



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALPINE COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FF

Introduction

On July 18, 2019, the Tenant applied for an expedited dispute resolution hearing under the *Residential Tenancy Act* (“the Act”) seeking an order for the Landlord to make emergency repairs to the rental unit and to recover the cost of the filing fee. The Director of the Residential Tenancy Branch has established the expedited hearing process in circumstances where there is an imminent danger to the health, safety, or security of a Landlord or Tenant.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant requested to amend her application to include compensation for a reduction in rent due to a loss of value in the tenancy and electricity costs.

An application for an expedited hearing cannot be combined with another claim such as a request for monetary compensation.

The Tenant's request to amend the application is not granted; however, the Tenant has leave to reapply for dispute resolution for compensation if the parties cannot come to an agreement.

Issue to be Decided

- Is the Tenant entitled to an order for the Landlord to make emergency repairs to the rental unit or property?

Background and Evidence

The parties testified that the tenancy began on January 1, 2019, and is currently on a month to month basis. Rent in the amount of \$1,512.00 is due to be paid to the Landlord by the first day of each month. Rent includes heat to the unit.

The Landlord testified that the rental building is over 40 years old and contains 45 rental units. The Landlord testified that the primary source of heating is from a hot water boiler that provides hot water to radiators contained in the rental units.

The Tenant testified that on July 17, 2019, she awoke cold and the temperature was 14 degrees. The Tenant testified that she immediately messaged the Landlord and got no response. She testified that she returned home later that evening and the unit remained cold so she messaged the Landlord about the issue again. The Tenant testified that the Landlord responded that the situation is not an emergency. The Tenant testified that the Landlord informed her that the heat will be off for July and August.

The Tenant applied for dispute resolution the next day on July 18, 2019.

The Tenant testified that when the heat is turned on, it provides heat to the radiators in the unit and some of the radiators cannot be turned off.

The Tenant testified that on July 30, 2019, she received a space heater from the Landlord. The Tenant testified that her rental unit is approximately 600 square feet and the space heater only heats up to 150 square feet. The Tenant provided photographs taken on a portable device showing temperature readings of 19 degrees and 21 degrees. The Tenant testified that in July the temperature went as low as 12 degrees.

In response to the Tenant's claims the Landlord testified that the outdoor temperature in the city is high during July and August. The Landlord testified that the city bylaw

requires a Landlord to provide a minimum temperature of 18 degrees. The Landlord testified that the Landlord is providing the required amount of heating.

The Landlord testified that the boiler is shut down to receive annual maintenance in the summer months. The Landlord testified that the boiler will be restarted in September 2019.

The Landlord testified that the outside temperature of 14 degrees that the Tenant referred to is lower than the actual temperature inside the rental building.

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.*

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,
 - (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.

Analysis

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the tenancy agreement requires the Landlord to provide the Tenant with heat and that the provision of heat is included in the rent.

I accept that the Landlord needs to maintain the rental property by annually servicing the boiler. In consideration of the age and character of the rental property and heating system, I find that there needs to be a balance between the Landlord's requirement to maintain the heating system and the Tenant's right to receive heat.

I find that on July 30, 2019, the Landlord provided the Tenant with a portable space heater. I find that the temperature of the rental unit does not present a health and safety risk. There is insufficient evidence from the Tenant that the Landlord has failed to provide heat to the extent that does not comply with health, safety, and housing standards required by law, making it suitable for occupation by the Tenant.

I decline to order the Landlord to immediately turn on the boiler at the rental property.

Since the Tenant's request to amend her application to include compensation was denied, the Tenant has leave to reapply for compensation for a loss of value in the tenancy and/ or electricity costs.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord only provided the space heater after the Tenant applied for dispute resolution, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's request for an order for the Landlord to complete repairs of the rental property regarding the provision of heat is not successful.

The Tenant has leave to reapply for compensation for a loss of value in the tenancy and/ or electricity costs if the parties cannot otherwise reach an agreement.

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: August 12, 2019

Residential Tenancy Branch