

DECISION

Dispute Codes ERP, RP, RR

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord make emergency repairs or general repairs and for an Order allowing the Tenant to reduce her rent for repairs, services or facilities agreed upon but not provided.

At the beginning of the hearing the Tenant claimed that she had not received a copy of the evidence submitted by the Landlord to the Residential Tenancy Branch for the hearing. Given the urgent nature of this application and that the Tenant has had no opportunity to respond to the Landlord's evidence, it is excluded pursuant to Rule of Procedure 11.5(b).

Issues(s) to be Decided

1. Are repairs required to the rental unit?
2. Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy started on November 5, 2009. The Landlord is the agent for the owner of the rental property. The Tenant claimed that prior to entering into a verbal agreement to rent the property, the Landlord advised her that a gas furnace would be installed in the rental unit. The Tenant said that a gas furnace was not installed but rather her sole source of heat is 4 oil filled radiators or space heaters. The Tenant said that she cannot operate more than 2 space heaters at the same time or the breakers will trip.

The Tenant claimed that the interior temperature of the rental unit is too cold for normal occupation. The Tenant said she recently discovered that a gas furnace cannot be installed until a gas line is connected to the property. The Tenant also said that baseboard heaters cannot be installed without first re-wiring the whole rental unit. The Tenant claimed that her heating expenses to operate the space heaters are more than if there was a gas furnace.

The Landlord's agent claimed that it was unlikely that the Landlord told the Tenant that a gas furnace would be installed as he sold the rental property to the current owner and knew that it had not had a furnace for approximately 4 years. The Landlord's agent also claimed that the Landlord probably was aware that there was no gas connection to the rental property. The Landlord's agent further claimed that since the rooms in the rental unit were small, the space heaters were likely adequate to heat the rental unit. The

Landlord's agent claimed that the Tenant was told at the beginning of the tenancy that the rental unit had electric heat.

Analysis

Section 33 of the Act defines an emergency repair (in part) as one that is urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and made for the purpose of repairing the primary heating system (for one).

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that make it suitable for occupation by a tenant.

While I suspect that the present method of heating the rental unit is probably inadequate to make it suitable for occupation by the Tenant, I find that there is insufficient evidence as to whether the temperature inside the rental unit complies with the minimum standards required by the municipal or regional health authority. If the temperature does not comply, then it is clear that this situation would constitute an emergency repair under s. 33 of the Act. In the absence of such evidence, however, the Tenant's application for emergency repairs or general repairs is dismissed with leave to reapply.

I also find that there is insufficient evidence to conclude that the Tenant is entitled to a rent rebate due to an inferior heating system or on the grounds that she is paying more for electrical heat than gas heat. Consequently, this part of the Tenant's application is also dismissed with leave to reapply.

Conclusion

The Tenant's application is dismissed with leave to reapply. 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, 2010.

Dispute Resolution Officer