



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP FF

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenants' application and evidence. The landlord did not submit any written evidence for this hearing.

Issue(s) to be Decided

Does this dispute fall within the jurisdiction of the Residential Tenancy Act? If so, are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to an order requiring the landlord to return the tenants' personal property pursuant to section 65?

Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The applicants in this hearing testified to the following facts. On January 3, 2017, the landlord took possession of the rental property, which the landlord was previously renting from the owner. An agreement was made between the applicants and the landlord for the applicants to start renovations in December 2016, before the landlord had taken possession. The keys were picked up on November 30, 2016 by the applicants. Both parties had discussed a rental agreement, and rent was set at \$1,100.00 per month. The applicants testified that originally two

keys were given to them, and one was returned to the landlord. On December 1, 2016, the utilities were put under the applicants' names.

The applicants testified that they had started to renovate the home in December of 2016, although they had never formally moved in. They testified that the home was uninhabitable as it lacked heat or water, and they had started to undertake renovations including taking down walls in the living room, bedroom, and bathroom. The applicants stated that the renovations were done with the landlord's permission, who was "excited to see" them. The applicants explained that they had a prior relationship with the landlord as they had done work on the landlord's own property next door in September and October 2016. As part of the renovations, the applicants had moved in some appliances, including a refrigerator and stove, and a pellet stove and a hearth. The tenants testified that although they had never moved in, the landlord moved another tenant into the rental unit, a week before Christmas, without their consent. The applicants are requesting the return of the above items, as well as reimbursement for the hydro and gas bill in the amounts of \$172.64 and \$41.24 respectively. They are also seeking reimbursement of the filing fee.

The landlord did not dispute the fact that she had purchased the property which she was previously renting from the owner. The landlord testified that she had paid the owners rent for December in order to have access to the rental property so she could clean up the yard and start renovations on the home. The landlord testified that she had met the applicants as they had previously done work on her fireplace. She testified that keys were given to the applicants, but they had immediately changed the locks despite giving her back one of the keys. The agreement was for the applicants to start removing items from the yard, and start cleaning the home and property. The landlord testified that the relationship had deteriorated after the applicants started taking down bearing walls. She quickly called a home inspector who instructed all parties not to remove any walls. She testified that there was an agreement for the applicants to pay reduced rent in exchange for repairs, but these repairs were to be strictly cosmetic. The landlord provided testimony that no rental agreement was signed by both parties, but that she had wanted to sign one as the applicants had wanted to purchase the home from her. She testified that no deposit was ever paid, and that she had never agreed for the applicants to bring in the appliances, as the home already had them. The landlord stated that the applicants had "bit off more than they could chew" when they had started to remove walls. The landlord explained that she had no issue with returning the appliances, with the expectation that the applicants reimburse her for the damage that they had done to the home. She testified that the applicants were responsible for the utilities as they were the ones who had required heat and hydro to clean, and the agreement was for the applicants to live in a trailer on the property while the home was being renovated. The landlord submitted that this was not a tenancy as there was no written agreement, and that the agreement was for the tenants to reside in a trailer on the property while the home underwent renovations in partnership with her own contractors. The landlord did not dispute the fact that another tenant had started occupying the premises, but stated that it was her electrical contractor who had taken in this tenant, and not her.

The landlord's witness testified during this hearing that he was a contractor, and that he witnessed the applicants removing bearing walls. He also testified that the tenants were asked to retrieve their appliances, but never did.

Analysis

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

The landlord, submitted in this hearing, that the applicants should not be considered tenants as they did not occupy the rental home, nor did they sign a written tenancy agreement. The applicants provided undisputed testimony in this hearing that although a written tenancy agreement was never signed, there was an oral agreement for them to occupy the premises in exchange for work on the home and property. Both parties also discussed, and agreed to, monthly rent at \$1,100.00 per month.

Although the applicants had never occupied the unit, a consideration of value has been provided for this occupancy, and an oral agreement was made regarding the terms of this tenancy. Section 16 of the *Act* states that "the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit". Based on the evidence, I find that the relationship between both parties is a tenancy, and this dispute falls within the jurisdiction of the *Residential Tenancy Act*.

During the hearing the landlord did not dispute the fact that she was in possession of the tenants' property. The landlord did not make an application for compensation or loss for this tenancy, nor did she make an application for an order to maintain possession of these items. Accordingly I find that the tenants are entitled to the return of their personal property. I order that the landlord return to the tenants their refrigerator, stove, pellet stove, and hearth.

The tenants had applied for monetary compensation for the utility bills that were incurred as part of this tenancy. Although the tenants did not occupy the unit, and although they did not authorize the additional occupant, both parties were in agreement that the tenants had agreed to have the utilities billed in their own names. The landlord testified that the tenants did utilize the heat and electricity for the purposes of the renovations, and I accept this testimony. I am not satisfied that the tenants provided sufficient evidence to show that they should be compensated for the heat and electricity that were incurred during this tenancy. Although the tenants had

never formally moved in, I did find that a tenancy did take place, and the tenants had undertaken the step of setting up the utilities during this tenancy themselves. Based on these facts, I find that the tenants are not entitled to a monetary order in compensation for the utility bills.

As the tenants were partially successful in their application, I allow the tenants to recover half of the filing fee from the landlord. The tenants are given a monetary order in the amount of \$50.00 for partial recovery of the filing fee.

Conclusion

I order the landlord to return the tenants' refrigerator, stove, pellet stove, and hearth to the tenants as soon as possible.

The tenants' application for a monetary order to compensate them for the utility bills is dismissed.

I issue a \$50.00 Monetary Order in favour of the tenants, which allows the tenants to recover half of the filing fee from the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: March 10, 2017

Residential Tenancy Branch