



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP, RR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make emergency repairs to the rental unit; and for authorization to reduce rent for repairs, services, or facilities agreed upon but not provided.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord, via registered mail, to the address noted on the Application, on November 12, 2011. A Canada Post receipt was submitted that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be determined are whether the Tenant is entitled to compensation for the lack of heat and hot water in the rental unit and for loss of quiet enjoyment caused by another occupant of the residential complex; and whether there is a new for an Order requiring the Landlord to make repairs to the rental unit.

Background and Evidence

The Tenant stated that she moved into the rental unit on September 15, 2011 and that she currently pays monthly rent in the amount of \$1,000.00 plus utilities.

The Tenant stated that when she moved into the rental unit she immediately realized that the thermostat in her rental unit did not control the furnace; that she spoke with the occupant in the lower rental unit who advised her that they had turned off the furnace; that there was no heat in the rental unit during the first week of her tenancy; that she advised the Landlord of the problem during the first week of the tenancy but no action was taken; that she asked the occupants of the lower rental unit to turn the furnace on during the last week of September but they did not comply with her request; that on October 01, 2011 the occupants of the lower rental unit turned the furnace on and that it provided some heat, after which it started to blow cold air; that the furnace was turned

off on October 02, 2011; that she reported the problem to the Landlord on October 07, 2011, on October 12, 2011, on October 13, 2011, and October 14, 2011 but no action was taken; that on October 16, 2011 the occupants of the lower unit told the Landlord's son that they are turning the furnace off as they cannot afford to pay the heating costs; that she reported the problem to the Landlord on October 17, 2011 and was advised that the furnace would be inspected the following day; that someone inspected the furnace on October 18, 2011 and determined that the occupant of the lower unit was tampering with the furnace; that she understood that the Tenant tampered with the furnace in a manner that prevented the Tenant's thermostat from operating the furnace; that the temperature in the rental unit was excessively high on the afternoon of October 18, 2011 and this problem was reported to the Landlord; that the Landlord removed the Tenant's thermostat and instructed them to connect the thermostat wires when they wanted heat; that the Landlord provided them with a new thermostat on October 20, 2011, which was installed by the Tenant's son; that the blower on the furnace ran continuously after the new thermostat was installed; that the Landlord again removed the thermostat on October 20, 2011; that the occupant of the lower unit turned the furnace off on October 20, 2011; that on October 26, 2011 she advised the Landlord that the furnace was not working; that heat was restored to the rental unit after October 26, 2011, although they still did not have a thermostat; that the occupant of the lower rental unit turned off the furnace again when they vacated the rental unit on November 01, 2011; that the Landlord was advised of the problem on November 01, 2011 but they did not have keys to the lower rental unit so they could not turn the furnace on at that time; and that on November 02, 2011 the Tenant removed an adjoining door between her unit and the lower unit; that she entered the rental unit on that date and turned on the furnace; that after operating the furnace they smelled smoke and called the fire department; that the fire department shut off the gas line to the residential complex and advised them that the furnace should not be used until it is inspected by a licensed gas/furnace technician; that on November 02, 2011 the furnace was inspected by individual who presented himself as a ticketed technician, at which time the furnace was turned on; that the Tenant's thermostat was replaced on November 02, 2011; that on November 03, 2011 the Tenant advised the Landlord that the fan will not turn off is very loud; and that since that date they have had heat in the rental unit although the fan is still noisy and runs continuously.

The Tenant stated that when the gas line was shut off on November 02, 2011 nobody realized that the pilot light on the water heater had to be re-set; that she noticed her hot water was not working properly on November 03, 2011; that she had no hot water on November 04, 2011; that she reported the problem to the Landlord on November 04, 2011, November 07, 2011 and November 09, 2011; and that hot water was not available to them until the pilot light was lit by the gas company on November 18, 2011.

The Tenant stated that the occupant living in the rental unit below her drank frequently and made several threats to harm her during the first six weeks of the tenancy. She stated that she reported the threats to her landlord; that she is aware the landlord spoke with the occupant on several occasions, although she does not know whether he cautioned the tenant about the threats. She stated that on one occasion the Landlord

was present when the occupant of the lower unit was making inappropriate comments and the Landlord intervened on that occasion.

