



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDCT, OLC, PSF, RP, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- An order for the Landlord to complete emergency repairs for health and safety reasons;
- An order for the Landlord to complete repairs that have been requested from the Landlord in writing;
- An order for the Landlord to provide services or facilities required by law or the tenancy agreement;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- A Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the witness for the Tenant, the agent for the Landlord (the “Agent”), legal counsel for the Landlord, and the witness for the Landlord. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the Application lists two names for the Landlord. The Agent clarified that the owner of the property is a registered corporation doing business as the

Landlord under a different business name. Pursuant to Residential Tenancy Policy Guideline (the "Policy Guideline") #43, the Application was amended to correctly show the Landlord as the registered corporation doing business under the specified business name.

Preliminary Matter #2

Although the Tenant acknowledged receiving the documentary evidence before me from the Landlord, Legal counsel for the Landlord and the Agent testified that they only received video evidence, a copy of the Application, and the Notice of Hearing from the Tenant. Legal counsel for the Landlord stated that he received the video evidence by e-mail from the Tenant and the Agent stated that she personally received the Application and Notice of Hearing from the Tenant mid-January, 2018.

When asked, the Tenant acknowledged that he sent the remainder of his evidence by regular mail on December 26, 2017, to the address for the Landlord listed on an online website, and provided me with that address. Legal counsel for the Landlord and the Agent stated that the address given by the Tenant in the hearing is not the correct address for the Landlord and that the Landlord's address for doing business is clearly located on the tenancy agreement.

Upon reviewing the tenancy agreement in the documentary evidence before me, I note that the Landlord's address is clearly located on page one of the tenancy agreement. As this address does not match the address to which the Tenant testified they mailed the majority of their documentary evidence, and the Agents for the Landlord dispute having received this evidence from the Tenant, I find that the Tenant did not serve the Landlord with this evidence in accordance with the *Act* and the Rules of Procedure.

As the ability to know the case against you and to present evidence in your defence is fundamental to the dispute resolution process, I find that it would be prejudicial to the Landlord and a breach of both the Rules of Procedure and the principles of natural justice, to accept this evidence for consideration. As a result, this evidence was excluded from consideration in this matter and the hearing proceeded based only on the Landlord's documentary evidence, the Tenant's Application, and the video evidence submitted by the Tenant as this is the only documentary evidence properly exchanged and received by the parties in accordance with the *Act* and the Rules of Procedure.

Preliminary Matter #3

In his Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the majority of the Tenants claims relate to the adequacy of heat in his rental unit, I exercise my discretion to dismiss the Tenants monetary claim for compensation related to loss of use of a balcony with leave to reapply.

Preliminary Matter #4

Although both parties had a witness present in the hearing, they were excluded from the proceedings while the parties provided evidence and testimony. The Tenant did not call their witness to provide any testimony during the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to complete emergency or other repairs, to provide services of facilities, or to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to a rent reduction and a Monetary Order pursuant to section 67 of the *Act*?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While significant testimony, submissions, and evidence were provided and considered on behalf of both parties, I have summarized only the testimony, submissions, and evidence relevant and fundamental to my decision and findings of fact.

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy began on September 1, 2017, that rent in the amount of \$1,610.00 is due on the first day of each month, and that heat is included in the cost of rent. The parties agreed that the building is heated by a boiler, which distributes heat to the individual rental units via baseboard radiators. The parties also agreed that the Tenant has a thermostat in his rental unit which controls the heat.

There was no dispute between the parties that the heat in the Tenant's rental unit works. Instead, the Tenant's dispute focused on the adequacy of the heat provided and heat loss from the rental unit. The Tenant testified that he has had consistent issues with inadequate heat since the tenancy began, which the Landlord has done nothing to address. The Tenant testified that the temperature in his rental unit has been as low as 14 degrees Celsius when the temperature outside is low or there is inclement weather and that these low temperatures occur despite the fact that the heat is on and turned up all the way, and all doors and windows are shut.

The Tenant provided a video in which he states that the time is 8:00 p.m., that the outside temperature is 1.3 degrees Celsius, and shows the temperature read out of a thermometer in his rental unit at 18.3 degrees Celsius. In the video the Tenant shows that the heat is on, states the radiators are working, and shows that a window is shut.

