



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ERP, MNDC, FF, O

Introduction

This matter dealt with an application by the Tenants for an Order that the Landlord make emergency repairs by restoring heat to the rental property as well as for compensation for a loss of a service or facility and to recover the filing fee for this proceeding. At the beginning of the hearing the Parties' confirmed that repairs were made to the heating system in the rental property and that heat was restored to the rental unit on October 21, 2009. Consequently, the Tenants abandoned their application for emergency repairs.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for loss of a service or facility and if so, how much?

Background and Evidence

This tenancy started approximately 4 years ago. Rent is \$781.89 per month which includes heat. On or about August 26, 2009, the heating system in the rental property failed. The Tenants claim that the heat was not restored to the rental unit until October 21, 2009.

The Tenants argued that the Landlord took an unreasonably long time to make the repair. The Tenants said that when they complained about a lack of heat, the Landlord told them in an e-mail on September 9, 2009 that the problem would be rectified by replacing the boiler which would be done "soon." On September 30, 2009, the Fraser Health Authority did an inspection of the rental property, found that the ambient temperature did not comply with the Rental Unit Bylaw and ordered the Landlord to make repairs by October 7, 2009. The inspector also ordered the Landlord to provide auxiliary heaters to any tenants who requested heat.

On or about October 2, 2009, the Tenants received a Notice from the Landlord that parts had been shipped and that the repairs would be completed on October 9, 2009. On or about October 5, 2009, the Tenants received a further Notice from the Landlord that there would be a further delay of about a week in the shipment of the necessary parts. The Tenants suggested that the delay in making the repairs was the result of

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the Landlord's delay in planning. In particular, the Tenants said the old equipment was not removed until the last moment.

The Landlord argued that he exercised due diligence in trying to restore heat to the rental property as soon as was possible. The Landlord claimed that he was at the mercy of contractors and suppliers who controlled the time frames for delivery of the parts and repairs. The Landlord said that auxiliary heaters were provided to tenants who requested them. He admitted that the Tenants had asked for heat but had not been supplied with a heater due to an oversight.

Analysis

I find that there is insufficient evidence that the Landlord breached his duty under section 32 of the Act to repair and maintain the rental property. Consequently, I find that the Tenants are not entitled to compensation on that ground.

Section 27 of the Act prohibits a landlord from terminating a service or facility if it is essential to the tenant's use of the rental unit as living accommodation. It also provides that if a service or facility is terminated, rent must be reduced in an amount that is equivalent to the reduction in value of the tenancy. I find that heat is included in the Tenants' rent and that they lost that service or facility for a 2 month period. In the absence of any evidence from the Tenants as to what value should be placed on that service, I find that an amount equivalent to 15% of the rent (as suggested by the Landlord) is appropriate. Consequently, I award the Tenants \$234.57 for their loss of heat for 2 months. I also find that the Tenants are entitled to recover their \$50.00 filing fee for this proceeding.

I order pursuant to s. 72 of the Act that the Tenants may deduct **\$284.57** from their rent payment for January 2010 when it is due and payable.

Conclusion

The Tenants' application for emergency repairs is abandoned. The Tenants' application for compensation is granted. 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: October 22, 2009.

Dispute Resolution Officer