



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, PSF, RR, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The tenant called 2 witnesses and the landlord called one witness, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses respecting the testimony.

The tenant provided a CD as evidence to the Residential Tenancy Branch but did not provide a copy to the landlord. Any evidence that either party wishes to rely on must be provided to the other party, and therefore, I decline to consider the CD. No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by law?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed-term tenancy began on November 1, 2012 and expired on April 30, 2013, thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$640.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$312.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a corner ground level apartment in a complex containing about 36 units, and a copy of the tenancy agreement has been provided.

The tenant further testified that heat is included in the rent, however boilers were turned off at the end of April. The inside temperature on April 26, 2016 was 15.9 degrees, and outside was 7 degrees. Photographs of the thermostat have been provided, and the tenant testified that it continued to be cold. The tenant sent an email to the landlord on May 6, 2016, and heat was back on for a day or so, but was turned off again. When the tenant asked, he was told that it was turned off and would remain off – end of subject.

The tenant testified that turning the heat off is not part of the agreement, and the tenant has been very cold. Friends don't want to visit because it's too cold in the tenant's rental unit. The tenant seeks a reduction of half the rent for May and June, considering the heat was turned off at the end of April. It's expensive for the tenant to run a space heater in the apartment.

Also provided is a copy of a letter from another tenant who states that it is brutally cold in her apartment.

The tenant's first witness (DH) testified that on several occasions, the witness visited the tenant at the rental unit and found it really chilly. The witness normally visits quite often, but not lately because it's too chilly. The witness takes a hoodie, a jacket and slippers, just to visit in the rental unit.

The tenant's second witness (GD) testified that he's visited the tenant in the rental unit for many years. The witness used to visit 3 times per week but it's been too cold in the rental unit, and not very nice at all. Since April, the witness has reduced visits to once per week because it's been too cold.

The landlord's agent testified that the building is heated with hot water through a boiler system. Hot water flows 24 hours per day so it still generates heat, but tenants cannot turn it off in individual apartments, but can turn it down.

The landlord relies on a local representative who lives in the community to tell the landlord's agents when it's warm enough to turn the boilers off.

Copies of news clippings and actual temperatures taken from the internet have been provided, and the landlord's agent testified that it was unreasonably warm this year. Many tenants have been using air conditioning units, so the landlord's agents had the boiler turned off. The landlord received the tenant's letter of May 6 and boilers were turned back on. They were not turned off again until the end of May, which was early due to the unusually warm temperatures. This has not been an issue in the past.

The landlord's witness testified that she lives about a 3 minute drive from the rental complex. Some tenants had air conditioning units on in their units at the end of April.

The witness also testified that boilers were turned off about May 4th or 5th and the witness received an email from the landlord company's office to turn them back on. They were back on May 6 and turned off again on May 12 because too many people were complaining about how hot the halls were and asking why the boilers were on.

Usually the boilers are turned off during the first week of May. When halls get hot and tenants complain, and when the weather seems good enough, they get turned off.

Another tenant was also cold, but didn't complain.

Analysis

Firstly, the tenant didn't raise any issues with respect to required repairs, and I dismiss that portion of the application.

The tenant also seeks an order that the landlord provide services or facilities required by law. The tenancy agreement clearly states that heat is included, but the tenant testified that it's warm enough now so the heat is no longer required. Therefore I dismiss the tenant's application for an order that the landlord provide services or facilities required by law. Should the tenant not have heat in the future, the tenant will be at liberty to make another application for dispute resolution.

With respect to the tenant's claim for a reduction in rent, I have reviewed the evidentiary material provided by the parties, and the numbers from the tenant's thermostat, forecasts and news articles differ. The parties' testimony and that of one of the witnesses also differ respecting when the heat was turned off. I accept that it was too cold in the tenant's rental unit for some time considering testimony of the tenant and the tenant's witnesses, and considering the letter from a neighbouring tenant. However the landlord's witness testified that it was turned off on the 4th or 5th of May, turned on May 6, and off again May 12. The tenant testified it was off April 26, which is somewhat corroborated by the tenant's witness who testified it was off in April.

Where a party makes a claim against another party, the onus is on the claiming party to prove the claim. In the circumstances, I am satisfied that during the month of May, 2016 the lack of heat, which is included in the rent, devalued the tenancy. I do not accept that it was devalued by half of the monthly rent, considering it was warm enough during the day. I find that the tenancy has been devalued by $\frac{1}{4}$ for a month, and I order that the tenant be permitted to reduce rent for a future month by \$160.00.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed.

The tenant's application for an order that the landlord provide services or facilities required by law is hereby dismissed.

I order that the tenant be permitted to reduce rent for a future month by \$160.00.

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 24, 2016

Residential Tenancy Branch