

Decision

Dispute Codes:

MNDC ERP RP RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order for money owed as a result of damage or loss under the *Act*, to request action by the landlord to make emergency repairs for health or safety reasons and make repairs to the unit, allow the tenant a rent abatement for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee from the landlord.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on February 3, 2009. The landlords were deemed to be served the hearing documents on February 8, 2009, the fifth day after they were mailed. Canada post receipt numbers were provided by the tenant.

Appearances were made for both the applicant and the respondent. Those in attendance gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the *Residential Tenancy Act*.
- Whether an Order for emergency repairs for health and safety reasons is warranted under section 33 of the *Residential Tenancy Act*.

- Whether an Order for repairs to the unit is warranted pursuant to section 32 of the *Residential Tenancy Act*.
- Whether the tenant is entitled to a reduction in rent for services or facilities agreed upon but not provided under section 65(1) of the *Residential Tenancy Act*.
- Whether the tenant is entitled to monetary compensation under section 72(1) of the *Residential Tenancy Act* to recover the filing fee from the landlord for the cost of this application.

Background and Evidence

The tenancy began on January 1, 2005 and continues on a month to month basis. The tenant paid a security deposit of \$480.00 on January 1, 2005. There was a rent increase as of March 1, 2009 to \$985.00 per month (\$970.00 plus \$15.00 for parking). Prior to March 1, 2009 the rent was \$955.00 (\$940.00 plus \$15.00 for parking).

The tenant provided Canada Post receipt numbers as evidence that the hearing documents were sent to the landlords via registered mail on February 3, 2009.

The tenant was faced with an emergency situation when her heater failed to operate on December 14, 2008. She testified that she was not given an emergency contact number for the building and stated that she was instructed to deal with the resident manager if she had any problems. The tenant stated that she was not aware of any emergency building contact numbers posted anywhere in the building.

The tenant stated that it was not until late January 2009 when she called the property management company after regular business hours when she heard a message stating that if the call was an emergency to call a telephone number stated in the message.

The acting property manager testified that it is her preference that tenants deal directly with resident managers who then coordinate with the property managers for approvals

to get repairs and maintenance work completed. The acting property manager confirmed that she received a telephone message from the tenant and instead of returning the call to the tenant she contacted the resident manager, whom she assumed would have replied to the tenant.

The acting property manager spoke to the changes of staff in relation to the tenant's building and time period covered by the tenant's claim. This acting property manager was in charge of the tenant's building until December 31, 2008 at which time this building was assigned to a new property manager. The new property manager could not attend the hearing as she has been ill and is currently in hospital. The acting property manager has been temporarily reassigned to this building effective March 2009.

The acting property manager explained that the long term resident manager was away on a scheduled vacation from January 1 to January 31, 2009 and returned to work on February 1, 2009. The resident manager resigned from his job on February 12, 2009 and moved out of the building on February 15, 2009. The acting resident manager worked at the tenant's building during the month of January, for vacation relief, took over as resident manager as of February 15, 2009 and attended this hearing.

The tenant testified that she had been suffering problems over an extended period of time with no heat, too little heat, or too much heat since December 14, 2008, is concerned that she is being labeled a complainer as she continues to bring these issues to the attention of the building and property managers, and is concerned that her health and well being are being negatively affected as the problems are ongoing. The tenant stated she has continued to pay her rent in full and on time and is requesting monetary compensation of \$1,910.00 for rent abatement, which is equal to two months rent.

The tenant entered into evidence a chronological listing of events surrounding the problems with the heat in her rental unit, the repairs, and how the resident building

manager has had to repeatedly enter her unit, at times, every two hours during the day, to release the build up of air in the heating pipes to get the heaters working again.

The tenant stated that when the resident manager brought in a thermometer he advised her that the room temperature was between 16 and 17 degrees on a day when the outside temperature was between minus 8.4 and plus 1 for the Vancouver, BC area (per the www.theweathernetwork.com).

The tenant advised, when the heat first went out, the previous resident manager loaned her a portable electric heater and told her to use it until the heat could be repaired. The tenant stated that the portable heater was not able to adequately heat her apartment; the heat was working intermittently, she was being told to wait several days for repairs even though the outside temperatures were below freezing, needed another heater to assist in warming up her rental unit so purchased one. The tenant is requesting a monetary claim of \$78.39 to reimburse the cost of the portable heater.

The tenant said when she continued to complain about the intermittent heating problems the previous residential manager told her to call the property manager herself and the current residential manager told her that if they called in a plumber again, the tenant would have to pay the bill. The tenant testified that she agreed to pay for the plumber if he came and said there was nothing wrong with the heat.

The tenant entered into evidence a receipt for the purchase of two fuses dated January 29, 2009. The tenant explained that the portable electric heater cause a fuse in the electrical panel to blow during the night of January 28, 2009, which she reported to the acting resident manager, on the morning of January 29, 2009, by leaving a message for him, explaining that the heating was not working again and that a fuse had been blown. The tenant stated that the acting resident manager called her back and told her that he could not do anything more about the heating problem and the resident manager was returning the next day so she would have to contact him about the blown fuse. The tenant needed electricity in her unit and could not wait until the resident manager

returned from holidays in a day or two, so she purchased the fuses, replaced them herself, and is requesting monetary compensation in the amount of \$8.94.

