



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Community Builders Benevolence Group & #0955802 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, ERP, PSF, RR

Introduction

This hearing dealt with the tenant's application for a monetary order; orders compelling the landlords to comply with the Act, regulation or tenancy agreement and to make repairs; to provide services or facilities required by law; and an order allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

The hearing was originally scheduled for July 3, 2015. It was adjourned, by consent of all parties to September 10, 2015. The hearing proceeded as scheduled on September 10 but the parties were not able to complete their testimony in the time set aside for the hearing so it was continued on September 24.

Issue(s) to be Decided

Is the tenant entitled to any of the orders requested and, if so, on what terms?

Background and Evidence

This month-to-month tenancy started August 16, 2012. The monthly rent of \$425.00 is due on the first day of the month. The rent has never changed since the start of the tenancy. There is a written tenancy agreement.

The rental unit is an unfurnished room in a SRO hotel. There is a sink in the room; shared toilet and shower facilities are located down the hall.

The hotel was built in 1913. It is eight stories high, plus basement. There are 98 rooms in total and 110 residents.

The hotel was sold in 2013. At first the hotel was operated on behalf of the new owners by an individual. In November 2014, the owner contracted with a charity to manage the building. This is the tenant's third application to the Residential Tenancy Branch about the water supply to his room.

The first hearing was on April 17, 2014 before me. It dealt with the tenant's claim for lack of hot water and insufficient water pressure. In that hearing the tenant testified that the taps had been replaced and there had been good water pressure since.

In that hearing the tenant also testified that on April 14, 2014, the repair person had solved the hot water issue. The repair person had told the tenant that he tracked the plumbing from the sink to a hot water heater that had been turned down. The repair person turned up the thermostat on the hot water heater and there was hot water in the tenant's room after that.

The tenant was awarded monetary compensation for the lack of hot water in the room from August 16, 2012 to April 16, 2014.

Interestingly, in the overview submitted on this hearing the tenant described the building as having "no serious maintenance and/or security violations" prior to the current owners buying the hotel in 2013.

The second hearing was on March 10, 2015. In that hearing the tenant testified that he only had hot water for a month after the previous hearing when it stopped again. His evidence was that he was without hot water entirely until January 2015, when as the result of some repairs, he now had hot water part of the time. He claimed compensation for lack of hot water from May 2014 to January 2015.

The tenant's claim was dismissed because the arbitrator found that the tenant had not taken any steps to mitigate his losses. Specifically there was no evidence that the tenant had complained in writing to the landlord about the water or filed an application for dispute resolution claiming repairs in the nine-month period he said he was without water.

Water pressure does not appear to have been an issue on this application.

The tenant filed this application for dispute resolution on May 15, 2015, claiming compensation for no hot water from May 17, 2014 to December 31, 2014 and from April 10, 2015 to May 15, 2015.

The tenant filed a copy of an inspection report prepared by the local municipality as a result of an inspection done on September 17, 2014. The report states: "moderate pressure – no hot water. Provide h/w and increase water pressure."

The tenant filed copies of written notices to the landlord delivered between December 1, 2014 and March 17, 2015. These notices state that the hot water was off on February 8 and from February 12 onward it was available half of the time. There is another e-mail dated April 28 that refers to the lack of hot water.

In his written submission he said that with the help of outside advocates there had been a campaign of written requests from residents of the building regarding maintenance and other issues between December 2014 and March 2015. He stated there were over 150 completed forms that averaged eight items per form.

The tenant also filed a copy of an e-mail from him to the local municipality advising that tenants have been reporting to staff since April 10, 2015, that they do not have hot water in their rooms.

In his oral testimony the tenant said he had hot water about 50% of the time and no hot water at all from April 10, 2015 to May 28, 2015. He testified that there has been hot water since May 28.

The tenant filed photographs of temperature readings said to be taken between April 11, 2015 and May 13, 2015. The photographs themselves are not date stamped although dates and other information have been added to the photographs. They show a range of temperatures between 71F and 108F.