Analysis

Section 32(1) of the *Act* requires landlords 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 to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. In my view this section requires a landlord to provide tenants with the ability to maintain the temperature in the rental unit at reasonable levels.

On the basis of the undisputed evidence presented at the hearing, I find that the occupants of the lower rental unit were controlling the temperature in the residential complex during the latter half of September and during the month of October; that the temperature in the rental unit was often uncomfortably low during this period; that the problem was frequently reported to the Landlord; that the Landlord did not respond to the reported problem in a timely manner; that when the Landlord did attempt to remedy the problem in October of 2011 heat was restored to the unit for a period of only 2 days; and that an uninterrupted heat source was not available to the rental unit until November 02, 2011.

Regardless of whether the Tenant was denied the ability to control the temperature in the rental unit by the actions of the occupant in the lower rental unit or by the inaction of the Landlord, I find that low temperatures in the rental unit for the majority of the time between September 15, 2011 and November 02, 2011 significantly reduced the value of this tenancy for this period. Although it is difficult to determine the reduced value of the tenancy resulting from the inability to maintain reasonable temperature levels, I find that the Tenant is entitled to compensation of \$600.00, which is approximately \$100.00 per week. In calculating the amount of compensation I was influenced by the fact that the Tenant did have some heat during this period and by the fact that the rental unit is located in the lower mainland, where the temperature is not particularly low during September and October.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant did not have hot water in the rental unit between November 03, 2011 and November 18, 2011; that the problem was reported to the Landlord; that the Landlord took no actions to restore hot water; and that hot water was not restored until a representative from the gas company lit the pilot light on the hot water tank.

I find that the absence of hot water for a period of 15 days significantly reduced the value of this tenancy. Although it is difficult to determine the reduced value of the tenancy resulting from lack of hot water, I find that the Tenant is entitled to compensation of \$200.00, which is approximately \$100.00 per week. In calculating the amount of compensation I was influenced by the fact that the lack of hot water has a considerable impact on a tenants daily living activities.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A Tenant's right to quiet enjoyment may be breached when a landlord permits or allows physical interference by an outside or external force which is within the landlord's power to control. I find that the Tenant has submitted insufficient evidence to show that the Landlord did not take reasonable steps to intervene in the conflict between the Tenant and the occupant of the lower rental unit. In reaching this conclusion I was heavily influenced by the Tenant's testimony that the Landlord did intervene on one occasion when he witnessed the parties arguing and that she is aware that the Landlord spoke with the occupant of the lower unit on several occasions. Although she does not know what they spoke about, I find it is quite possible that the Landlord was attempting to intervene in the dispute between his tenants.

I also find that the Tenant has submitted no evidence to show that the Landlord had the ability to influence the behaviour of the occupant in the lower rental unit. I therefore find that the Landlord is not obligated to compensate the Tenant for the loss of the quiet enjoyment of the rental unit for the six weeks she lived in the same complex as the occupant of the lower rental unit.

In the absence of evidence that contradicts the Tenant's testimony that the furnace fan runs continuously and is very noisy, I find that it is possible that the furnace is not functioning properly, which may render the rental unit unsafe. I therefore order the Landlord to have the furnace inspected by a qualified technician prior to December 15, 2011; to make any repairs necessary to bring it into compliance with health and safety standards prior to December 30, 2011 and to provide the Tenant with written documentation from that technician that declares the furnace complies with health and safety standards.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$800.00, in compensation for being without heat and hot water for a portion of this tenancy. Based on these determinations I grant the Tenant a monetary Order for the amount of \$800.00.

I authorize the Tenant to reduce her rent payment for January of 2012 by \$800.00. In the event that that Tenant elects to reduce her rent payment for January of 2012 by \$800.00, I find that the monetary Order I have issued is of no force or effect.

In the event that the Tenant elects not to recover this amount owed by withholding rent in January of 2012, the monetary Order may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event that Landlord does not provide the Tenant with written documentation from a qualified technician that declares the furnace complies with health and safety standards by December 31, 2011, I hereby authorize the Tenant to reduce her monthly rent by \$50.00, commencing on January 01, 2012 and continuing until such time as this documentation is received.

Dated: November 29, 2011.

Residential Tenancy Branch