



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Providence Mgt. Inc.
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes: MNDC, ERP, RP, RR, FF

Introduction

The tenant filed his application on August 11, 2014, and a hearing was originally scheduled to occur by way of telephone conference call on October 07, 2014. In his application the tenant sought a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / 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. While the landlord called into the hearing, the tenant did not appear. In the result, by decision dated October 07, 2014 the tenant's application was dismissed.

Thereafter, the tenant applied for review consideration, and by review consideration decision dated October 31, 2014, the tenant's application was allowed. In the review consideration decision the Arbitrator stated, in part:

The decision and Order made on October 7, 2014 are hereby suspended pending the outcome of the review hearing.

This review hearing was scheduled to commence at 1:30 p.m. on December 09, 2014. Both parties attended and / or were represented and gave affirmed testimony.

At the outset of the hearing an update was sought on the current status of the tenant's application. In summary, as the tenant's filing fee was waived, his application to recover the filing fee is withdrawn. Further, with the exception of the tenant's concern about the provision of heat in his unit, as all other repairs (emergency and otherwise) have been completed, the bulk of the tenant's application in this regard is also now withdrawn. As to compensation, the tenant seeks \$1,800.00 which is calculated on the basis of \$300.00 per month for each of the 6 months from March to August 2014; the tenant takes the position that such an entitlement arises from the inadequate provision of heat

in his unit during this time. Such compensation might be realized by way of a monetary order or permission to reduce rent.

Issue(s) to be Decided

Whether the tenant is entitled to an order instructing the landlord to make repairs to the unit, site or property / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / or permission to reduce rent for repairs, services or facilities agreed upon but not provided.

Background and Evidence

The unit which is the subject of this dispute is located in a 3 storey building, within which are a total of 10 separate rental units. Pursuant to a written tenancy agreement the term of tenancy is from March 01, 2014 to February 28, 2015. Monthly rent is \$1,100.00 and a security deposit of \$550.00 was collected.

Provision of heat is included in the rent. Convection heating is provided by way of passive hot water radiators located within the unit. While the heat is controlled centrally, residents have access to valves on the radiators which can affect the flow of hot water into the radiators. In general, residents are encouraged to leave the valves open so that a minimum level of heat can be maintained.

The tenant claims that heat provided to his unit is inadequate, and that he has incurred costs arising from attempting to raise the temperature by way of the oven, and an electric heater. The landlord's agent testified that complaints alleging inadequate heat have not been received from any other residents in the building. The landlord's agent also testified that the radiators have been checked in the tenant's unit and have been found to be working properly. As well, the landlord's agent testified that the tenant has been encouraged to leave the valves open on his radiators. Finally, the landlord's agent testified that an abundance of personal possessions kept in the tenant's unit have impeded the transfer of heat within the unit.

Analysis

Section 27 of the Act addresses **Terminating or restricting services or facilities**, in part:

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.

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

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.

The tenant has taken his concern about the heat to the attention of the City of Vancouver. In this regard, section 18.1 of the City's "Standards of Maintenance By-law No. 5462" (the "By-law") speaks to HEATING SYSTEMS, in part as follows:

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 [degrees] Fahrenheit (22 [degrees] Celsius) measured at a point 5 feet (1.52 m) from the floor.

It is understood that that an official representing the City of Vancouver has visited the tenant's unit and brought the above provision to his attention.

Further, section 23 of the By-law addresses ENFORCEMENT AND PENALTIES, in part:

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.

23.2 The City Building Inspector may issue an order to an owner of a building or land directing that the building or land be brought into compliance with a provision of this By-law.

There is no evidence of the City's having issued an order to the landlord in relation to the above By-law.

Having reviewed the considerable documentary evidence submitted by parties, but in particular by the tenant, and having considered the testimony of the parties, I find that the tenant has failed to meet the burden of proving that the landlord has either restricted a service or facility (provision of heat), or failed to comply with the "health, safety and housing standards required by law." In the result, the tenant's application is hereby dismissed.

Section 82 of the Act addresses **Review of director's decision or order**, in part:

82(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above, the original decision / order dated October 07, 2014 are hereby confirmed, such that the tenant's application is hereby dismissed.

Conclusion

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: December 11, 2014

Residential Tenancy Branch

