



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northern Properties REIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, OLC, ERP, RP, PSF, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling an additional rent increase – Section 43;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62;
4. An Order for the Landlord to make emergency and other repairs – Section 62;
5. An Order for the Landlord to provide services or facilities required by law - Section 65;
6. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
7. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the Hearing the Tenant clarified that the claim for the Landlord’s compliance and provision of facilities and services was in relation to the loss of heat. During the Hearing the Tenant withdrew its claim of \$200.00 for unfinished repairs and the Landlord withdrew its rent increase retroactively to September 1, 2013. The Landlord states it will refund the increased amount collected from the Tenant since this

date. The Landlord states that the Tenant's rent will continue to be at the level it was prior to the increase: \$850.00.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order for repairs?

Is the Tenant to a reduction in rent?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in September 2012 on a fixed term to August 31, 2013 followed by a second one-year fixed term tenancy. Rent of \$850.00 is payable monthly on the first day of each month.

The Tenant states that the provision of heat is included in the tenancy and that the boiler for the radiant heat system stopped working midsummer 2013. The Tenant states that in September 2013 the Landlord provided the Tenant with two baseboard heaters. The Tenant states that further into the fall period this heat source was insufficient to heat more than his kitchen and living room and that his bedroom became unbearable to sleep in. The Tenant states further that two heaters running at the same time would blow the breakers. The Tenant states that this caused him to have to constantly move the baseboard heater. The Tenant states that the problem with the electricity was mentioned to the maintenance person. The Tenant claims \$30.00 per day for the loss of the boiler. The Tenant was unable to articulate how many days or equivalent days that the Tenant was without sufficient heat.

The Landlord states that the boiler will be repaired over this coming week-end. The Landlord states that it was not aware of any electrical problem but that if the boiler is not functioning after the week-end, the electrical problems will be investigated and resolved. The Landlord states that there are also extra heaters available to the Tenant.

The Parties agree that the Landlord will pay 90% of the hydro costs from September 2013 until the boiler is repaired.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. While it is not disputed that the building boiler is in need of repairs or that the Landlord acted to provide an alternate heat source, given that the alternate heat source is space or baseboard heaters, I find that this alternate heat source does not reasonably provide an equivalent level of comfort or ease that was present and provided at the commencement of the tenancy agreement.

Although the Tenant claims a significant reduction in heat provision from the heaters, it seems to me that the mere mention of the problem with the breakers to the maintenance person does not support the level of discomfort claimed and I also accept that the Tenant was able to access additional heaters. For these reasons I find that the Tenant has only substantiated an entitlement to compensation for having to live with a lesser quality heat source for a longer period of time than is reasonable to repair the boiler. I calculate this entitlement at \$100.00 per month for the months of August, September, October and November 30, 2013 for the total amount of **\$400.00**.

As the Landlord is now on notice in relation to the breaker issues, should the Landlord fail to have the boiler operational or the electricity functionally able to support the heaters for the Tenant's unit by December 1, 2013, I order the Tenant to reduce December 2013 rent by \$300.00 and for each month thereafter until such repairs are made. If the Tenant is required to continue to heat the unit with heaters as of December

1, 2013 with the electrical problems resolved, I find that the Tenant is entitled to reduce its monthly rent by \$100.00 until the boiler is repaired.

As the Tenant has been partially successful with its application, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$450.00**. Although a monetary order is provided for this amount the Tenant may reduce future rent payable by this amount in full satisfaction of the monetary order.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. If necessary, this order may be filed in the Small Claims Court and 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: November 22, 2013

Residential Tenancy Branch

