Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC, LRE, MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, orders that the landlord comply with the Act and restricting the landlord's access to the rental unit and a monetary order. The hearing began on February 18 and was adjourned to March 30. An interim decision was issued on February 24 with respect to all claims save the monetary claim, which was addressed at the March 30 hearing.

At the March 30 hearing the tenant sought to amend his claim to include a claim for additional compensation. The tenant's original claim was $24,420.00. As the addition of any further claims would have brought the total claim over the monetary jurisdiction of this tribunal, I declined to permit the application to be amended and no further claims were considered or adjudicated.

After the hearing the tenant submitted supplementary evidence. This evidence was neither read nor considered.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as requested?

Background and Evidence

The parties agreed that the tenancy began on October 24, 2008. The rental unit is a single family home which is heated with a hot water (hydronic) heating system and features an in-ground swimming pool. Rent is $4,300.00 per month. The tenancy agreement provides that the tenant was responsible to install a safety net over the pool at his own cost and would remain liable for any damage caused by the installation. The tenant provided evidence showing that he purchased a safety net at

a total cost of $1,314.41, which includes the $1,104.58 cost of the net and shipping and $209.83 in duty and tax. The tenant installed the safety net himself.

The tenant testified that on October 25, the day after he moved into the rental unit, he reported that the heat was not working. The landlord was out of town at that time, so the landlord's wife was telephoned and several messages left advising her of the problem. The landlord's wife gave the tenant several space heaters and on October 26 the landlord sent a repairman from 911 Heating Service (the "911 Repairman") to the rental unit. The 911 Repairman attended the rental unit on both October 26 and 27 for approximately 2 hours on each occasion and testified that he examined the furnace and thermostats and replaced the digital thermostats with analog thermostats because the tenant said he did not understand how to operate the digital thermostat. The 911 Repairman testified that when he left the rental unit on October 27, the boiler was working and the heat was on. The 911 Repairman further testified that before he left, he gave the tenant his business card and asked him to call if there were further problems. The tenant had also contacted another repairman, known as the Gas Man, who attended the unit and inspected the heating system. The Gas Man testified that he discovered the pump was not working and tapped the motor with a screwdriver. The Gas Man returned the following day intending to install a new pump, but at that time discovered that the pump was operating and did not install a new pump or perform any repairs. There is no indication that prior to the tenant having filed his application, the landlord was aware of the Gas Man's inspection of the heating system.

The tenant and his witness, S.H. who is a co-tenant, both testified that the heating system did not work effectively throughout the tenancy and that they contacted the landlord many times regarding the heat between the beginning of the tenancy and the time the tenant filed his claim. The landlord's wife acknowledged that the tenant complained about the heat immediately after having moved into the rental unit and that she responded by arranging for the 911 Repairman to attend and providing space heaters to use in the interim. She testified that on one other occasion in 2008 she was contacted by the co-tenant who asked where the electrical box could be found. The landlord's wife attended the rental unit to show the tenant where the electrical box

was and testified that the heat was not discussed at that time and that she received no more complaints from the tenants until January. The landlord testified that he was out of the country until December and was advised by his wife of the two aforementioned occasions on which she had received complaints. The landlord further testified that he received no complaints from the tenants until January.

The parties agreed that on January 8 the tenant emailed the landlord to advise that eaves troughs required repair. In that email, the tenant also wrote:

> The furnace as you know is not good, but it works ok, sometimes it needs to be reset the damper switch reset and then it turns back on and starts working again. We've used space heaters in most rooms to maintain room temps. The furnace can't do better than 50 degrees F when it gets near zero outside. Also I weather-stripped doors and windows. Thank makes a 4 degree F difference over all. Now that we've got heat were ok.
> [reproduced as written]

On January 9 the tenant wrote a second email at 12:29 p.m. to the landlord in which he stated:

> Unfortunately the furnace didn't go on last nite and as of 12:15 pm today, I've been unable to get to operate. It's the exact same situation when I moved in, the pilot late is on, but it doesn't respond to the thermostat at all, no one changes anything it doesn't come on. As mentioned previously, what has worked in the past is turning the power on and off from the electric panel, but that no longer is getting response.
> [reproduced as written]

