



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CROSSROAD ENTERPRISES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC RP RR

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord perform repairs pursuant to section 33; and
- Authorization to reduce the rent for services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by a friend. The corporate landlord was represented by its agent (the "landlord") and building manager.

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

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord be ordered to perform repairs?

Should the tenant be authorized to reduce rent for services or facilities agreed upon but not provided?

Background and Evidence

This periodic tenancy began in 2015. The rental unit is a suite in a multi-unit building containing 37 units. The tenant's unit is located on the corner of the first floor of the building.

The tenant submits that there have been issues with access to heating in the rental unit for some time. The tenant testified that the building has been provided with a new heating system and thermostat in the rental unit. The tenant testified that there are currently no issues with the heating system but believe that the temperature can be controlled by the landlord. The tenant submits that control of the unit's heat is included in the rental agreement and believes that the landlord's ability to override the control of the temperature to be a denial of a service specified in the agreement. The tenant submitted into evidence letters from their family physician stating that the tenant has reported a lack of heat in their suite as well as a letter from a family member observing that the suite was cold on some instances. The tenant also submits that other units in the building suffer the same lack of heating and has provided written notes from other occupants to this effect.

The landlord testified that a new heating system was installed in 2019. They said that the temperature in each individual unit is controlled by a thermostat accessible in the unit and that the landlord has no ability to override the temperature controls. The landlord further explained that the heating system does respond to outside temperatures by adjusting the energy used for heating of hot water tanks but that does not affect the ability of individual residents to set the temperature for their unit. The landlord also submitted into evidence brief correspondence from a third party heating professional who suggested the lack of heat in the tenant's unit may be attributable to the configuration of furniture in the suite.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities. In the case at hand the tenant submits that while the heating system in the rental unit is functioning, they have been denied the control of the temperature settings that they enjoyed under the previous system.

I find that the tenant has not met their evidentiary burden. Much of the tenant's submissions consists of subjective observations, general complaints and conclusions reached without sufficient evidence in support. The correspondence from the tenant's

physician simply parrots the complaints made to the doctor and is of little value as evidence of the temperature of the suite. I find that notes provided by family members based on a few occasions to have little probative value. I do not find the unsigned, undated list of other units which the tenant claims are reporting issues with the heating to be credible or persuasive.

While the tenant complains of past instances where there was insufficient heat in the rental unit, I find little evidence in support of their submissions. I accept the parties' evidence that there was a brief period in August of 2019 when the heating system was being replaced where the building was without access to a working heating system. I do not find that this interruption to have had a significant impact on the tenant at that time. The primary complain of the tenant appears to be the lack of control they believe they have over the present heating system.

The tenant gave testimony that they are not presently having issues with the heating system in the building. The tenant's complaint is that they believe the landlord has the ability to override the tenant's setting of the temperature in the rental unit. I find that the tenant has provided insufficient evidence in support of this belief. It stretches credulity to believe that a heating system would involve thermostats accessible in individual units if those are not meant to control the temperature. I accept the landlord's testimony that the heating system adjust the amount of power expended based on outside temperatures but control of the heat inside individual suites remains with the occupants.

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

Conclusion

The tenant's application is dismissed in its entirety 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: November 14, 2019

Residential Tenancy Branch