



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AAT DRI ERP LAT LRE OLC PSF RP RR MNDC

Introduction

This hearing was convened in response to an application filed by the tenant on March 27, 2017 seeking multiple Orders under the *Residential Tenancy Act* (the Act).

Both parties participated in the hearing and provided testimony. The tenant acknowledged they did not submit document evidence however received the evidence of the landlord. The tenant also acknowledged that the sole reason for filing their application was due to solely seeking compensation for a lack of heat and that all other items in their application are irrelevant to their claim. Therefore, the hearing proceeded on merits of the tenant's claim that they have experienced a lack of heat.

Both parties were provided opportunity to settle their dispute to no avail. They were also provided opportunity to present all relevant evidence and testimony and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were informed that only *relevant evidence* would be considered toward a final and binding Decision.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?
Is the tenant entitled to an abatement of rent?

Background and Evidence

This tenancy started March, 2015 and continues pursuant to the written tenancy agreement. Subsidized rent of \$375.00 per month is payable on the first of each month and is inclusive of heat.

The tenant claims that shortly after first occupying the rental unit in the month of March 2015 they noted a lack of heat and verbally informed the landlord whom provided the

tenant with a portable oil heater to supplement the radiant hot water heating system of the building (the heating system) which the tenant controls with their thermostat. The landlord testified that in the month of March, dependent on the outside temperature, the heating system may not always be on demand. However, the tenant complained of needing heat and was therefore was given a supplementary source to their satisfaction with a view it would be utilized temporarily given the rising outside temperatures.

The tenant claims they had satisfactory heat via their portable heater throughout 2015 and 2016 until October 2016 when their portable heater no longer functioned. The tenant testified they did not notify the landlord in writing, but verbally notified the landlord of a need for heating. The landlord testified they did not receive any information from the tenant as to heat until February or March 2017 during which time they assumed the heating system is not always triggered. According to the landlord the tenants of the building complain of too much heat.

The tenant filed for dispute resolution for, amongst many other items, a lack of heat. The landlord soon after responded with a repair technician addressing the hot water heating system in the unit. The technician found the valve to the heating system was shut off, and once turned on the heating system responded as functional. To what the landlord describes as solely out of an abundance of caution the zone valve to the unit was replaced and the system operates as always intended. The tenant claims they tried the valve before and received no heat so turned it back off. The landlord explained it may have been the case if the system was not on at the time the tenant turned it on, or that the tenant's thermostat was being compromised by the use of the portable heater.

The parties seemed to agree of the possibility of miscommunication in the 24 month tenancy regarding heat and that both parties assumed certain matters in the absence of communication. The landlord acknowledged they did not further investigate the tenant's want for more heat in March 2015 and in the absence of any complaint regarding heat until recently assumed that heat was not an issue. The landlord does not concede of a problem with the heating system and that the tenant would have known to rely on the heating system for heat first and then the portable heater if supplementary heat was required. The tenant acknowledged they at no time put any complaint in writing for follow up by the landlord and simply relied on the portable heater until it no longer satisfied their need for heat in the recent winter season.

The tenant acknowledged that from now on they are able to alert the landlord of any problem in writing, which was welcomed by the landlord.

Analysis

On preponderance of the evidence and on the balance of probabilities I find in this matter the tenant and landlord both failed to adequately communicate in respect to the heating system. I find the testimonial evidence indicates that the parties mutually made assumptions which started and then advanced the issue of the heating system and lack of heating until the issue was brought to the forefront by the tenant's application. None the less, I find that in this matter the landlord could not have known if a problem truly existed with the building heating system, given the lack of information from the tenant of a possible problem until recently. I find it unfortunate it required the tenant to apply for dispute resolution to notify the landlord of a problem, however I am satisfied the landlord took almost immediate steps to rectify it once served with the Notice of Hearing.

In this type of application the burden rests with the applicant tenant to prove the landlord somehow breached the tenancy agreement or the Act and in their breach the tenant suffered a lack of heat. I do not find the tenant has met this burden.

As a result of all the above, I find the tenant may have suffered some discomfort but that it has not been solely due to the landlord's doing. As a result I find it appropriate to award the tenant nominal compensation. An Arbitrator may award nominal damages or a nominal award which is a minimal award granted where there has been no significant loss, or where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I set the tenant's nominal compensation in the amount of **\$50.00**. The balance of the tenant's application is **dismissed**.

I Order that the tenant may deduct \$50.00 from a future rent in full satisfaction of their award.

Conclusion

The tenant's application in relevant part is granted.

This Decision is final and binding.

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: May 09, 2017

Residential Tenancy Branch