



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Amended DECISION

Dispute Codes

RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Preliminary and procedural matters.

The tenant in their evidence filed a monetary worksheet; however, they did not seek a monetary order in their application. Further, the tenant file through their evidence an amendment to an application for dispute resolution adding a second respondent; however, that was not properly filed with the Residential Tenancy Branch and a Notice of Hearing was not issued to the named respondent.

Therefore, the only issue for me to consider at the hearing, is whether the tenant is entitled to a rent reduction for the claimed period.

Issue to be Decided

Is the tenant entitled to a rent reduction?

Background and Evidence

The tenancy began November 2016. Rent in the amount of \$1,275.00 was payable on the first of each month. A security deposit of \$637.50 was paid by the tenant.

The tenant testified that they seek a rent reduction equal in the amount of \$637.50, for being without a reliable heat source between November 20, 2016 and February 15 2017, which the temperature outside was approximately -17 Celsius. The tenant testified that during this period they had no heat for a total 18 days, which was at different times. It was 5 days, then 6 days and the last time it was 7 days. The tenant stated the landlord provided two portable heaters provided by the landlord; however, the barely warmed the bedrooms.

The landlord testified that while the outside temperature was low, it did not have any substantial impact on the rental unit as the rental unit is surrounded by other units. The landlord stated that the temperature was never below 19 Celsius. The landlord stated that they made the repairs to the heating system and when the system was down provided another source of heating.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the heating system broke and repairs were needed. The tenant did not have control over the heating system for a five day, six day and a seven day period totaling 18 days during this specified time period. The evidence of the tenant was that the rental unit was too cold. The evidence of the landlord was that the rental unit was at 19 Celsius as it surrounded by other units and portable heaters were provided.

The tenant did not provide any evidence on the actual internal temperature of the rental unit for me to consider. The evidence of the landlord was the rental unit was at 19 Celsius when they attended the premises; however, I find it would be reasonable that the internal temperature of the premises would drop during the night even when surrounded by other units and portable heaters.

I accept the rental unit was partially heated from the surrounding units and from two portable heaters; however, a proper heat source is included in the rent and the tenant had the right to heat the premises to a comfortable level, which may be over 19 Celsius.

I am satisfied that the tenancy was devalued as a result of not having an insufficient heating system for 18 day period, as space heaters are not intended to heat and entire unit; however, I find the amount of \$637.50 claimed as compensation high. The daily amount claimed for

compensation equals the amount of **\$35.41 per day** ($637.50 \div 18 \text{ days} = 35.41$) and the daily rent for the entire rental premise is **\$41.91 per day** ($1275 \times 12 \text{ month} \div 365 \text{ days} = 41.91$).

I find an appropriate amount of compensation for an insufficient heating system is 10% of the daily rent of \$41.91, since the tenant still had the use of the rental premise and there was still some heat. Therefore, I grant the tenant a **onetime** rent reduction in the amount of **\$75.43** ($41.91 \div 10\% = 4.191 \times 18 = 75.43$). I authorize the tenant to deduct this amount from a future rent payable to the landlord to recover this award.

Or alternatively if the tenant is unable to collect the above award through a onetime rent reduction, I grant the tenant a monetary order pursuant to section 67 of the Act. Should the landlord fail to voluntarily pay the above amount.

I decline to award the tenant the filing fee, it was not request in their application.

Conclusion

The tenant's application for a rent reduction is granted. The tenant is entitled to a onetime rent reduction or alternative a monetary order in the above amount.

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: April 12, 2017

Amended on July 20, 2017

Residential Tenancy Branch