The tenant testified that the water pressure was acceptable until May 28 but when the temperature was restored, the pressure dropped. The issue of lack of pressure only applies to the hot water; cold water pressure is fine. He testified that the hot water is 20% to 40% of what it used to be and only 20% to 40% of what the cold water flow is.

He testified that the city inspector was at his unit on May 5 and tested the hot water. At that time the temperature was 90F.

In support of his claim the tenant called two witnesses. The first, JW, testified that he started his employment as a general handyman with the previous owners in June 2013. He does not hold a ticket in any trade but has always worked in maintenance or construction. He was the sole maintenance man for this building until November 2014. He still works for the bar that is located in the hotel. From July 2013 until February 2015 he lived in the boiler room. He testified that this space was part of his wages.

JW testified that the building is heated by a closed loop hot water system and it has a separate potable, or domestic, water system. There are three domestic hot water tanks, and they were replaced shortly after he started work at the hotel. There are four boilers for the heating system.

The witness testified that in his opinion the problem is that there is no fresh air supply to the boiler room. He says that hot water issues only come up in the winter months when the heating system is working. When all four boilers come on at the same time the intense demand for air sucks the air from the hot water tank nearest the boilers and puts the pilot light out. The witness says he discussed the issue with the plumbing contractor the new building manager had come to look at the situation, both before and after he moved out, and they agreed with him.

JW testified that the current managers have replaced a recirculation pump} and the main pressure limiting valve.

He said there is an ongoing problem with supplying hot water to the third floor (where the tenant's room is located) because it is at the end of the line and the pipes are occluded.

He expressed the view that there should be four hot water tanks, not three, to service a population of 110 residents.

He suggested that the tenant's water problems were the result of three factors;

- Too few hot water tanks.
- Blocked pipes.
- The tenant turning on the hot water tap at the same time as everyone else.

JW said this is a very old building with multiple issues and in his opinion it should be re-piped.

The tenant also called one of his neighbours. This gentleman testified that although his room is only two doors down from the tenant his water does not come through the same route as the tenant's room. He went on to say that he has lived in the hotel since 2003 and has always had problems with hot water supply.

The owner's witness testified that the owners have spent lots of money on plumbing issues and referred me to the invoices filed as proof that they trying to maintain the building properly. She testified that the current project is to rebuild the exterior wall façade and the next project is rebuilding the fire escapes.

Of the invoices filed by the landlords the following appear to be relevant to this dispute:

- February 24, 2015 – Replacement of recirculation pump for potable hot water system.
- March 5, 2015 – Replacement of PRV of main building water supply and removal of existing plumbing permit issues.
- April 20, 2015 – Repaired damaged exhaust venting on hot water tanks in basement.
- June 3, 2015 – Relight the hot water tank in the basement.

The witness testified that they have been given repair orders from the city and they try to comply with them. She stressed that they have a good working relationship with the city.

The witness for the management company testified that plumbing is an issue in the building and because of its age it needs a whole new upgrade. She said the pilot light often blows out. She did recall the plumbers suggesting there should be a fourth hot water tank. Finally, she testified that they try to respond to all complaints.

The landlord witnesses and the tenant all spent considerable time testifying about their conversations with the same city inspector and gave completely different accounts of their

relationship with the inspector and the inspector's view of the other party. There was nothing from the inspector himself.

The tenant said the inspector gave the landlord an oral order on May 5 to provide hot water; the landlord denied this.

The tenant said that since the date of the last hearing he had obtained records from the city pursuant to a FOI request and these records supported his testimony. None of these records were filed in evidence.

The parties agreed that the tenant worked for the building manager for a short period of time after they took over the building. They gave conflicting evidence as to whether the tenant quit or was fired.

The owner and the building manager devoted most of their written submission and oral evidence to the theory that the tenant is engaged in an active campaign against them which included tampering with the boilers and draining the hot water prior to a city inspection. The basis for this opinion was stated to be conversations the owner's representative has had with staff. The only direct evidence was a written statement from an individual who is no longer employed by the landlord about an incident on August 10, 2015, where he observed the tenant's tap running at full blast in circumstances which meant the water had been running for over an hour. The statement does not say whether it was the hot or cold water that was running. The tenant said this incident did not happen.

