



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF FFT

Introduction

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

- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to provide services or facilities?
Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in 2010. The current monthly rent is \$1,456.00 payable on the first of each month. The rental property is a four-plex where there are two units above and two units below. The rental unit is one of two units on the upper floor. There is a single furnace for both the upper

and lower units providing heating. The thermostat for the heating system was previously located in the tenant's upper unit but was moved to the lower suite in November, 2018. The lower unit has been occupied by the current occupant since 2013.

The tenant submits that the temperature in their suite is unbearable, hot at some times and freezing cold in others. The tenant testified that they believe the landlord removed the thermostat as retaliation for the results of previous dispute resolution hearings under the file numbers on the first page of this decision. The tenant submitted into documentary evidence copies of correspondence with the landlord and photographs of a digital thermometer located in the tenant's unit showing the temperature. The tenant said that the temperature in their suite is uncomfortably hot and despite numerous requests to the landlord they have failed to remedy the situation.

The landlord testified that the heating system is operating normally. The landlord said that each time there has been a complaint regarding the temperature in either suite they have requested a photograph of the thermostat setting be taken. Copies of the photographs of the thermostat were submitted as part of the documentary evidence. The landlord said that they have received numerous complaints from both the tenant and the downstairs occupant throughout the tenancy and in each instance they have taken reasonable action by determining the thermostat setting and confirming that the furnace is operating normally. The landlord attributes the difference in the temperature in the tenant's unit compared to the thermostat to the tendency for heat to rise and the greater exposure to sunlight in the upper unit.

Analysis

The onus is on the party bringing an application to establish their claim on a balance of probabilities. I find that the tenant has provided insufficient evidence to establish their claim. While I accept the tenant's evidence that they feel uncomfortable in their suite, I find that to be insufficient to determine that there has been a breach of the Act, regulations or tenancy agreement by the landlord in a failure to provide services or facilities.

The evidence shows that there may be some difference between the temperature indicated on the thermostat and that on the tenant's thermometer but I find this to be within the realm of what would normally be expected. I find the temperatures shown on the tenant's thermometer to remain in the range of what would normally be expected for the geographic area. I find the tenant's complaints to be subjective and exaggerated.

I do not find the tenant's submission that the relocation of the thermostat was part of a concerted effort by the landlord to end this tenancy or retaliate against the tenant for the results of previous hearings to be credible or convincing. In any event, I find that it does not affect the finding that the landlord has not terminated any service or facility.

I find that the tenant has not established their claim on a balance of probabilities. Therefore, I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's 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: June 28, 2019

Residential Tenancy Branch