



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The tenants have also requested recovery of their filing fee. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on August 1, 2010 and ended on July 31, 2011. The rent was \$1,600.00 per month. The rental unit was a detached home. The landlord resided in the lower portion of the home and the tenants lived above. Utilities were to be shared by the parties 50/50. The tenants paid a security deposit of \$800.00 at the start of the tenancy. On May 31, 2011 the landlord delivered a letter to the tenants saying that he was going to increase the rent by \$100.00 per month at the beginning of August 2011 – the start of the second year of the tenancy. This letter did not comply in any way with the requirements of the Act regarding rent increases. The letter also said that the tenants had to either agree with the rent increase within ten days or move out of the unit on July 31, 2011. On the same date, May 31, 2011, the tenants responded in writing to the landlord as follows: “Upon careful consideration we have decided that we would like to end our tenancy by July 31, 2011”. The tenants did move out on July 31, 2011 and provided the landlord with their forwarding address in writing on the same day. On August 25, 2011 the tenants filed this application with the Residential Tenancy Branch because they had still not received their deposit back. On September 10, 2011 the tenants received a cheque in the amount of \$800.00 from the landlord.

The tenants claim that the rental unit was always cold and that in December 2010 the landlord had the heating system replaced and moved the thermostat into an area that they could not access. The tenants claim that from December 15 until July 31 they were always cold and the heat in the residential property was only turned on when the landlord was at home. The tenant claims that they were so cold that they had to

purchase an extra space heater and pay for a cord of wood to use in their fireplace. The lack of heat in the rental unit was particularly upsetting to the tenants because they have a two year old son. The tenants submitted letters from a friend and two relatives which state that the rental unit was often cold. The tenants also claim that they felt bullied by the landlord's letter which advised of the rent increase. They felt they had no choice but to move out on July 31, 2011.

For his part, the landlord says the rental unit was not cold and that the amount of heat being used by the tenants was well in excess of what previous tenants had used. The landlord also denied that the tenants did not have access to the thermostat and provided photos showing the location of the thermostat. The landlord also said he felt justified asking for an additional rent increase above the annual allowable amount due to the significant expense he incurred (\$4,200.00) on the new heating system. The landlord also disputes the tenants' claim that they felt bullied by his May 31 letter based on their response which made no reference to feeling under duress of some sort.

Analysis

The tenants have made a monetary claim against the landlord comprised of the following:

Double security deposit	\$1,600.00
Excess utility charges Sep-Dec 15, 2010	\$161.34
Utility payments Dec 15 – July 31, 2011 & cord of wood	\$1,197.76
Rent refund for June and July 2011	\$3,200.00
TOTAL	\$6,159.10

I will deal with each of these claims in turn.

Double security deposit - Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord did neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit. . It is true that he returned \$800.00 to the tenants on September 10th but this was well outside the 15 days required by the Act. Accordingly, the landlord must pay an additional \$800.00 to the tenants.

Excess utility charges – At the hearing the landlord agreed that he was liable for 50% of these excess utility charges and agreed to pay \$80.67 to the tenant. I am satisfied that this is a correct outcome based on the agreement the parties had for a 50/50 split of all utilities.

Utility payments (Dec-July) – The tenants want a full refund of their utility payments for the period from December 15, 2010 and July 31, 2011. The tenants argue that they are entitled to return of these amounts because the landlord put the thermostat in a location that they could not access and the place was always cold. As stated above, the landlords disputes the tenants' claim that they were unable to access the thermostat and that the unit was cold but regardless of that, the landlord disputes this claim simply on the basis that the tenants were liable for 50% of all utility bills and these amounts were properly allocated to them.

In my view, whether the thermostat was accessible or not and whether the unit was warm enough for the tenants, it is clear that energy was being consumed at the residential property and that the parties had agreed to at 50/50 split of these charges. As a result, I am not satisfied that the tenant has established a claim for return of these payments. Further, on the basis of the information before me, I am not satisfied that the tenants have proved that the landlord is liable for the \$100.00 they spent on a cord of wood. I therefore dismiss the tenants' claim in this regard.

Rent refund (June & July) – The tenants have made this claim on the basis that they had to spend two months looking for a new place to live as a result of the landlord illegally raising the rent by \$100.00. The tenants felt pressured and "bullied". In my view, this portion of the tenants' claim has not been established. The tenants lived in the unit for those two months and remained liable for the rent. If the tenants had wanted to stay in the rental unit they could have easily disputed the landlord's rent increase notice. Rather, they chose to move out. I cannot hold the landlord liable for the tenants' decision in this regard despite the fact that the notice did not comply with the Act. Accordingly, I dismiss the tenants' claim in this regard.

Conclusion

Based on the above, I find that the tenant is entitled to an order that the landlord pay to them the sum of \$880.67 comprised of \$800.00 relating to the security deposit and \$80.67 in utility overcharges. I further order that the landlord pay to the tenant the sum of \$25.00 representing half the cost of this application. This order may be filed in 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*.