



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order for emergency repairs, pursuant to section 33;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62(3);
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord was served with the tenants' dispute resolution application via registered mail. I find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue: Adjournment Request by Tenants

The tenants' requested an adjournment of the hearing on the basis that they did not have enough time to submit all of their evidence since one of the tenants' phone's was broken.

The building manager “the landlord”) was opposed to an adjournment as they were ready to proceed on today’s date and did not want a delay in the proceedings.

The tenants testified that prior to the hearing the landlord agreed to adjourn the hearing. The landlord denied agreeing to an adjournment but had received the tenant’s request for an adjournment.

Rule 7.9 of the Residential Tenancy Branch Rules of Procedure states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the tenants’ failure to submit all of their evidence due to a broken phone to be insufficient to grant an adjournment. The tenants’ applied for dispute resolution on February 10, 2019, over one month prior to the hearing. I find that they had ample time to submit their evidence. I therefore dismiss the tenants’ application for an adjournment.

Issue(s) to be Decided

1. Are the tenants entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants entitled to an Order for regular repairs, pursuant to section 32 of the *Act*?
4. Are the tenants entitled to an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62(3) of the *Act*?
5. Are the tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
6. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2014 and is currently ongoing. Monthly rent in the amount of \$1,220.73 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a third-floor apartment in a 1960's three-floor wood construction apartment building.

The tenants testified to the following facts. The tenants have had issues with the windows for years. The tenants understand that a little sweating is normal but water drips from the top of the windows to the bottom of the windows causing the window framing to degrade and mold to grow in the window sills.

The landlord testified to the following facts. The windows are single pane in keeping with the age of the subject rental building. Condensation accumulates on the windows and it is the tenants' responsibility to wipe off the condensation. The growth in the window sills is not mold but a combination of mildew and dust and it is the tenants' responsibility to clean the window sills to prevent excessive accumulation of dust and mildew.

The tenants' testified that they bleach the window sills as suggested by the landlord but the mold continues to accumulate.

The tenants testified to the following facts. The tenants have had problems with the heat in their apartment from November 2018 to March 2019. The heat in their apartment is intermittent: sometimes it works, sometimes it only partially works and sometimes there is no heat at all. In November of 2018 the tenants first noticed that the heat in the subject rental property was not working. The tenants texted their building manager sometime between November 24-26, 2018 and informed him of the problems with their heat and the building manager informed them that there was an issue with their boiler and that all the apartments on the third floor were experiencing problems with their heat. The November 2018 text messages were not entered into evidence. The landlord denied that the above text exchange occurred.

The tenants testified to the following facts. When the heat stopped working it would usually start working again once the lines from the boiler were bled; however, the heat sometimes only lasted ½ day before needing to be bled again. In December 2018 the landlord provided the tenants with only one space heater for a family of four and that in January of 2019 the landlord provided more space heaters. The tenants could not use the space heaters very much because when they were all plugged in, the fuses to the subject rental property would blow. In support of the above testimony the tenants entered into evidence social media posts made by the tenants about their heating problems from January to February 2019.

The tenants are seeking a full rental rebate from November to February in the amount of \$4,980.00 and an Order for the landlords to provide heat and hot water as stated in the tenancy agreement. The tenants are also seeking an Order that the landlords replace the windows in the subject rental property.

The landlord and regional manager testified to the following facts. The subject rental property was built in the 1960's and is heated by a boiler. In this type of heating system, air can get trapped in the lines that transfer the hot water to the heaters, and this causes the heat to stop working. The solution to fix air trapped in the lines is to bleed the lines which takes 2-3 minutes. The landlord employs maintenance personnel 24 hours a day, the maintenance personnel routinely perform this task when tenants notice a drop in heat. This inconvenience is a part of living in an older building heated by a boiler.

The tenants testified that they have had problems calling the maintenance line and that they have been left on the line for long periods of time. The landlord and regional manager testified that the maintenance line is answered promptly.

The landlord and regional manager testified to the following facts. The first complaint they received from the tenants was on December 13, 2018; a maintenance person bled the heater lines and heat was restored to the subject rental property. A work order stating same was entered into evidence. On January 16, 2019 the tenant complained of no heat, a plumber was called, and it was found that the boiler pump was leaking. An invoice from a plumber dated January 17, 2019 stating same was entered into evidence. The boiler pump was repaired, and the tenants were offered some space heaters. On January 17, 2019 space heaters were provided to the tenants. The tenants did not dispute the above testimony.

