



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This matter dealt with an application by the Tenant for emergency repairs, compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to comply with the Act, regulations or tenancy agreement, for services and facilities included in the tenancy agreement but not provided, for general repairs to the unit site or property and for a rent reduction while repairs are being completed.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on April 30, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there emergency repairs to be completed?
2. Is there loss or damage to the Tenant?
3. Is the Tenant entitled to compensation for loss or damage and if so how much?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?
5. Has the Landlord provided services agreed to in the tenancy agreement?
6. Are there general repairs to be completed on the rental unit?
7. Is the Tenant entitled to a rent reduction will repairs are completed?

Background and Evidence

This tenancy started on November 1, 2005 as a one year fixed term tenancy with an expiry date of October 31, 2006. The tenancy has continued as a month to month tenancy since October 31, 2006. Rent is \$899.36 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on October 6, 2005.

The Tenant said her application is a result of no heat in her rental unit. The Tenant said she believes the Landlords turn the heat off from April 30 to October 1 each year. To support this statement the Tenant provided a new unsigned tenancy agreement dated May 6, 2014 that indicated the heat for the unit would only be provided from October to April. The Tenant said she would not sign this agreement was it changed the terms of her original tenancy agreement which provided heat all year round.

As a result of the lack of heat in the Tenant's rental unit the Tenant said she is requesting reimbursement for the purchase of two heaters at \$22.39 each (receipts provided) and compensation for additional hydro costs to heat the unit and aggravation for the lack of heat in the amount of \$20.00 per month for 47 months (\$940.00).

The Landlord said the heat is on in the building and they have not had other complaints about the lack of heat in the building from other tenants. The Landlord continued to say they posted a notice that they were doing radiator inspections in the building and the Tenant did not give the Property Manager access to the unit when he came around. The Tenant said she did not receive 24 hour written notice from the Landlord and he just turned up to inspect the heating system when it was not convenient for her. As a result the Tenant did not give access to the Landlord and the Landlord has not come back to inspect the heating system in her unit. The Landlord and property manager agreed the heating system in the Tenant's rental unit has not been inspected. The Landlord said they do not shut the heating system off because the hot water and heating system are both on the same boiler. The Landlord said the Tenant has had some issues in the building and has caused a disturbance with some of the other tenants in the building about the management. The Tenant said she is the one that speaks up as she believes she is the most able tenant in the building as many of the other tenants may not speak English as their first language.

The Arbitrator asked the Tenant to turn the heat on in her rental unit to see if it was working. The Tenant said it was turned to the highest setting and there was no heat in the radiators or in the unit. The Landlord said the heat was on in the building and they did not know why it was not on in the Tenant's unit. The Landlord said they sent a photograph of the thermostat in the hall way that shows the heat is on in the building.

In closing the Tenant said they have had a previous hearing about the heat in the building in 2010 and nothing happened so now she hopes the heat will be turned back on.

The Landlord and the Property Manager said in closing that the heat is on in the building and although they have not had a professional heating person check the Tenant's unit they have had the boiler system checked for the rental complex and it was passed.

Analysis

Although the Tenant has applied for a number of things the main issue in the Tenant's application is for the Landlord to provide heat as stated in the original tenancy agreement dated October 11, 2005. In that tenancy agreement heat is checked off on page 2 of the agreement as supplied by the Landlord as part of the rent.

The Tenant has applied for compensation for having to provide heat for herself as the heat in her unit was not working or was shut off. Whether the heat was just not working or if it was shut off is immaterial. The tenancy agreement states the Landlord is to supply heat to the rental unit and I accept the Tenant's testimony and evidence that the rental unit did not have heat though

out the year. As well the Landlord said they have inspected the boiler and building heating but they have not inspected the Tenant's unit and they have not had a qualified heating professional inspect and repair if necessary the Tenant's rental unit heating system.

The Tenant said there is no heat in the unit at times and the Landlord did not know as no inspections have been done.

Section 32 of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant. Therefore a Landlord is obligated to repair items include in the tenancy agreement.

Further Policy guideline 22 says:

A landlord must not:

- terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- terminate or restrict a service or facility if providing the service or facility is a material term of the tenancy agreement.²

Where the tenant claims that the landlord has reduced or denied him or her a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

I accept the Tenant's evidence and testimony that there are heating issues in the rental unit and that the Landlord has not taken corrective measures to provide adequate heat to the rental unit. Consequently; I find for the Tenant and award the costs the Tenant has incurred to heat the unit and for the Tenant's aggravation of having to heat the unit when heat is to be included in the tenancy. I award the Tenant \$44.78 for heater costs and \$940.00 for increased hydro costs and aggravation over the last 47 month at \$20.00 per month. I order the Tenant to reduce the July and August, 2015 rents by half of the awarded amount \$492.39 for each month. The July and August, 2015 rent will be reduced as follows \$899.36(rent) - \$492.39 (award) = \$406.97(July and August 2015 rent).

Further I order the Landlord to have the Tenant's heating system in the rental unit inspected and repaired if required by a professional heating technician by July 15, 2015. As well I order the Landlord to provide that written report from the professional heating technician to the Tenant within three days of receiving the report.

In addition I order the Tenant to reduce the rent of the rental unit by \$20.00 for each month starting August 1, 2015 if the heating system is not repaired to a good working order. By a good working order I mean that if the Tenant turns the thermostat on the unit should start to receive heat within 5 minutes and the rental unit should be heated within 30 minutes.

Conclusion

I Order a rent reduction of the Tenant's July and August, 2015 rent of \$492.39 making the July and August, 2015 rent in the amount of \$406.97.

I order the Tenant to further reduce the rent by \$20.00 starting August 1, 2015 for each month if the heating system is not repaired after July 15, 2015.

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: June 15, 2015

Residential Tenancy Branch

