Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's Application and evidence. The tenant confirmed receipt of one evidence package from the landlords. The contents of this package were confirmed in the hearing. The landlords submitted a second package for this hearing, which the tenant disputes having been served. As I am not satisfied that the second package was served in accordance with section 88 of the *Act,* I exercise my discretion to exclude the second package. I find the tenant duly served with the first package in accordance with section 88 of the *Act.*

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on May 4, 2014. The tenancy ended on February 28, 2021. The monthly rent was initially set at $1,500.00, and was increased in accordance with the *Act.* Both parties could not recall during the hearing the exact amount of the monthly rent at the end of the tenancy. The landlords had collected a security deposit in the amount of $750.00 for this tenancy.

It is undisputed by both parties that the original written tenancy agreement clearly states that heating was not an included utility. It is also undisputed that in 2014 the landlords had started to reimburse the tenant half the cost of oil for heating, which continued until 2017, when the landlords had stopped. The landlords do not dispute that they had provided the reimbursement for the specified period, but testified that this was a temporary agreement, which included a stipulation that the tenant only top up the oil twice a year, which the landlords testified was not honoured by the tenant, and thus the temporary agreement was revoked by the landlords in 2017. The landlords testified that the original tenancy agreement still stood where heating was not included, and the reimbursement was only on a temporary basis to assist the tenant, and not a permanent rent reduction or a change in the terms of the tenancy agreement. The landlords dispute that any agreement was made in response to issues with the furnace. The landlords testified that the furnace was repaired and serviced regularly. The landlords submitted a statement in their evidentiary materials which state that they had “stopped contributing to the cost of the heat as it was only a temporary arrangement to help out the Tenant. The tenant did not comply with our temporary arrangement of two top ups of the oil tank per year, which gave us no control over the heating costs”. It is also undisputed that the landlords did ask the tenant to sign a new tenancy agreement, which the tenant did not

agree, to, and therefore the landlords feel that the original tenancy agreement still stood.

The tenant is seeking a monetary order in the amount of $2,820.44 for half of the cost of oil for the period from the fall/winter of 2017 through to February 28, 2021. The tenant had written March 2021 as the end period on their application, but submitted statements for the cost of the oil for the period up to February 28, 2021.

The tenant testified that both parties had negotiated an agreement where the landlords would pay half of the heating oil costs, which the landlords did fulfill for several years until 2017. The tenant testified that the proposed tenancy agreement included a move out clause, which the tenant did not agree to. The tenant feels that at this point the landlords had unilaterally revoked the agreement to compensate the tenant for half of the heating costs.

The tenants submitted correspondence between the parties, including an email dated April 24, 2015 from the landlord MJ which stated that the landlords had “thought about the costs of the heating oil and we would pay (half) of the costs for heating oil from November 1st to March 31st every year. You would be responsible for the heating the rest of the year. Personally, I would turn the (thermostat) heat off from May 1st to October 1st.”

The tenant also provided evidence by way of an email dated April 14, 2017, where the landlords confirmed that they would “keep the heating costs as a shared responsibility, ie (pay half the oil heating fuel costs twice a year), as we are currently doing”, and the proposal of a “new fixed lease agreement with a specified end date, and move out clause”.

On April 30, 2017 the landlords sent an email in response to the tenant’s refusal to sign the new fixed term agreement with move-out clause. The landlords stated that they were now “offering you two options”. “Option 1: We sign a new lease with a fixed length and a specific move out clause. We will then share the heating costs based on agreeable terms for both parties. Option 2: We don’t sign a lease. The original lease that we agreed to (May 4, 2014) becomes a month to month lease and we abide by the terms that we agreed to in the original lease”. The landlords also emphasized that heating was the tenant’s responsibility.

Analysis

I have considered the evidence and testimony before me, and I make the following findings. I will first the address the question of whether the two parties had entered into an agreement for reimbursement of heating costs.

The definition of a “tenancy agreement” is outlined in the following terms in section 1 of the *Act*:

> **"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 licence to occupy a rental unit;

A tenancy agreement can exist in the absence of a written tenancy agreement. In this case, it was undisputed by both parties that both parties had initially entered into a fixed-term agreement that began on May 4, 2014 for a period of up to May 31, 2015, where monthly rent was set at $1,500.00, and did not include heating costs. It is also undisputed that the landlords had started to reimburse the tenant for part of the heating costs in 2014 despite the original agreement that heating was not included. The landlords did reimburse the tenant for several years from 2014 through to 2017. The landlords testified that they had stopped as the agreement was a temporary one to assist the tenant with the cost of heating, and the original agreement, although reverted to month-to-month, still stood where heating costs were not included.

