Decision

Dispute Codes: MNDC, OLC, PSF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement; an order instructing the landlord to comply with the Act, regulation or tenancy agreement; and an order instructing the landlord to provide services or facilities required by law. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

A copy of the written tenancy agreement is not in evidence for this month-to-month tenancy which began on or about April 1, 2005. Currently, monthly rent is $408.00. It is understood that a security deposit of $175.00 was collected at the outset of tenancy.

Rent includes the provision of heat in the unit. Heat is principally provided by way of a central oil furnace. The oil furnace heats all of what are 5 separate units in the building. At the tenant's discretion, this particular heat source can be supplemented by his use of an electric baseboard heater in the unit, in addition to an electric plug-in space heater. Hydro (electricity) is also included in the rent.

At the beginning of this tenancy, the thermostat for the oil furnace was located and openly accessible in the tenant's unit; the tenant therefore had unrestricted control over the heat setting on the thermostat for all 5 units in the building. Subsequently, in 2008 a new owner restricted access to the thermostat by installing a plastic cover over it with a lock. The owner also programmed the thermostat at varying levels of temperature

throughout a 24 hour cycle. Later, the tenant removed the lock and resumed control of the thermostat.

Thereafter, in approximately November 2009 the current owner removed the thermostat from the tenant's unit and relocated it to "the center of the basement in a hallway where there are no heat ducts." In this manner, according to the landlord "the suites get the heat first then after the whole building is well heated the heat gets to the thermostat last. This allows the temperature to be set a little lower than it would be if it were located inside the individual suites." The thermostat is again covered and locked, and the temperature setting remains programmed throughout a 24 hour cycle. The setting on the thermostat is generally as follows:

6:00 a.m. to Noon: 70 degrees Fahrenheit

Noon to 5:00 p.m: 65 degrees Fahrenheit

5:00 p.m to midnight: 70 degrees Fahrenheit

The tenant objects to the removal of the oil furnace thermostat from his unit, objects to his inability to access the thermostat, and claims that the temperature in his unit is too cold. Further, he considers that heat provided in his unit by way of a space heater is unsafe. In a written submission made after his original application, the tenant also proposes that the landlord pay him compensation in the amount of 3 months' rent for "the hardship I had to endure last winter (these relate to the 3 coldest months of the year which I endured the most)."

The landlord takes the position that, with one exception, no residents of the other 4 units in the building have reported concerns about the level of heat. The exception was an occasion when the "daylight savings time change" did not coincide with the programmed level of temperature on the thermostat. On that occasion, the landlord attended to the problem that same day.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 1 of the Act defines **"service or facility"** in part as follows:

> **"service or facility"** includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:
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> (b) utilities and related services;
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> (l) heating facilities or services;

Section 27 of the Act speaks to **Terminating or restricting services or facilities**, and provides in part:

> 27(1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

Residential Tenancy Policy Guideline # 22 addresses "Termination or Restriction of Service or Facility," and provides in part:

> An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is "essential" to the tenant's use of the rental unit as living accommodation…..the [dispute resolution officer] will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation.

> Where the tenant claims that the landlord has reduced or denied him or her a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

Based on the documentary evidence and testimony of the parties, I find that heat continues to be provided to the tenant's unit by way of an oil furnace, and by way of an electric baseboard heater and electric plug-in space heater. I note that the thermostat is programmed to provide uniform heating to all 5 units in the building, that no residents in the building have access to the thermostat, and that a general concern about the level of heat programmed on the thermostat appears to be limited to this tenant.

The experience of comfort in relation to heat is an experience which is personal to residents in each unit. If the tenant finds the level of oil furnace heat too high in his unit, he has the option of opening a window. On the other hand, if the tenant finds that there is insufficient heat provided to his unit by way of the oil furnace, he has the option of using both, an electric baseboard heater as well as an electric space heater in his unit. Oil heating and hydro (electric) utilities continue to be included in the tenant's monthly rent.

There is no evidence that the tenant documented any concerns about the level of heat in the unit during the winter prior to his application for dispute resolution filed on June 7, 2010. Neither is there any evidence that the tenant documented concerns related to what he claims was the daily shutting off of the breaker switch, or the safety of the electric space heater and / or electrical plug-ins in his unit.

The tenant has described a preference for direct control over the thermostat for the oil furnace, and a preference for heat provided by the oil furnace versus the electric options available in his unit. Despite these preferences, I find that the tenant has failed to meet the burden of proving on a balance of probabilities, that the landlord's removal of the oil furnace thermostat from the tenant's unit, and the removal of any tenant access to direct

control over the oil furnace thermostat, has resulted in a reduction or denial of a service or facility. Accordingly, the tenant's application is hereby dismissed.

As for other general concerns set out in the tenant's application in regard to such things as past rent increases, and the condition of the unit and the building, the tenant has the option of addressing these concerns directly to the landlord. In the event that these concerns are not resolved, the tenant has the option of filing a further application for dispute resolution.

Conclusion

Following from all of the above, the tenant's application is hereby dismissed.

DATE: July 22, 2010

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Dispute Resolution Officer