



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, RP, RR, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The subject unit is located within a 3 storey building which was built in 1973. 38 rental units are located within the building.

Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 1, 2011. Monthly rent is due and payable in advance on the first day of each month; effective March 1, 2014, rent was increased to \$775.00. A security deposit of \$375.00 was collected at the start of tenancy.

Pursuant to the tenancy agreement, heat is included in the rent. A gas furnace in the building's basement powers hot water radiant heat within the units. There are 2 hot water radiators in the subject unit. While there is a thermostat in the unit, it does not provide the tenant with control over the level of heat provided. The landlord's agent testified that during the winter months the radiant heat provided to the units is set at the maximum possible with the existing system. In response to the tenant's concern that the unit is still often insufficiently warm, the landlord provided the tenant with an electric heater. The landlord subsequently replaced the electric heater with an oil based heater. However, the tenant takes the position that it ought not to be necessary for her to incur

costs for heat related utilities which are over and above the cost of rent which, as early noted, includes heat.

Documentary evidence includes, but is not limited to, copies of the tenant's letter to the landlord dated December 09, 2013, the landlord's written response dated December 18, 2013, and the tenant's further letter to the landlord dated December 31, 2013.

Efforts undertaken by the parties to resolve the dispute during the hearing did not lead to a mutually agreeable settlement of all aspects of the tenant's application.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part as follows:

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.

Further, the parties are informed of the City of Vancouver's "Standards of Maintenance By-law No. 5462," which provides in part as follows:

HEATING SYSTEMS

18.1 (1) Heating systems shall be maintained in a safe and good working condition so as to be capable of safely attaining and maintaining an adequate temperature standard, free from fire and accident hazards and in all residential accommodation capable of maintaining every room at a temperature of 72 Fahrenheit (22 Celsius) measured at a point 5 feet (1.52 m) from the floor.

ENFORCEMENT AND PENALTIES

- 23.1 The City Building Inspector, and anyone authorized by the City Building Inspector, may enter any premises at any reasonable time for the purpose of determining whether or not such premises comply with the provisions of this By-law.

While it has been noted that the thermostat in the unit does not provide the tenant with access to controlling the level of heat being provided to the unit, the landlord's agent testified that the thermostat will nevertheless show an accurate reading of the temperature in the unit. However, further to the tenant's subjective claims that the unit is insufficiently warm, there is no documentary evidence before me which speaks to the actual temperature in the unit at any given time. Following from all of the above, I find that in the absence of sufficient evidence that the landlord has failed to comply with the "health, safety and housing standards required by law" where it concerns the provision of heat, the main aspects of the tenant's application must presently be dismissed.

Despite the above, during the hearing the landlord agreed to apply a more permanent seal to a crack in the patio door. Accordingly, I hereby **ORDER** that the landlord undertake to complete this task by no later than **midnight, Friday, March 21, 2014**.

Conclusion

With the exception of the above ORDER, the tenant's application is hereby 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: March 05, 2014

Residential Tenancy Branch

