



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stanmar Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the Tenant for a monetary order for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed for the loss of an air conditioner?

Background and Evidence

The following are agreed facts: The tenancy started on September 1, 1996. Rent of \$828.00 is payable on the first day of each month. The tenancy agreement includes the provision of an air conditioner. The Tenant was provided with a wall mounted conditioner from the onset of the tenancy.

The Tenant states that in June or July 2017 the air conditioner stopped working. The Tenant states that the conditioner was very old and likely original to the rental building constructed in 1963. The Tenant states that several calls were made to the Landlord’s office with messages left for the property manager however no calls were ever returned to the Tenant. The Tenant states that she ended up in the hospital due to the heat and

was so frustrated with the lack of action by the Landlord that on August 11, 2017 the Tenant purchased a new conditioner and had it installed. The Tenant claims \$493.28 and provides the invoice.

The Landlord states that they were first called by the Tenant on July 24, 2017 and that on August 4, 2017 a contractor was sent to the Tenant's unit to inspect the conditioner for either repairs or replacement that same day. The Landlord states that the Tenant did not allow that person into the rental unit. The Landlord states that they could have replaced the unit for \$250.00 and does not agree that the Tenant is entitled to the reimbursement claimed. The Landlord states that the Landlord never spoke with the Tenant about the conditioner but that his secretary and maintenance coordinator had both spoke with the Tenant about the planned repair or replacement. The Landlord estimates the age of the conditioner to be about 38 years old. The Landlord states that units that are recently rented without an air conditioner are rented at a rate of \$1,025.00 and that similar units recently rented with an air conditioner are rented at a rate of \$1,050.00.

The Tenant states that nobody ever called her about repairs and that nobody came on August 4, 2017 to her unit either. The Tenant states that she did get a call from somebody about measuring her unit. The Tenant provides a copy of a letter to the Landlord dated August 15, 2017 that details the Tenant's acts to obtain a functioning air conditioner.

Analysis

Section 33(1) defines emergency repairs as urgent, necessary for the health or safety of anyone, and made for the purpose of repairing, inter alia, the primary heating system. There is no dispute that the tenancy includes a wall mounted air conditioner. Although an air conditioner could be seen as "cooling" system rather than a "heating" system, it is still a "system" that operates in relation to the heat in a unit. The Tenant's evidence that she was hospitalized due to the heat holds a ring of truth and I consider that for

some persons the loss of an air conditioner could be life threatening during the hot months, much like the possible threat from the loss of a furnace during cold months. For these reasons I find that in these circumstances an air conditioner can be seen as a part of the primary heating system in the unit. Given the undisputed evidence that the conditioner stopped working I also find that the Tenant experienced the requirement for an emergency repair or replacement of the air conditioner.

Section 33(3) of the Act provides that a tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

There is no dispute that the Landlord was informed at least by July 25, 2017 that the air conditioner was not working. While the Landlord gives oral evidence that the Tenant refused the Landlord's work on the conditioner, the Tenant gives evidence that nobody told her or came to the unit about repairs to the conditioner. As the Tenant's evidence is direct and holds a ring of truth and as the Landlord did not provide any direct or supported evidence of communication with the Tenant I prefer the Tenant's evidence and find on a balance of probabilities that the Landlord did not communicate with the Tenant about plans for repair or replacement of the conditioner and that no repair person came to the unit. I also find that the Tenant made at least 2 attempts to obtain emergency repairs during a high heat season and that in the circumstances the Tenant gave the Landlord more than adequate time to repair or replace the air conditioner. I find therefore that the conditions were met for the Tenant to make the repairs herself.

Section 33(5) of the Act provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from

the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. Given the letter of August 15, 2017 and the invoice I find that the Tenant has substantiated the compensation claimed of **\$493.28**. The Tenant may deduct this amount from future rent payable.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$493.28**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 21, 2018

Residential Tenancy Branch