The landlord and regional manager testified to the following facts. On January 18, 2019 in house plumbers inspected the boiler and determined that it required replacing. The boiler was repaired as a stop gap measure to ensure heat was provided to the building until a new boiler could be installed. On January 23, 2019 a new boiler was installed. Some of the pipes were also re plumed to increase boiler heating capacity. The landlord was invoiced for the new boiler on January 29, 2019 and the invoice was entered into evidence.

The landlord and regional manager testified to the following facts. On January 21, 2019 the tenant complained about fuses blowing. New fuses were provided to the tenant and an electrician was contacted to inspect the electrical system in the subject rental property. On January 22, 2019 an electrician attended at the subject rental property and determined that too many things were plugged in the outlet and it was causing the panel to overload and blow the fuse. A work order dated January 22, 2019 regarding the electrical panel was entered into evidence. The tenants did not dispute the above testimony.

Both parties agree that on January 22, 2019 the tenants provided the landlord with a letter dated January 22, 2019 which stated that the tenants want the heat and mold issues properly dealt with and the windows replaced on or before January 29, 2019.

The landlord and regional manager testified to the following facts. On January 23, 2019 the tenants complained about their stove not working, maintenance personnel attended and replaced a fuse and element and the stove was then in working condition. A work order dated January 23, 2019 reflecting same was entered into evidence. On January 25, 2019 the tenants complained of reduced heat and maintenance personnel bled the heaters to restore heating. A work order dated January 25, 2019 reflecting same was entered into evidence. The tenants did not dispute the above testimony.

The landlord and regional manager testified to the following facts. In response to the tenants' letter dated January 22, 2019, the tenants' apartment was inspected on January 28, 2019. All the windows in the subject rental property were open as was the patio door. Photos of same were entered into evidence. Upon inspection it was determined that one of the bedroom windows needed to be replaced as there was a crack in the stucco which would be repaired at the same time. The tenants were instructed to clean the other windows so that maintenance could check the silicone seal. The landlord submitted that the tenants leave their windows open and then complain about lack of heat. The landlord submitted that in very cold weather, it is not possible for

the boiler system to keep the tenants' apartment reasonably warm when the windows are left open in negative temperatures.

In response to the windows being left open, the tenants testified that they were only half way open and that they are allowed to open the windows to get fresh air. The tenants testified that the landlord instructed them to open their windows if there was a lot of condensation on them. The landlord testified that she instructed the tenants to open their windows less than 1" if the condensation on the windows was bothering them, not to open them all the way in the middle of winter. The tenants testified that on some occasions, their apartment had no heat even when the windows were shut.

The landlord and regional manager testified to the following facts. On February 5, 2019 the tenants complained of no heat, maintenance staff attended at the subject rental property and found that the thermostat was turned off. The maintenance personnel turned on the thermostat and bled the heater lines and the heater worked. The maintenance staff instructed the tenants to leave their thermostat on high as changes in the level of the thermostat may make it more likely that they would get air caught in the lines resulting in heating problems. A work order dated February 5, 2019 stating same was entered into evidence.

The tenants testified that they have been keeping their thermostat on high which, now that the weather is warming up, has left their apartment way too hot. The landlord testified that the tenants are free to turn the heat down, the tenants were simply told that frequent changes in the thermostat could lead to increased air pockets, not that they could not change the temperature.

The landlord and regional manager testified to the following facts. On February 5, 2019 plumbers attended at the subject rental building to determine if automatic bleeders could be installed at the subject rental property to decrease the need of tenants contacting maintenance staff to bleed the lines. A work order dated February 5, 2019 stating same was entered into evidence. The plumber informed the landlord that it would be a big job and would require the heat to be turned off for a period of time. Given the cold weather, the landlord decided to complete the upgrade in warmer weather so that tenants wouldn't be as impacted when the heat to the building was turned off. The work is currently scheduled to be completed at the end of May 2019.

The landlord and regional manager testified to the following facts. On February 7, 2019 the landlord completed an annual inspection of the unit, the female tenant was home at the time. The master bedroom window was open and the thermostat was only set to half

and the female tenant complained about not being warm enough and requested that the thermostat be changed. A copy of the annual inspection was entered into evidence. It notes that the thermostat was turned to 20 degrees Celsius and the master bedroom window was open. The landlord changed the thermostat on February 8, 2019. A work order dated February 8, 2019 stating same was entered into evidence.

