

## **DECISION**

### **Dispute Codes:**

RR

### **Introduction**

This is the Tenant's application for an Order allowing the Tenant a reduction in rent for repairs, services or facilities agreed upon but not provided

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents and copies of his documentary evidence by registered mail sent December 21, 2011. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

### **Issues to be Decided**

- Is the Tenant entitled to the Order sought, pursuant to the provisions of Section 65(1)(f) of the Act?

### **Background and Evidence**

The rental unit is a suite in an apartment building which was built in the 1960s. This tenancy started on September 1, 2006. The Tenant provided a copy of the tenancy agreement in evidence.

#### **The Tenant gave the following testimony:**

The Tenant testified that the Landlord inherited the tenancy 2 or 3 years ago and that his former landlord did not regulate his heat.

The Tenant testified that heat is included in the rent. He stated that the Landlord is regulating his heat. He testified that the temperature is pre-set so that it cannot go above 25 degrees Celsius.

The Tenant testified that the Landlord replaced the thermostat on his heater and that he believes the thermostat is a power saving thermostat.

The Tenant stated that he requires more heat than the thermostat currently allows because he has chronic back pain.

The Tenant submitted that there is no cap in the Municipality's Bylaws with respect to maximum or minimum heat temperatures.

The Landlord provided the following testimony:

The Landlord testified that he inherited the tenancy in 2007. He does not dispute that heat is included in the rent, but submitted that excessive heat is not included. The Landlord stated that the Tenant has been known to have his windows open and that he observed that the Tenant left his sliding glass door open on January 9, 2011, which would cool down the Tenant's home considerably.

The Landlord denied regulating the Tenant's heat. He testified that the thermostatic valve on the Tenant's heater was replaced, at the request of the Tenant, last year. The Landlord stated that the previous valve was a different brand that is no longer manufactured. The Landlord stated that the new thermostat is not a power saving thermostat and is simply a regular thermostat that tops off at 25 or 26 degrees Celsius.

The Tenant provided the following reply:

The Tenant stated that when he opens a window, he always turns the heat down to 21 or 22 degrees Celsius.

**Analysis**

Section 65(1)(f) of the Act states:

**Director's orders: breach of Act, regulations or tenancy agreement**

**65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Section 27(1) of the Act states:

**Terminating or restricting services or facilities**

**27** (1) A landlord must not terminate or restrict a service or facility if

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

The Tenant did not provide any documentary evidence to support his claim that he required much higher than normal heat to reduce his back pain.

The Landlord denied regulating the Tenant's heat. The Tenant did not provide sufficient evidence that the Landlord is terminating, regulating or restricting the Tenants' access to a reasonable amount of heat. Average room temperature in Canada is generally accepted to be 21degrees Celsius (70 degrees Fahrenheit). The parties agreed that the thermostat on the Tenant's heater is effective to at least 25 degrees Celsius (77 degrees Fahrenheit). I find that it is unreasonable for the Tenant to expect that the Landlord provide heat in excess of 25 degrees Celsius.

Therefore I do not find that the Landlord has breached Section 27 of the Act and the Tenant's application for an Order under the provisions of Section 65(1)(f) of the Act is dismissed.

### **Conclusion**

The Tenant's application is dismissed.

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: January 11, 2012.

---

Residential Tenancy Branch