



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP RP RR

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant and Occupant on November 30, 2016. The application was for Orders to have the Landlord make emergency repairs for health or safety reasons; make repairs to the unit, site, or property; and to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the Tenant and Occupant. No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on December 2, 2016. The Tenant provided the Canada Post tracking information in their oral submissions.

Two packages of documentary evidence were received on the Residential Tenancy Branch (RTB) file from the Landlord. The first package of 10 pages was received at the RTB on December 19, 2016. That package included a written submission from the Landlord indicating he would not be attending the scheduled hearing as he would “be away due to a previous family commitment”. There was no request for an adjournment and no one attended the hearing as agent for or on behalf of the Landlord. The second package of 5 pages submitted by the Landlord was received at the RTB on December 20, 2016.

Based on the undisputed evidence of the Tenant and the documentary evidence received on file from the Landlord listing the correct file number, I find that the Landlord was sufficiently served notice of this application and hearing in accordance with Section 89(1)(c) of the Act. As such, the hearing continued to hear the undisputed evidence of the Tenants.

The Tenant testified they did not receive a written statement or any documentary evidence from the Landlord relating to this application for Dispute Resolution.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

Residential Tenancy Rules of Procedure 7.4 provides that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

To consider documentary evidence that was not served upon the other party and not presented during the hearing would be a breach of the principles of natural justice and the Rules of Procedure. Therefore, as the Landlord's evidence was not served upon the Tenants and not presented during the hearing, I declined to consider that documentary evidence.

Issue(s) to be Decided

- 1) Has the Landlord completed the emergency repairs to the natural gas system?
- 2) Is the Tenant entitled to monetary compensation and/or reduced rent resulting from the natural gas leak?
- 3) Are there additional repairs required that have not been the subject of a previous dispute resolution proceeding?

Background and Evidence

The Tenant entered into a month to month tenancy agreement which commenced on June 1, 2016. As per the tenancy agreement rent of \$1,200.00 was payable on the first of each month. On May 17, 2016 the Tenant paid \$600.00 as the security deposit.

The rental unit was described as being a single detached house that was built in approximately 1949. The original house was heated by a natural gas forced air furnace which was located beside the natural gas hot water tank. Both the furnace and hot water tank were connected to the same venting ducting. The master bedroom appeared to be an addition to the original house and was heated by a separate natural gas wall heater.

The Tenant testified that when they returned home on November 27, 2016 they could smell natural gas. They called the natural gas company who attended and found a gas

leak in the master bedroom heater. Upon further investigation the natural gas inspector also determined that the venting for the hot water tank was installed incorrectly which could cause a carbon monoxide danger.

The Tenant asserted they attempted to contact their Landlord on November 27, 2016 and when he did not pick up their call they left him a voice message. The Tenant stated they contacted the natural gas company the next day and were told the Landlord had attended the rental unit with a natural gas inspector and that the Landlord had been advised of the required repairs. They were also told the natural gas service had been locked out until the repairs were completed and inspected by the gas company.

The Tenant stated they could not occupy the rental unit until the natural gas problems had been repaired so they found alternate accommodations with friends and family starting from November 27, 2016.

The Tenant submitted that despite their attempts they were unable to contact the Landlord until December 2, 2016 to obtain a status update. He stated the Landlord was hostile towards them during that conversation and would not provide them with the requested information. The Tenant stated they contacted the gas safety authority afterwards and were told the Landlord was arranging the repairs.

The female Occupant attended the rental unit on the weekend of December 3, 2016 to pick up some possessions. When she arrived she saw the Landlord and a repair person working at the house. On December 6, 2016 they attended the rental unit and saw the gas had been turned back on. The Tenant had not heard from the Landlord so they called the gas authority and were told the required work had been completed and it was safe for them to return.

The Tenant testified they had to find other accommodations for the period of November 27, 2016 to December 6, 2016 due to the natural gas problems. They asserted that they were disappointed with the Landlord who showed a lack of concern for their family's safety as he still has not completed all of the required repairs that were ordered in a previous hearing. As a result, the Tenant is seeking a 100% reduction of rent until the beginning of April 2017. The Tenant provided the file number from their previous application and noted that they had been awarded a \$200.00 monthly rent reduction until the repairs had been completed. They stated they were currently paying \$1,000.00 per month (\$1,200.00 - \$200.00) and had paid the \$1,000.00 in full for November and December 2016.