The tenants testified that they did not believe the thermostat was changed.

The landlord and regional manager testified to the following facts. On February 10, 2019 the tenant complained about lack of heat. Maintenance personnel attended and bled the heater lines. The tenant was still not happy with the heat output and requested maintenance personnel to attend again. Maintenance staff returned to the subject rental property, the tenants were not home, the maintenance staff checked the heat and noted that the heat was on full blast and the apartment was 25 degrees Celsius. A work order dated February 10, 2019 was entered into evidence confirming above, except that the heat noted in the subject rental property was 24 degrees Celsius, rather than the 25 degrees noted in oral testimony.

The landlord and regional manager testified to the following facts. On February 17, 2019 the tenants complained of no heat and the stove not working. Maintenance staff bled the heaters at the subject rental property and replaced some stove fuses. The landlord put a new breaker panel for the subject rental property in the budget due to the frequency of fuses blowing at the subject rental property. A work order dated February 17, 2019 stating same was entered into evidence. The landlord testified that the purchase order for the new panel will be made after this hearing. On February 19, 2019 maintenance staff bled the heaters again to restore heat. A work order dated February 19, 2019 stating same was entered into evidence.

Analysis

Repairs- Heat

Section 32 of the *Act* states that 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.

Upon review of all of the evidence, I find that the landlord has not breached section 32 of the *Act*. I find that the subject rental building was built in the 1960's making it roughly 50 to 60 years old. Given the age of the subject rental building I find that it is reasonable that it is heated by a boiler system. I find that an inherent problem of a boiler system is that air pockets can form in the heating lines which in turn disrupt the output of heat. I find that it is the landlord's response to these air pockets and the maintenance of the boiler which determines whether the landlord is complying with section 32 of the *Act*, not the fact that air pockets occur.

Based on all the evidence before me, I find that the landlord promptly dispatched maintenance personnel to the subject rental property each time the tenants reported a heating or electrical problem. When it became known to the landlord that the boiler required replacing, the boiler was promptly replaced, in this case, one day after the tenant provided the landlord with the January 22, 2019 letter requesting that his heating issues be addressed. Furthermore, the landlord has scheduled further upgrades to the current system which should improve the heating issues at the subject rental property, namely the scheduled upgrade for automatic bleeders in May of this year.

While the issues inherent with a property heated by boiler may be the source of inconvenience and frustration to the tenants, I find that having regard to the age and character of the rental building, the landlord has provided and maintained the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. The tenants have not provided me with any physical evidence which indicates that the subject rental property was unsuitable for occupation. Should the tenants determine that boiler heating system is not suitable for them, they may vacate the subject rental property and move to a building with a more modern heating system.

I also note that it is not reasonable to leave windows half way open in the middle of winter and expect the subject rental property to be warm.

Section 33 of the *Act* states that "**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.

I find that the heating system at the subject rental property is functional and maintained and therefore does not require emergency repairs as set out in section 33 of the *Act*.

Repairs- Windows

Residential Tenancy Policy Guideline #1 ("P.G. 1") states that this guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

P.G. 1 states that the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy.

I find that given the age and character of the subject rental property, single pane windows are common and do not require replacing simply because they are old. I find that condensation on the interior of windows is normal and the tenants have not proved, on a balance of probabilities, that the condensation on their windows is out of the ordinary. I also find, pursuant to P.G. 1 that it is the tenants responsibility to clean the window tracks, be they covered in mold or mildew. The fact that frequent regrowth of mold or mildew occurs, does not in and of itself prove that there is an issue requiring redress.

I decline to Order the landlords to replace the windows in the subject rental property.

Remainder of Tenants' Application

As I have found that the landlord has not breached section 32 and 33 of the *Act*, I decline to Order the landlord to provide a service or facility, pursuant to section 62(3) of the *Act*, as they are already providing it.

I also decline to Order the tenant to comply with the *Act*, pursuant to section 62, as I have found that they are complying with the *Act*.

Section 65(1)(f) of the *Act* states that if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. As I have found that the landlord did not breach the *Act*, I find that the tenants are not entitled to a rent reduction.

Conclusion

The tenants' application is dismissed 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: March 19, 2019

Residential Tenancy Branch