At 1:46 p.m., one hour after sending the above email, the tenant sent a second email in which he stated:

> Its getting too cold here now and the furnace still isn't working, we need to call someone right away, baby naps. I have 5 space heaters and its not enough to balance out the furnace not working. I'll try to reach you by phone to get you to call the heater guy you sent last time.
> [reproduced as written]

The landlord responded to the tenant on January 9 at 5:20 advising that the 911 Repairman would be attending at the rental unit the next day. The 911 Repairman was able to attend the rental unit on the same day, January 9, and at 10:31 p.m. the

tenant emailed the landlord and stated:

> [The 911 Repairman] replace the two relays which are the reason for the problems. He did it tonite at 10pm and now hot water is flowing to the radiators and we have heat, I gave him a bottle of wine and thanked him many times for coming back … I'm crossing my fingers that we are done with the furnace for now. I've got heat and water I'm living in luxury!
> [reproduced as written]

The tenant called witnesses who had inspected the rental unit and testified that the furnace number of radiators were inadequate to heat the rental unit. The tenant hired the Gas Man in October to attend and repair the heating system and in 2009 hired two other heating companies to assess the condition and performance of the heating system. The tenant testified and provided evidence that he had purchased 11 space heaters between December 4 and 18.

The tenant argued that the landlord breached his responsibility to provide an adequate heating system and flowing from that breach, the landlord should be obliged to repay four months of rent, the tenant's moving expenses, the amount expended on the pool safety net, the cost of space heaters and the cost of professional assessments of the heating system.

Analysis

The tenant's entire claim is based on the premise that the landlord failed to provide adequate heat during the tenancy. While it is true that the landlord is obligated to provide and maintain the unit in a state of repair that complies with the health, safety and housing standards required by law pursuant to section 32(1) of the Act, the landlord cannot be expected to make repairs when he does not know repairs are required. In my view, this claim turns on the question of whether the tenant advised the landlord of the problems with the heat and requested that repairs be effected.

When the tenant complained of a heating problem on the day after the tenancy began, the landlord responded immediately, providing space heaters and telephoning the 911 Repairman who attended at the rental unit within a very short period of time and performed a repair which the landlord believed had resolved the complaint.

When the tenant emailed the landlord on January 9 and complained of a heating problem, the landlord again responded immediately and arranged for the 911 Repairman to attend at the rental unit and again perform a repair for which he was rewarded by the tenant with a bottle of wine. The tenant then wrote to the landlord advising that he had heat and was "living in luxury." Although the tenant and his wife both testified that they contacted the landlord repeatedly between October 25 and January 9, there is no corroborating evidence of this and the landlord and his wife specifically deny having received complaints during that time period. The evidence shows that on the two aforementioned occasions when the landlord received a complaint, he acted quickly to resolve the problem. In the tenant's second email of January 9, he refers to the same problem he had at the outset of the tenancy rather than stating that this has been a daily problem since the outset of the tenancy. While the tenant did state in his first email on that date that the landlord knew that the furnace "is not good," I am unable to draw the conclusion from that statement that the landlord was aware that there was an ongoing problem. I find that the tenant did not complain of the heating problem between October 25 and January 9 and that the landlord had every reason to believe that the heating issue had been resolved when the 911 Repairman changed the thermostat on October 27. For these reasons, I find that the tenant did not advise the landlord that there was an ongoing problem with the furnace between October 25 and January 9. I find that after January 9 the landlord again had every reason to believe the problem had been resolved.

Because the tenant did not advise the landlord that there was inadequate heat, the landlord was not given an opportunity to perform any required repairs. I find that the tenant may not claim compensation for losses resulting from an inadequate or inoperable heating system, and I make no finding on the adequacy or operability of the heating system, when he failed to inform the landlord of the problem. As for the tenant's claim to recover the cost of the October visit by the Gas Man, the tenant was responsible to report the problem to the landlord and give the landlord a reasonable time to effect repairs. I find that in this case the tenant did not give the landlord a reasonable time to repair the furnace. The landlord arranged for and paid for the visit of the 911 Repairman and should not be held responsible for the cost of a service call

by a second repairman.

Conclusion

I find that the tenant has not proven his claim on a balance of probabilities and as a result, the claim is dismissed.

Dated April 7, 2009.

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