



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord provide services or facilities and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and her agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to provide heat; to a monetary order for compensation for the landlord failing to provide heat and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a copy of a tenancy signed by the parties on April 1, 2016 for a 1 year fixed term tenancy beginning on April 1, 2016 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00. The parties also agreed that heat and electricity are included in the tenancy. The tenant noted that he did not move into the rental unit until April 9, 2016.

The tenant submitted that from the start of the tenancy he found the rental unit cold but that he let it go for a few days at the start of the tenancy and then raised the issue with the landlord on April 12, 2016. He stated that after their discussion the landlord turned the heat on. The tenant has submitted, into evidence, copies of correspondence between the parties on this issue beginning April 12, 2016 through to May 20, 2016.

The tenant also submitted into evidence, a documented accounting of temperatures and a timetable of events for the period of April 9, 2016 to April 27, 2016. This accounting records temperatures between 10°C and 15°C from April 9, 2016 to April 12, 2016; a discussion with the landlord on April 12, 2016 after which the temperature is recorded as "heat turned up/heat up/heat down" until April 14, 2016; the tenant's absence

between April 14, 2016 and April 18, 2016; temperatures from between 16⁰C and 20⁰C with exceptions of three occasions where the temperature is recorded at 24⁰C, 22⁰C, and 26⁰C; and the landlord's provision of a space heater on April 27, 2016.

The tenant submitted that the landlord is required, by local bylaw, to provide temperatures of at least 20⁰C. In support of this position the tenant has submitted the wording of local bylaw #4050 under the section entitled "Minimum Standards for Residential Property – Structural" and the subheading "Heating". The wording is: "Every dwelling shall be provided with a heating system capable of maintaining a room temperature of 20 degrees Centigrade at one and half (1.5) metres above floor level and one (1) metre from exterior walls in all habitable rooms, bathrooms and toilet rooms" [reproduced as written].

The tenant also provided wording regarding enforcement if the bylaw is contravened, but has provided no evidence the landlord has been fined by local authorities for the contravention of any bylaws.

The tenant submitted that the landlord has contravened Section 27 of the *Act* by withdrawing or restricting necessary services. The tenant seeks \$250.00 as compensation for the landlords' failure to comply with these actions. The tenant has provided a detailed calculation showing how he determined this amount based on hydro usage for 4 portable heaters for the period of April 2016.

The landlord submitted that there is no requirement under local bylaws that require the landlord to provide a specific temperature and that she took reasonable steps to deal with the tenant's complaints. The landlord submitted that the landlord does not adjust the temperature because the system is automatic and will initiate heating when the ambient temperature near the thermostat, located in the landlord's part of the property, reaches 16⁰C.

While the landlord agreed that a portable heater was provided to the tenant on the April 27, 2016 she could not explain why she waited so long to do so. Originally she stated it was because the tenant was away until that date but later agreed that she had spoken with the tenant on April 18, 2016 after he returned from being away.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 27 of the *Act* states 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 providing the service or facility is a material term of the tenancy agreement.

I accept that the provision of heat is an essential service that allows the tenant to use the rental unit as living accommodation. I find, based on the submissions of both parties, that heat is an included service in this tenancy agreement.

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

While the tenant's position is that the landlord must provide heat of at least 20°C for any given room in a rental unit according to local bylaw I accept the landlord's position that there is no local bylaw setting such a standard. I make this finding, not necessarily because the landlord has provide any evidence of this but that the tenant has failed to provide any evidence of such a bylaw.

I find the bylaw the tenant is relying upon is most likely related to either building or renovating a home structure and obtaining an occupancy permit. I find the bylaw cited requires the party to provide a "heating system" that has a capability set at a certain standard. However, I find no language that would require either a homeowner or a landlord to ensure that each of the rooms is heated to that temperature standard.

For the period of April 1 to 12, 2016 I find that since the tenant had not identified a problem of inadequate or no heat to the landlord the landlord cannot be held responsible for failure to provide a service if she had not been made aware that it was not being provided.

As of April 12, 2016 I find the tenant had advised the landlord of a problem. I accept, as a result of that complaint the tenant acknowledged that heat was being provided but that it was inconsistent and that it varied greatly for the remainder of April 2016 until he received the portable heaters on April 27, 2016. I note the tenant has not provided copies of any correspondence on these matters for the period between April 13, 2016 and April 25, 2016.

I note the letter of April 25, 2016 from the tenant to the landlord is the first documented request for the landlord to install some electric heating into the rental unit. The landlord's written response dated April 26, 2016 offered the tenant portable heaters which were provided the following day.

As a result, I find the landlord had responded to the tenant's complaint of April 12, 2016 within a timely fashion and attempted to rectify the tenant's complaints of inadequate heating.

From the documentary evidence submitted including the tenant's documented chronology of events, I find the tenant did not identify any ongoing problem with variations in temperatures until his April 25, 2016 letter and that the landlord then provided a response that has met with the tenant's satisfaction on April 27, 2016. I find this response was also completed in a timely manner.

Based on the above, I find the landlord has met her obligations under Section 32 of the *Act* and that the tenant has failed to provide sufficient evidence to establish that the landlord has restricted or withdrawn any service essential to the tenancy, pursuant to Section 27 without responding to complaints and dealing with the deficiencies in a timely manner.

As a result, I find the tenant has failed to establish deliberate or neglectful violation of the *Act*, regulation or tenancy agreement.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

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 29, 2016

Residential Tenancy Branch