The owner and the building manager's witnesses also testified that they are small organizations who have been overwhelmed by the multitude of applications filed against them recently by the tenant on behalf of various residents of the building.

Finally, the owner's witness says the city has never found that the building is completely without hot water.

Analysis

As explained to the parties in the hearing I am bound by findings of fact, including the ultimate decision, made by other arbitrators in previous hearings involving the same parties and the same facts. Legally, this principle is known as *res judicata*. The tenant's claim for lack of hot water from May 17, 2014 to December 31, 2014, has already been decided. Accordingly, this decision will only deal with the tenant's claim for the period from April 10, 2015 to May 28, 2015.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 16.2 (2) of the relevant municipal bylaw states that every hand basin and bathtub, shower and sink shall have an adequate supply of hot and cold running water and hot water shall be supplied at a minimum temperature of 120F (49C) and a maximum of 140F (60C).

The testimony from the tenant's neighbour was not relevant as his water system is apparently completely different from the tenant's. Of more relevance would have been the testimony of a neighbour whose water supply is the same as the tenant's.

Although the landlords filed evidence and gave testimony about their good intentions and the tenant's bad intentions they never actually supplied any evidence about any checks they made of the water temperature in this room, or neighbouring rooms, and the results of their inquiries. They never actually said there was hot water to this unit between April 10 and May 28, or that conversely, they knew there was no hot water but they had made the following efforts to address the issue.

The landlords' evidence in support of the theory that the tenant has obtained certain test results by tampering with the boilers and the plumbing system was based almost entirely on hearsay said to have been received from unnamed persons.

The former employee's unsworn written statement was contradicted by the tenant's sworn oral testimony so cannot be accepted at face value.

The landlords' devoted substantial energy on proving that JW lived in the boiler room; a fact he admitted to immediately. Interestingly, JW is the only witness who offered the information that the hot water tanks had been replaced in the recent past – evidence that is more favourable to the landlords than the tenant.

Based upon the tenant's evidence and the landlords' failure to deny the central allegation of the tenant's claim, I find that there was no hot water to the rental unit between April 10 and May 28.

Although the evidence does not offer any compelling reason for the periodic lack of hot water to the rental unit, that is not determinative of an application such as this. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

A tenant has to prove that he or she has been deprived of the use of all or part of the premises; not the reason for the failure.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

In a previous hearing I found that the lack of hot water represented a reduction in value of the tenancy of \$75.00/month. I apply the same standard to this application and award the tenant the sum of \$125.00 as compensation for the lack of hot water between April 10, 2015 and May 28, 2015.

Although the tenant's application for dispute resolution did not include a claim for lack of water pressure the tenant's subsequent submissions did, and I accepted evidence on the issue. In an effort to resolve as many disputes as possible in this hearing I will deal with that claim.

The tenant's evidence is that the hot water flow has been greatly reduced since May 28 and I accept his evidence. However, the rental unit only contains a small sink. The tenant is not trying to run a shower, fill a bathtub or operate a washing machine or dishwasher. The only vessels he could fill with hot water are the sink and an electric tea kettle or coffee maker. The loss suffered by having to spend a few more minutes at these tasks is nominal only. I find that the pressure, however low, is adequate and I decline to make any order regarding the hot water pressure.

My decision does not prevent the local municipality from coming to a different conclusion. If the local municipality should make a formal order regarding the water pressure to this rental unit the landlords are bound to comply with it, or appeal it through the channels provided in the bylaw.

Conclusion

I find that the tenant is entitled to compensation in the amount of \$125.00 for the lack of hot water from April 10, 2015 to May 28, 2015. Pursuant to section 72(2) that amount may be deducted from any rent due or becoming due to the landlord. All other claims are 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: October 12, 2015

Residential Tenancy Branch

