



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This review hearing was scheduled to clarify and set the base amount of the tenant's monthly rent. Both parties participated in the conference call hearing.

Background and Evidence

Matters related to this tenancy regarding the use of the gas fireplace in the tenant's rental unit and loss of the tenant's peace and quiet enjoyment were heard under file 704065 on October 15, 2007. The Dispute Resolution Officer ruled in part that:

*Based on the evidence of the landlord, I agree with the tenants. **The value of their gas fireplace operating fully is equal to an amount of \$40.00 per month.** If the landlord wants to turn off the gas effective on October 1, 2007 as set out in his Notice, then commencing on October 1, 2007 the tenants are entitled to a rent reduction of \$40.00 per month or part thereof.*

Matters related to this tenancy regarding the use of the gas fireplace in the tenant's rental unit and loss of the tenant's peace and quiet enjoyment were heard under file 779481 on October 25, 2011. The Dispute Resolution Officer ruled in part that:

- 1. The tenant will have a rent reduction in the amount of \$45.00 commencing November 1, 2011 for the loss of use of the natural gas fireplace;*
- 2. Rent is set at \$640.00 per month (exclusive of parking fees) effective November 1, 2011;*
- 3. Any rent increases will be based on the monthly rent of \$640.00;*

The landlord testified that the tenant's rent is \$685.00 and the tenant receives a \$45.00 rent reduction when the gas fireplace is not in use. This rent reduction is for removal of the service which is the operating gas fireplace. The landlord stated that if the tenant wants the gas fireplace on, then the rent goes to \$685.00 and the tenant then pays the new \$50.00 per month charge for gas.

The tenant's agent testified that the rent with the gas fireplace on should be \$685.00 and that there should not be an additional \$50.00 charge for using the gas fireplace.

Analysis

The parties again could not come to an agreement as to what the tenant's monthly rent (exclusive of parking) is set at should the tenant choose to use the gas fireplace.

Therefore the original determinations made by the Dispute Resolution Officers in the 704065 October 15, 2007 and 774981 October 25, 2011 hearings shall be used to establish the tenant's monthly rent for when the gas fireplace is in use and for when the gas fire place is not in use.

In the 774981, October 25, 2011 hearing it was determined that the tenant's rent was \$685.00.

The Dispute Resolution Officer in the 704065 October 15, 2007 hearing was very specific when they stated: ***'The value of their gas fireplace operating fully is equal to an amount of \$40.00 per month.'*** This value was adjusted in the 774981, October 25, 2011 hearing by mutual agreement to \$45.00.

Therefore:

- When the tenant **does not** have the *gas fireplace operating fully*, the rent is **\$640.00 (exclusive of parking fees)**.
- When the tenant **does have** the *gas fireplace operating fully*, the rent is **\$685.00 (exclusive of parking fees)**.

The rent reduction is in relation to a **gas fireplace operating fully**, therefore the landlord may not now insist that the tenant pay \$685.00 rent PLUS a \$50.00 fee for gas if the tenant wants use of the gas fireplace. The decisions do not state that the tenant will have to pay additional fees.

In December 2011 the tenant paid a 'gas fee' resulting in an over payment of \$45.00 to the landlord, the tenant also paid a \$25.00 'gas fee' in January 2012. Therefore the tenant has made overpayments to the landlord in the amount of \$70.00 and the tenant is to deduct \$70.00 from the February 2011 rent.

Conclusion

When the tenant **does not** have the *gas fireplace operating fully*, the rent is **\$640.00 (exclusive of parking fees)**.

When the tenant **does have** the *gas fireplace operating fully*, the rent is **\$685.00 (exclusive of parking fees)**.

The tenant may deduct \$70.00 from future rent owed to the landlord for the overpayment of the December 2011 and January 2012 'gas fee'.

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: January 26, 2011.

Residential Tenancy Branch