



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, ERP, RP, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for compensation for damage or loss under the Act, an Order that the landlord make emergency repairs and repairs, to allow the tenant to make deductions from rent for repairs and services agreed upon but not provided and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants testified that on February 9, 2011, at 1 p.m. they both attended at the landlord's agent apartment door and personally served the landlord's agent with Notice of the hearing and the hearing documents. The agent served was the landlord's on-site representative to whom rent was paid and issues related to the tenancy were communicated.

I find, pursuant to section 89 of the Act, that the landlord has been served with Notice of this hearing.

Preliminary Matter

At the start of the tenants confirmed that the monetary claim made was in relation to the rent abatement that they are requesting.

Issue(s) to be Decided

Must the landlord be Ordered to make emergency repairs and repairs to the rental unit?

Are the tenants entitled to rent abatement for loss of services not provided?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 15, 2010, rent is \$850.00, due on the first day of each month. A deposit in the sum of \$425.00 was paid at the start of the tenancy.

Soon after moving into this 42 unit building on December 15, 2010, the tenants reported a heating problem to the landlord's agent. In mid-January, 2011, the landlord's agent attended at the rental unit, with a plumber, who determined that the boiler heat system in the unit required 2 shut-off valves, a bleeder valve and a zone valve.

No repairs were carried out; the previous agent told the tenants that the landlord did not have money for repairs. The landlord has since hired a new agent and the tenants have not made any further requests for repair.

The tenants have several space heaters in their unit, which they rely upon to keep the unit warm. If those units are turned off the apartment becomes cold.

The tenants reported a problem with the shower and bathroom water flow generally. When having a shower the water temperature fluctuates from extremely cold, to scalding hot. The tenants have been told that they need to stagger showers to times when other occupants may not be using water. The tenants believe that the water problems stem from pressure problems; that when someone flushes a toilet, it causes the water to become very hot and that when occupants use hot water, the water flow in their unit becomes cold.

The tenants would like the heat and water flow issues repaired and requested compensation for the loss of heat by way of rent abatement.

Analysis

Section 32 of the Act provides, in part:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Act defines heat as a service provided as part of a tenancy. Residential Tenancy Branch policy suggests:

A landlord must not:

- terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- terminate or restrict a service or facility if providing the service or facility is a material term of the tenancy agreement.

I find this to be a reasonable stance. Therefore, as heat is an essential service, I find that the tenants are entitled to expect a constant source of heat that may be set, at a reasonable minimum temperature of 20 degrees Celsius.

Therefore, pursuant to section 62(3) of the Act, based on the balance of probabilities and in the absence of the landlord at this hearing, I Order the landlord to:

- immediately investigate the heat service in the tenant's rental unit, and
- that no later than March 7, 2011, at 5 p.m., the heat be repaired so that the tenants have a constant source of heat, which allows the rental unit to maintain a constant temperature of 20 degrees Celsius throughout the rental unit.

The landlord is at liberty to supply any other method of heat which confirms with safety and housing standards required by law, as long as the alternate method of heat is at no cost to the tenants.

Once the repair is completed and heat is restored, I Order the landlord to provide the tenants with written notice that includes the date the repair was completed.

If the repairs are not completed by March 7, 2011, I find, pursuant to section 65(1)(b) that the tenant's are entitled to:

- daily rent abatement in the sum of \$12.50 per day until such time as the heat is repaired and functioning as set out in my Order.

Any rent abatement will be deducted from the next month's rent owed; for example any abatement from March will be deducted from April rent owed.

The parties may come to a written mutual agreement as to the repair date and the date rent abatement will cease.

If the parties cannot reach mutual agreement ending the rent abatement I find that the landlord must submit an Application requesting the rent abatement cease and this will occur based on evidence submitted by the landlord that the heat repair has been fully completed.

Any rent abatement that the tenants deduct from rent owed, after the date repairs have been found to be fully completed may be considered as unpaid rent.

I Order the landlord to investigate the water flow problems in the bathroom. This investigation must take place within a reasonable period of time and the landlord must provide the tenant's with a written summary of the landlord's findings and any repair that will be completed that brings the water temperature, at a constant flow, to the level required by law. This must occur no later than March 18, 2011.

I find that the tenants are entitled to filing fee costs in the sum of \$50.00.

Conclusion

The landlord has been Ordered to repair the rental unit heat no later than March 7, 2011.

If the landlord fails to repair the heat, as outlined in my analysis, the tenants are entitled to daily rent abatement in the sum of \$12.50 per day until such time as the landlord provides the tenants with written notice that the repair has been completed.

The parties may mutually agree, in writing, an end to the rent abatement.

If the parties do not reach mutual agreement ending the rent abatement the landlord must submit an Application requesting an Order that the abatement cease, based upon evidence that the heat has been repaired as Ordered.

The landlord has been Ordered to investigate the water flow temperature problem reported in the bathroom, no later than March 18, 2011.

The tenants may deduct the filing fee cost in the sum of \$50.00 from the next month's rent owed.

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: February 23, 2011.

Residential Tenancy Branch