The tenant argued that the landlords had established over time that the arrangement was for the landlords to reimburse the tenant as they did in the past, and they had unilaterally withdrew this compensation because the tenant refused to enter into a new fixed-term agreement with a specified move-out clause.

In review of the correspondence submitted by the tenant, I note that the landlords did reference an agreement where they would reimburse the tenant half the heating costs. The landlords referenced the terms of this agreement in the April 25, 2015 email which stated “we would pay (half) of the costs for heating oil from November 1st to March 31st every year. You would be responsible for the heating the rest of the year.” On April 14, 2017, the landlords again referenced an agreement where they would “keep the heating costs as a shared responsibility, ie (pay half the oil heating fuel costs twice a year), as we are currently doing”. I am satisfied that the landlords had reimbursed the tenant for a several years, despite the original tenancy agreement which stated that heating costs

were not included. Although the landlords testified that the arrangement was a temporary one, I do not find that the long history of reimbursements could be considered temporary, nor do I find that the evidence submitted supports that the arrangement was conditional nor temporary. I find that the terms laid out by the landlords clearly specified that despite the original agreement, the cost of heating was now a shared responsibility where the landlords would pay half of the oil heating costs twice a year. Specifically for the period of November 1 through to March 31 **every year.** The boldface was added by myself for emphasis, but these terms were copied verbatim from the email sent by the landlords on April 25, 2015.

Furthermore, I find it undisputed that a new tenancy agreement was proposed in 2017, which was not signed by the tenant. As noted by the landlords, the tenancy had reverted to a month-to-month in accordance with the *Act.* As noted above, a tenancy agreement could be written or oral, express or implied. In this case, I find that the evidence shows that the 2014 tenancy agreement was amended by both parties to include oil heating costs on a partially reimbursed basis, which is supported by the correspondence and behaviour of the landlords. I find that the landlords had established over a long history of reimbursements that this agreement was not a temporary one. The permanency of this agreement is further supported by the landlords' own words "every year" in their correspondence to the tenants, as noted above. I find that the landlords had unilaterally revoked this agreement in 2017 as they did not possess an Order from an Arbitrator nor the written consent of the tenant to change this agreement. Accordingly, I find that the landlords were bound by the same terms until the end of the tenancy on February 28, 2021, and the tenant is entitled to reimbursement of the oil heating costs on the same terms for up to that period.

I must now determine whether the tenant is entitled to the amount claimed in this application. I find that the evidence submitted by both parties support that the agreement was for the landlords to reimburse half of the oil heating costs, which would not exceed a frequency of more than twice a year, and only for the period of November 1st to March 31st. I note that no cross applications had been filed by the landlords at this time to be considered with the tenant's, and therefore I can only consider the tenant's monetary claim. If the landlords feel that they are entitled to reimbursement or compensation for any overpayments, they may file their own application for these amounts, with consideration to limitation periods of course.

I have reviewed the invoices submitted by the tenant, and as the tenant submitted more than two invoices per calendar year, some of which falls outside the reimbursement window, I have allowed for the first two eligible reimbursements per calendar year (two

invoices as determined by the invoice numbers provided) for half of the oil heating costs only for the period of November through to March as follows. Any additional invoices that exceed the two maximum per year, or fall outside the reimbursement window will not be reimbursed (for example, three invoices were submitted for 2018, and I allowed for reimbursement of the first two).

Item	**Amount**
Invoice 15899-657 – January 23, 2017	$748.98
Invoice 20989-567 – October 10, 2017	652.37
Invoice 31217-688 – February 3, 2018	864.09
Invoice 42878-300– November 14, 2018	412.44
Invoice 31196-300 March 2, 2019	399.79
Invoice 56305-300 December 9, 2019	435.44
Invoice 68245-300 January 31, 2020	403.82
Invoice 56135-200 March 14, 2020	279.71
Invoice 66083-200 February 1, 2021	288.14
Total for Invoices:	4,484.78
Total Monetary Order (50% reimbursement)	**$2,242.39**

As the tenant was successful in her application, I allow the tenant to recover the filing fee for this application.

Conclusion

I find that the tenant is entitled to a monetary order in the amount of **$2,242.39** plus the cost of the filing fee for this application. I issue a monetary order in the tenant's favour in the amount of **$2,342.39.**

The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail 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: November 30, 2021