



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEYDAY REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 03, 2019 (the "Application"). The Tenant applied as follows:

- For an order that the Landlord make emergency repairs;
- To reduce rent for repairs, services or facilities agreed upon but not provided; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. The Representative appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Representative confirmed the correct spelling of the Landlord's name and this is reflected in the style of cause.

The Tenant withdrew the request for an order that the Landlord make emergency repairs as this issue had been resolved.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Representative confirmed he received the hearing package. He advised that he did not receive the Tenant's evidence. The Tenant advised that she did not serve the evidence on the Landlord.

I heard the parties on whether the evidence should be admitted or excluded in the circumstances. The Representative agreed to the admission of text messages and

emails between him and the Tenant. He objected to the admission of the remaining evidence. The Tenant said she was fine with this.

I admit the text messages and emails between the Representative and the Tenant given the position of the parties in relation to these. I exclude the remaining evidence of the Tenant given it was not served on the Landlord in accordance with rule 3.14 of the Rules of Procedure as I find it would be unfair to admit it when the Representative has not had a chance to review it. I have considered the tenancy agreement given the nature of this document.

The Tenant confirmed she received the Landlord's evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the owner of the rental unit, Landlord and Tenant in relation to the rental unit. The tenancy started December 01, 2018 and is for a fixed term ending November 30, 2019. Rent is \$1,850.00 per month due on the first day of each month.

The Tenant sought to reduce rent by half during the time the heat in the rental unit was not working from the start of the tenancy until January 17, 2019.

The timeline of events submitted includes the following:

- November 21, 2018: discovered issue with heating system
- December 04, 2018: technician attends, no confidence in repairing
- December 10, 2018: contacted third party about approval process for baseboard heaters
- December 12, 2018: three space heaters provided
- December 12, 2018: determined baseboard heaters could not be installed
- December 22, 2018: technician inspected heating system and cleaned filters
- January 10, 2019: technician submits report stating they cannot repair heating system
- January 14, 2019: technician attends but cannot repair heating system
- January 17, 2019: technician is able to repair the heating system

The Tenant testified as follows. A problem with the heating system was discovered during the move-in inspection. The temperature in the rental unit was 17 degrees Celsius in the morning and night and 20 degrees Celsius during the day. This temperature was uncomfortable for her. The temperature should have been at least 22 degrees Celsius, but she prefers 24 or 25 degrees Celsius. The Landlord provided space heaters and a large panel heater; however, these did not heat the space sufficiently and the oil heaters burned her. The heaters were a fire hazard and she had to turn them off whenever she left the room. She put the largest heater in the bedroom; however, the attached bathroom was still cold. She did still live, sleep and cook at the rental unit.

The Tenant further testified as follows. At first, the Landlord did not want to fix the heating system and wanted to install a different system; however, this was not permitted. The Landlord then decided to fix the heating system. Three people attended to try to fix the problem. The first person only cleaned the filter. The second person did nothing. The third person fixed the issue and it was an easy fix.

The Tenant testified that the issue with the heating system took up a lot of her time. She testified that her hydro bill increased because of the space heaters used. She did not yet know how much it increased but testified that the projected amount was \$50.00 more than what she was expecting to pay. The Tenant took issue with the time it took the Landlord to fix the heating situation. The Tenant agreed with the timeline of events submitted by the Landlord.

The Representative denied that the Landlord held off on repairing the heating system. He testified that the Landlord tried to repair the heating as soon as possible. He testified that the people who attended to repair the heating system did their best but were unable to. The Representative testified that one company took a month to get back to him about the issue. The Representative pointed out that there is no evidence of the amount of the Tenant's hydro bill but stated that the Landlord believes \$100.00 would be the difference in hydro without seeing the bill.

The Representative testified further as follows. He does not think the heating system would have heated the bathroom differently than the space heaters did. The manufacturers would not make the space heaters if they were not safe. The space heaters were enough to heat the rental unit. The heater in the living room and master bedroom were not working but the heater in the second bedroom was working.

In reply, the Tenant testified that all three heaters in the rental unit were not working.

Analysis

Section 32 of the *Residential Tenancy Act* (the "Act") states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

...

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 62(3) of the *Act* states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 65(1)(f) of the *Act* states:

(1) Without limiting the general authority in section 62 (3)...if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

There is no issue that the heating system in the rental unit was not working properly from the start of the tenancy until January 17, 2019. The Landlord was required to ensure the heating system in the rental unit was working properly. I accept the Landlord took steps to have the heating system repaired; however, I do not accept that almost two months to repair the heating system is reasonable. I am not satisfied the Landlord took all reasonably necessary steps to fix the heating system in a timely manner.

I accept the Landlord provided space heaters; however, I do not find this sufficient. The Landlord should have done more to ensure the heating system in the rental unit was fixed and working properly within a reasonable time.

I accept the Tenant found the rental unit uncomfortable during the time the heating system did not work. Nothing about the testimony of the Tenant caused me to question her credibility in this regard. I also accept that the Tenant's hydro bill will be more than anticipated because of the heating system issue. The Representative acknowledged this.

I am satisfied that rent should be reduced by \$100.00 for the increased hydro amount. I arrive at this amount based on the Representative's acknowledgement that the hydro bill will likely increase by this amount. I am not satisfied it will increase more than this amount in the absence of evidence to support this.

I am satisfied that rent should be further reduced for the discomfort experienced by the Tenant. I accept she found the temperature uncomfortable. I accept the space heaters were not a sufficient solution. I accept the Landlord took too long to have the heating system fixed. I find issues regarding heating to be on the serious end of the spectrum, particularly when such issues occur in the winter months as they did here. However, I do not find the situation to be serious enough to warrant reducing rent by half given the rental unit was still between 17 to 20 degrees Celsius and given the Tenant was still able to live in, and use, the rental unit.

In the circumstances, I accept that rent should be reduced by a further \$300.00. I reach this amount as I am satisfied the total rent reduction should be slightly less than a quarter of the monthly rent which is \$462.50. With the \$100.00 reduction in relation to hydro and further \$300.00 reduction, the total reduction is slightly less than a quarter of the monthly rent. This rent reduction applies to the time when the heating system was not working.

Given the Tenant was successful, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a rent reduction of \$500.00. Pursuant to section 72(2) of the *Act*, the Tenant is permitted to deduct \$500.00 from one future rent payment.

Conclusion

The Tenant is entitled to a rent reduction of \$500.00. Pursuant to section 72(2) of the *Act*, the Tenant is permitted to deduct \$500.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 26, 2019

Residential Tenancy Branch