



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP

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 repairs and an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The hearing was originally convened by telephone conference call on September 11, 2018, at 11:00 AM and was attended by the Tenant, and an agent for the Landlord (the “Agent”), both of whom provided affirmed testimony. The hearing was subsequently adjourned and an interim decision was made on September 11, 2018. For the sake of brevity I will not repeat here the findings of fact and the orders made in the Interim Decision. As a result, the Interim Decision should be read in conjunction with this decision. The reconvened hearing was set for October 30, 2018, at 9:30 AM. A copy of the Interim Decision and the new Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) on September 17, 2018, in the manner requested by them during the initial hearing.

The hearing was reconvened by telephone conference call on October 30, 2018, at 9:30 AM and was attended by the Tenant. Neither the Landlord nor an agent for the Landlord attended. I confirmed that the information contained in the Notice of Hearing for the reconvened hearing was correct and I note that the Tenant was able to attend the hearing using the information contained in the Notice of Hearing. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As this was the Tenant’s Application and the Tenant appeared in the hearing, ready to proceed, the hearing proceeded as scheduled despite the absence of the Landlord or their agent pursuant to rule 7.3 of the Rules of Procedure. The Tenant was provided 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 met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to complete repairs in compliance with the *Act*, regulation, or tenancy agreement?

Background and Evidence

The Tenant testified in both hearings that the heat in his rental unit is unreasonably high at all times and that even in the winter with his windows open, the heat off, and his air conditioners on, he cannot get the ambient temperature in his rental unit below 69-70 degrees Fahrenheit, which is unreasonably warm. The Tenant testified that in the summer and when the weather is warm, the temperature in his rental unit is even higher, even with the heat off and his two air conditioners running.

In the hearing conducted on September 11, 2018, the parties agreed that the Tenant's rental unit has radiant in-floor heating controlled by the Tenant's thermostat. In the initial hearing the Tenant pointed to a previous decision from the Residential Tenancy Branch (the "Branch") dated July 15, 2016, wherein the Landlord was ordered to have the heating system in the Tenant's rental unit inspected within a reasonable period of time after the date of the decision by a certified technician to determine if there are any problems with the system and to repair any deficiencies that may be determined by this inspection. Although the Agent acknowledged awareness of the order, she was unaware if the Tenant's rental unit itself had been inspected and only had knowledge of an inspection completed on the building heating system. Although both parties agreed that the heating system for the building was indeed inspected, they disagreed about the date of this inspection. The Agent argued that the heating system in the building was inspected on July 20, 2017, however, the Tenant stated that this is incorrect and that it was actually an adjacent building that was inspected on July 20, 2017. The Tenant stated that it was not until February of 2018, that the heating system in his rental building was inspected, which has not resulted in a change in the temperature of his rental unit.

Although the Agent denied knowledge of any such inspection, the Tenant also stated that someone attended his rental unit in August of 2016, but he was never provided a copy of any report and nothing in his rental unit was repaired. In the reconvened hearing the Tenant stated that the problem with the heating in his rental unit persists, and that the temperature is so high that it cannot possibly comply with safety and housing standards required by law in order to make a rental unit suitable for occupation by a tenant. The Tenant stated that despite the decision and order rendered by the Branch on July 15, 2016, the Landlord has failed to either properly investigate his complaints or repair the heating system in his rental unit and therefore sought an order from the Branch that the Landlord repair the heating system in his rental unit, or the building, or both, as necessary. Neither the Landlord nor an agent for the Landlord appeared at the reconvened hearing to provide any evidence or testimony for my consideration.

Analysis

Section 32 of the *Act* states that a landlord must provide and maintain a 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.

While I accept the Tenant's undisputed testimony that the temperature in his rental unit is unreasonably high at all times, even in the middle of winter when it is very cold outside, the air conditioning is on, and the heating is turned off, it remains unclear to me if the cause of the high temperatures is in fact related to a malfunction in either the heating system in the Tenant's individual rental unit or the heating system from the building. As a result, I therefore grant the Tenant's Application and make the following orders:

- **I order** that the Landlord have a licensed and qualified professional (or professionals, as required), from a business in good standing in the community attend the Tenant's rental unit as soon as reasonably possible and not more than 30 days after the date of this decision to assess if there are any issues with either the temperature or the heating system(s) in the Tenant's rental unit.
- **I order** the Landlord to give proper written notice of the date and time that the professional will attend the rental unit for the inspection in accordance with section 29(b) of the *Act* so that the Tenant may make arrangements to be home or to have a representative of their choosing present.
- **I order** that the Landlord obtain from the qualified professional a written report of the inspection completed which identifies the company or professional by name, states the date and time of the inspection, the system(s) inspected, lists any deficiencies or malfunctions identified, and any suggestions made for repairs.
- **I order** that the Landlord provide a copy of this the report to the Tenant as soon as reasonably possible and not more than five (5) days after receipt of the report by the Landlord.
- **I order** the Landlord to have any problems or deficiencies identified in the report repaired as soon as reasonably possible and in any event, not more than 30 days after the date the professional inspects the rental unit.
- **I order** that the Landlord have a licensed and qualified professional (or professionals, as required), from a business in good standing in the community attend the building in which the Tenant's rental unit is located as soon as reasonably possible and not more than 30 days after the date of this decision to assess if there are any issues with the heating system(s) for the building in which the Tenant's rental unit is located.
- **I order** that the Landlord obtain from the qualified professional a written report of the inspection completed which identifies the company or professional by name, states the date and time of the inspection, the system(s) inspected, lists any deficiencies or malfunctions identified, and any suggestions made for repairs.
- **I order** that the Landlord provide a copy of this the assessment to the Tenant as soon as reasonably possible and not more than five (5) days after receipt of the report by the Landlord.

- **I order** the Landlord to have any problems or deficiencies identified in the report repaired as soon as reasonably possible and in any event, not more than 30 days after the date the professional inspects the rental unit.

Should the Landlord fail to comply with the above noted orders as written, the Tenant is authorized to deduct \$50.00 per month from their rent until the Landlord complies with the above noted orders. If the Landlord has not complied with the above noted orders within six (6) months after the date of this decision, the rent reduction is increase to \$100.00 per month until the Landlord complies with these orders. This rent reduction **only** applies if the Landlord fails to comply with the specific orders noted above, not if the Tenant simply disagrees with the findings of the qualified professional(s) in the reports or the recommendations made by them regarding any necessary repairs.

Conclusion

The Tenant's Application seeking an order for the Landlord to complete repairs and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement is granted.

I therefore order the Landlord to comply with the decision and orders described above.

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: October 30, 2018

Residential Tenancy Branch