The Tenant stated that 18 degrees Celsius is the minimum temperature required by law inside rental units and provided me with a web address for a previous arbitrator's decision where he stated this finding was made. However, a copy of the decision was not provided to me by the Tenant. The Tenant testified that in February 2018, he purchased his own heater at a cost of \$86.00, which he pays for as part of his electric bill. The Tenant estimates that the additional cost of running the heater is \$9.00 per month based on his most recent electric bill. The Tenant requested a rent reduction in the amount of \$300.00 per month, effective November 2017, as a result of the heating issues and the Landlord's failure to do anything about it.

The Witness for the Landlord testified that he has attended the Tenant's rental unit on no less than four occasions in relation to complaints about inadequate heat. The Witness stated that the temperature in the unit has been fine during his visits but acknowledged that he has not visited the Tenant's rental unit at night or during very inclement weather. The Witness testified that when he first attended the Tenant's rental unit regarding a heat complaint, it was determined that the heat was on and functioning, however, there was an issue with the thermostat. As a result, the Witness for the Landlord stated that he ensured the heat was turned up all the way by manual controls and had an electrician attend the rental unit and install a new thermostat on October 20, 2017. The Witness for the Landlord testified that a company was called to check the heat in several units, including the Tenant's rental unit, on November 8, 2018, and no problem with the heat or temperature was found. As the Tenant continued to complain about the lack of proper heat, additional insulation was added around the window and door frames to stop heat loss on January 23, 2018. Invoices were submitted by the Landlord for the above noted visits and repairs and the Agent and the Witness for the Landlord stated that after the additional insulation was added, no further complaints were received from the Tenant regarding the heat in his rental unit. The Tenant acknowledged that he has made no further complaints but states that adequacy of heat in his rental unit is still an issue.

The Agent testified that the temperature in the Tenant's rental unit has been adequate during all visits and stated that despite the fact that the Tenant has never provided them with evidence that the heat in his unit does not meet health, safety, and housing standards required by law, they have still taken action to address the Tenant's complaints.

Legal counsel for the Landlord stated that although there is no disputing the Landlord's obligations under section 32 of the *Act*, the *Act* and regulation do not state what temperature is acceptable for occupants of rental units and stated that the Tenant has not demonstrated that the heat in his unit does not meet health, safety, and housing standards required by law. Legal counsel for the Landlord acknowledged that the temperature in the rental unit may not be at the preferred comfort level for the Tenant but submitted that comfort is subjective in nature and that

Landlords are not required to ensure each Tenant receives heat at his or her preferred comfort level.

Legal counsel for the Landlord submitted that as the Tenant has not demonstrated that the heat in his unit does not meet health, safety, and housing standards required by law, he is not entitled to any rent reduction or monetary order for damage or loss. Further to this, he stated that the Tenant's testimony has been inconsistent, contradictory, and evasive and as a result, it should be given little weight.

Analysis

Section 32 of the *Act* outlines a landlord's obligations to repair and maintain a rental unit as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy guideline #16 states that a landlord or tenant who does not comply with the *Act*, regulation, or tenancy agreement must compensate the affected party for the resulting damage or loss and that the purpose of any such compensation is to put the person who suffered the loss in the same position as if it had not occurred. Policy Guideline #16 also states that in order to determine whether compensation is due the arbitrator may determine whether a party has failed to comply with the *Act*, regulation, or tenancy agreement, whether a loss has occurred as a result of any non-compliance, the amount or value of the damage or loss, and whether the party who suffered the damage or loss has acted reasonably to minimize any damage or loss suffered.

Rule 6.6 of the Rules of Procedures states that the standard of proof is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the Tenant is responsible to satisfy me on a balance of probabilities that the Landlord breached the *Act*, regulation or tenancy agreement, that this breach resulted in a loss, the value of the loss suffered as a result of the breach, and that the Tenant acted reasonably to minimize any damage or loss suffered.