The Tenant submitted they were out of town for Christmas vacation from December 22, 2016 to January 2, 2017 and had not yet paid their rent for January 2017. They stated that upon their return home they received a letter from the Landlord asking them to move out by February 28, 2017. The Tenant confirmed they had not been issued a 2 Month Notice to end tenancy or any other formal Notice to end tenancy as of the date of this hearing.

Both parties were represented at the previous Dispute Resolution hearing which was held on November 23, 2016 (as noted on the front page of this Decision). That hearing was convened to hear matters pertaining to the Tenants' October 4, 2016 application for requests for repairs to the rental unit, none of which related to issues with the master bedroom natural gas heating or the hot water tank venting.

On November 25, 2016 the Arbitrator issued his Decision which made a finding on who was the Tenant; listed, in part, 15 orders to the Landlord for repairs; and granted the Tenants a \$200.00 monthly rent reduction as follows:

While the tenant's Application for Dispute Resolution named two applicants as tenants, I note the tenancy agreement names BM as the only tenant. As a result, I find the applicant LM has no standing in this tenancy and I amend the tenant's Application to exclude LM as an applicant.

[Reproduced as written p. 1]

... effective September 1, 2016 and remain in place until either the parties agree that work ordered above is completed or the landlord obtains an order from an Arbitrator that the work has been completed.

[Reproduced as written p. 4]

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to the current matters as follows:

Section 32 of the *Act* requires a landlord to 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 33(1) of the *Act* defines "**emergency repairs**" as repairs that are: (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; the electrical systems; or in prescribed circumstances, a rental unit or residential property.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 65(1)(f) of the *Act* states that if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I accept the undisputed evidence the Landlord was in breach of section 32 of the *Act*, for the period of November 27, 2016 to December 5, 2016, when the natural gas to the rental unit had to be shut off pending repairs. I further accept the Tenant's submissions that they were unable to reside in the rental unit until December 6, 2016. As such I am satisfied that the value of the tenancy had been reduced by 100% for the nine days (November 27 to December 5, 2016) the Tenant and his family were not able to occupy the rental unit. Accordingly, I grant the Tenant monetary compensation for the devaluation of the tenancy based on a daily rate of \$32.88 ($\$1,000.00 \times 12 \text{ months} \div 365 \text{ days/year}$) in the amount of **\$164.40**.

Regarding the Tenant's request for a 100% rent reduction to the beginning of April 2017, I find there was insufficient evidence before me to support such a claim. I make this finding in part as the matters before me related to the natural gas leak and hot water tank venting, both of which had been fully repaired by December 5, 2016, nine days after they were reported. I further find that nine days to conduct repairs is reasonable given the circumstances presented to me during the hearing.

Furthermore, the Tenant and his family returned to the rental unit December 6, 2016 and continue to fully occupy the rental unit. A tenant is not entitled to compensation for a period they choose to be on vacation. In addition, the Tenant is in receipt of a \$200.00 monthly rent reduction relating to their previous application for Dispute Resolution which has no relation to the matters currently before me.

The letter the Tenant stated they received asking them to move out of the rental unit does not meet the requirements of a formal notice to end tenancy and does not form part of the application for Dispute Resolution that was currently before me.

As per the foregoing, I conclude there was insufficient evidence before for a 100% rent reduction to April 2017 and that request is dismissed, without leave to reapply.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce their rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is **\$164.40**.

In the event this tenancy ends prior to the Tenant's next rent payment, the Tenant has been issued a monetary order in the amount of \$164.40. This order must be served upon the Landlord and may be enforced in Small Claims Court.

Conclusion

The Tenant was partially successful with their application and was granted monetary compensation of \$164.40. The Tenant is at liberty to deduct the one time award of \$164.40 from their next rent payment. The balance of the Tenant's application was dismissed.

This decision is final, legally binding, and 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: January 04, 2017

Residential Tenancy Branch