The current resident manager denied telling the tenant she would have to wait for the return of the previous resident manager and denied telling the tenant she would have to pay for the plumber herself.

The resident manager testified that the building was built in approximately 1970 – 1974 and there is an old boiler and newer boiler at this building. He was not able to provide a date on when the new boiler was installed. The resident manager stated that the heating pipes and radiators in the tenant's unit were original.

The resident manager testified that he noticed the rental unit was very hot when he had to bring a cable repairman into the tenant's unit in late January. When asked if he checked the rental unit to see if the portable heaters were on, or if the radiators were causing the problem, the resident manager stated that he was not in the unit for that purpose, that he was there to strictly supervise the cable repairman, and if there was a problem with the heaters it was up to the tenant to advise him.

The resident manager stated later in the hearing that he was aware that the heating problems in the tenant's rental unit are still on going.

The acting property manager confirmed that there have been heating issues with the tenant's building and submitted into evidence copies of repair invoices, for various units in the building, dated December 15, 16, 21, 2008 and January 27, 2009. This evidence was accepted late due to her co-worker's illness and admittance into the hospital.

The acting property manager confirmed that the building was built in the early 1970's and that the heaters and pipes in the tenant's unit were the original heaters which were installed when the building was constructed. The acting property manager explained

that she no longer had access to all of the building records as she was not assigned to this building.

Analysis

In regards to an Applicant's right to claim damages from the other part, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under sections 33 and 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Rent abatement - \$1910.00. I find the landlord is in violation of section 33(2) of the *Act* which states a landlord must post, maintain, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

Regardless of sudden staff changes, I find the property and resident managers have been aware of the existing heating problems since December 14, 2008, and have avoided the cost of the required repairs by avoiding the tenant's complaints and by having the resident manager enter the unit as much as every two hours per day to release the air locked valves, which affected the tenant's right to quiet enjoyment of her rental unit pursuant to section 28 of the *Act*.

I find that the evidence supports the tenant's claims that the heater goes from not working at all, causing her unit to be cold, to providing too much heat which I find is in violation of Health Canada and ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) standards of indoor air quality which lists recommended temperatures to be not lower than 20 degrees and not higher than 24 degrees during the winter months and between 23 to 27 degrees during the summer months.

I find that the evidence supports the tenant's claim that she has endured a substantial devaluation of the tenancy over the past four months, from the continued problems with the heating system in her rental unit, and aggravation with getting the problem resolved. I find that retro-active rent abatement is justified applicable to rent already paid from December 1, 2008 up to and including March 2009 reducing rent payable by \$250.00 per month. The past rental rate would be adjusted from \$955.00 to \$705.00 for the months of December 2008 to February 2009 and from \$985.00 to \$735.00 for March 2009, reflecting loss of value and usage of the rental unit by approximately 26%. The tenant is entitled to a monetary claim of \$1,000.00.

Request the landlord make emergency repairs and repairs to the unit. Pursuant to section 33 (1) (iii) of the Act, the primary heating system is listed as an essential service which constitutes “emergency repair”. I find that the evidence supports the tenant’s claim that heating system is not working properly.

Pursuant to section 32 of the *Act* a landlord must provide and maintain residential property in a state of repair that complies with the health, safety, and housing standards required by law and having regard to the age of the rental unit.

Residential Tenancy Policy Guidelines list the life span of a heating system as 15 years and the evidence indicates the heating system in the tenant’s unit is in excess of 35 years old.

I find the landlord is required under the *Act* to repair the heating problem and ensure that it works within Health Canada and ASHRAE temperature guidelines. I find that the monthly rent being paid by the tenant must be reduced until the above repairs are completed. Accordingly I find that the rental rate for this unit is now set at \$735.00 per month unless and until the landlord has fully resolved the heating problem.

Purchase of Portable Heater - \$78.39 – I find that the tenant has proven the test for damage and loss and find in favor of the monetary claim of \$78.39.

Purchase of Fuses - \$8.94 – Pursuant to section 32(5) a landlord must reimburse a tenant for amounts paid for emergency repairs. I find in favor of the tenant’s monetary claim of \$8.94.

Filing Fee - \$50.00 – I find that the tenant has succeeded in large and that she should recover the filing fee from the landlord.

Conclusion

I find that the tenant is entitled to a Monetary Order including the filing fee for this proceeding as follows:

Retro-active rent abatement	\$1,000.00
Portable heater	78.39
Fuses	8.94
Filing fee	50.00
Monetary Order (in favor of the tenant)	\$1,137.33

I hereby grant a Monetary Order in favor of the tenant in the amount of \$1,137.33 pursuant to sections 33(5) and 67 of the *Act* and enclose it with the tenant's copy of this decision. The order must be served on the respondent landlord and is enforceable through the Provincial Court of British Columbia.

I hereby **Order** the landlord to repair the heating system for the tenant's unit. I further **Order** that the monthly rate for the rental unit be reduced by \$250.00 per month to \$735.00 per month unless and until the landlord has fully resolved the heating problem.

Date of Decision

Dispute Resolution Officer