Based on the above the first thing I must determine is whether or not the Landlord breached the *Act*, regulation, or tenancy agreement. There was no dispute between the parties that the heating system for the building and the heating system in the Tenant's rental unit both work. Although the Tenant argued that the Landlord must ensure the temperature in his rental unit

remains above 18 degrees Celsius, he did not provide any documentary evidence showing that this is a requirement under the *Act*, the regulation, the tenancy agreement, or law. In the hearing the Tenant referred to a previous decision by another arbitrator where he stated this finding was made. However, this decision was not provided to me by the Tenant for my review. Further to this, I am not bound by the decisions of previous arbitrators and even if the decision had been provided for my consideration, having not been the arbitrator in that matter, I would not be privy to all of the facts, testimony, and documentary evidence upon which that decision was based, and therefore the decision would be of little value in this hearing.

In any event, although the Tenant stated that the heat in his unit is inadequate and that the temperature reaches lows of 14 degrees Celsius, the only documentary evidence accepted for my consideration regarding the temperature in the rental unit, which is a video taken by the Tenant, shows the temperature at 18.3 degrees Celsius, which is above the minimum temperature that the Tenant argued must be provided in rental units.

Based on the above, I find that the Tenant has not satisfied me on a balance of probabilities that the Landlord is required by the *Act*, regulation, tenancy agreement, or law, to ensure that the temperature in his rental unit remains above 18 degrees Celsius. Further to this, I find that the Tenant has also failed to satisfy me that the temperature in his rental unit is, or has been, below 18 degrees Celsius. As a result, I dismiss the Tenant's claims for an order for the Landlord to provide services or facilities and to comply with the *Act*, regulation, or tenancy agreement without leave to reapply. As I am not satisfied that the Landlord has breached the *Act*, regulation, or tenancy agreement, I find that it is not necessary for me to assess the remaining criteria for a monetary claim for damage or loss, and I therefore dismiss the Tenant's claim for a \$300.00 rent reduction without leave to reapply.

I will now turn my mind to the Tenant's claim for emergency and other repairs related to heat.

Section 33 of the *Act* states the following with regards to emergency repairs:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means 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
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

As both parties agreed that the primary heating system is working, I find that the Tenant has failed to establish that emergency repairs are required pursuant to section 33 of the *Act* and I dismiss his claim for emergency repairs without leave to reapply.

Section 32 of the *Act* requires a landlord to provide and maintain the 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. Although the Tenant initially stated that the Landlord has done nothing to address the heating issue in his rental unit, when presented with the testimony of the Agent and the Witness for the Landlord as well as the documentary evidence regarding maintenance and repairs in his rental unit, the Tenant changed his testimony and acknowledged that the Landlord has taken action with regards to his complaints but stated that these actions have been insufficient as the heating issue persists. The Tenant also acknowledged that he has not advised the Landlord of any further heating issues since insulation was added around his exterior windows and doors on January 23, 2018.

Based on the documentary evidence and testimony before me, it appears to me that all reasonable steps have been taken by the Landlord to address the Tenant's complaints and the Tenant has not satisfied me on a balance of probabilities that other repairs are required to either comply with health, safety and housing standards required by law or to make the rental unit suitable for occupation by a tenant. As a result, I dismiss the Tenant's claim for an order for the Landlord to make repairs without leave to reapply.

Although a discussion took place with the parties at the start of the hearing regarding my discretion to dismiss the Tenant's monetary claim for \$5,000.00 for healthcare costs and tuition with leave to reapply pursuant to section 2.3 of the Rules of Procedure; section 2.3 of the Rules of Procedure grants me the discretion to dismiss claims with or without leave to reapply. Upon further consideration and deliberation of this matter, I dismiss the Tenant's monetary claim for \$5,000.00 without leave to reapply as I have already found in this hearing that the Tenant has failed to satisfy me that the Landlord breached the *Act*, regulation or tenancy agreement, and the Tenant's \$5,000.00 claim was based on the premise that this breach occurred.

As the Tenant was not successful in his Application, I decline to grant him recovery of the filing fee.

Conclusion

With the exception of the Tenant's Application for compensation related to loss of use of a balcony, which I have already dismissed with leave to reapply, the remainder of the Tenant's claims are dismissed in their 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: April 13, 2018

Residential Tenancy Branch