motor for the furnace and fitted it himself. He states he did not give the previous landlord the bill for this work and has not presented it in evidence for the hearing today.

The tenant agrees that during the move out condition inspection they agreed the landlord could keep their security deposit of \$850.00 towards unpaid rent for June, 2011.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties, as the landlords have reduced their claim to \$100.00 this is the portion I will deal with here. Section 26 of the *Act* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

A tenant is entitled to have emergency repairs made if it falls under s. 33 of the *Act* and a landlord must reimburse the tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord,
and

(b) gives the landlord a written account of the emergency repairs
accompanied by a receipt for each amount claimed.

The tenant argues that he had an agreement with the previous landlord but has provided no evidence to support this. The landlord argues that these repairs were made prior to them taking over ownership of the property and the tenants should have pursued their claim for this sum from the previous landlord before the purchase was complete.

In light of both arguments I find if the furnace did constitute an emergency repair the tenant should have claimed reimbursement from his landlord at that time and given him a written account of the emergency repair and a receipt for the amount claimed. It is my decision that the tenants did not comply with s. 33 of the *Act* and cannot now seek reimbursement from

the new landlords as they had no knowledge of any verbal agreement between the tenants and the previous landlord.

Consequently, the landlords claim to recover unpaid rent of **\$100.00** is upheld and they will receive a Monetary Order pursuant to s. 67 of the *Act*. I further find as the landlords have been successful with their reduced claim that they are also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$150.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: July 07, 2011.

Residential Tenancy Branch