



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*.

The hearing was conducted via teleconference and was attended by both tenants and two agents for the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order directing the landlord to have the rental unit furnace inspected and to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on April 20, 2011 for a 1 year fixed term tenancy beginning on June 1, 2011 for a monthly rent of \$870.00 due on the 1st of each month with a security deposit of \$435.00 paid. The parties confirmed the tenants originally moved into the rental unit under a previous fixed term tenancy agreement approximately 1 ½ years ago. The parties have also confirmed the tenants are vacating the rental unit on or before October 31, 2011.

The tenants began requesting, in writing, to have the landlord check and service the furnace system in July 2011. The landlord responded to these requests by advising the tenants that they would begin this work during the "heating season". The tenants continued to request an inspection until one was completed on September 29, 2011.

In addition the local gas company inspected the furnace on September 29, 2011 and tagged the furnace as dangerous and in hazardous condition. The tag reads: "over 300 ppm CO when first fired dumping into room – heavy soot above grill on front of unit, flame rollout at bottom of unit when fired." There was also a leak that has since been repaired.

The landlord testified that his service technician was working on providing him with some options to repair the unit but that his technicians have indicated that they are not eager to return to the unit and deal with the tenants.

The landlord has confirmed that the tenants have been provided with two electric baseboard heaters to use until the repairs are complete. The tenants testified that despite the provision of these heaters that when using the heaters and other electrical appliances the breakers are tripping.

The landlord confirmed the electrical service to the home is 100 amps. The landlord testified that he had anticipated that the tenants would “come up with something” to explain why the heaters were not working.

The landlord testified that he is waiting to hear from his service technicians as to the options for the required repairs and expects to hear by the end of the week. The landlord is uncertain when he will be able to make the repairs, until he hears back from his service technicians.

Analysis

While the tenants' Application for Dispute Resolution originally sought an order to have the landlord comply with the *Act*, regulation or tenancy agreement to have the furnace inspected, I accept that circumstances have changed since the time of the Application and the issue before me now is to have the landlord comply by repairing the furnace that it is not operating.

I also acknowledge that the tenancy is ending by October 31, 2011 but until the tenants vacate the rental unit and surrender possession of the unit to the landlord both parties are still obligated to their responsibilities outlined in the *Act*, regulations and tenancy agreement.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 recognizes the need for emergency repairs, in a rental unit that urgent; necessary for the health or safety of anyone; or for the preservation or use of the residential property and, among other things, are made for the purpose of repairing the primary heating system.

In the absence of any documentary evidence from the landlord of any service records regarding the maintenance of the furnace or from the landlord's service technicians as to the options and the timeline to repair the non-functioning furnace I am not satisfied the landlord is taking all reasonable steps to repair the furnace.

Further, I find based on the antiquated electrical service to the rental unit; in the absence of any contradictory evidence from the landlord; and on the balance of probabilities the electric baseboard heaters provided by the landlord provide an over

exertion of the load on the unit's electrical system, rendering them inadequate alternative to the existing heating system.

I also find that had the landlord followed up on the request by the tenants in July 2011 to have the furnace inspected instead of waiting until the heat source is needed that any deficiencies would have been caught and dealt with prior to the start of "heating season". For these reasons, I find the landlord has failed to comply with both Sections 32 and 33 of the *Act*.

Conclusion

For the reasons noted above, I order the landlord to repair to working order the current furnace immediately and in any event not later than October 15, 2011.

As I have found the tenants to be successful in their Application, I grant the tenants a monetary order in the amount of \$50.00 to recover the filing fee for this hearing. This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 06, 2011.

Residential Tenancy Branch