



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FFT

Introduction

On November 22, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a repair order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and J.W. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served a Notice of Hearing and evidence package to the Landlord by registered mail on or around December 2, 2019 and J.W. confirmed receipt of this package; however, he stated that there was no evidence in that package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package. As I was not satisfied that the evidence was included in this package, I advised the Tenant that he would have to testify as if I did not have this evidence before me. Regardless, the Tenant made no references to this evidence.

J.W. advised that the Landlord’s evidence was served to the Tenant by registered mail on December 16, 2019 and the Tenant confirmed that they received this package. As this evidence was served within the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

As per the hearing, the repair issue on the Tenants’ Application had been rectified as of the hearing date. Consequently, the request for a repair order does not need to be addressed in this decision as the Tenant submitted that he was satisfied by the Landlord’s actions of rectifying this issue. However, the matter of the filing fee will be addressed below.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2009 and the rent was established at \$1,970.00 per month, due on the first day of each month. A security deposit of \$825.00 was paid.

The Tenant advised that their heat stopped working in October 2019 and that they advised the Landlord of this issue on October 9, 2019. He stated that the Landlord did not address this critical issue of a lack of heat in an expedient manner and they had to constantly request for updates of the repair. On November 1, 2019, while waiting for a sufficient solution or repair from the Landlord, the Tenant requested that the Landlord supply two space heaters. The Landlord provided the Tenant with one space heater only and this was inadequate as it was only designed to heat a living area of 150 square feet. He stated that the Landlord had arranged for a handy man to address this issue; however, the Landlord did not treat a lack of heat as an emergency, took far too long to address the issue, and only corrected it after the Tenants applied for Dispute Resolution.

J.W. advised that the Landlord was aware of the heat issue, that they were in constant communication with the Tenants about the impending repair, that they provided the Tenants with one space heater, and that it is the Landlord's belief that two months is not a long time for the Tenants to be without their primary heating source. He stated that part of the reason the repair took so long was because of difficulties scheduling the repair with the Tenants.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a state of decoration and repair that “complies with the health, safety and housing standards required by law” and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

With respect to the issue of the repair of the heating, I am unable to Order that this issue be rectified as this repair has been completed already. However, with respect to the filing fee, I am satisfied from the undisputed evidence that the Landlord was aware that there was an issue with the heating system and that the Tenants were without adequate heat for approximately two months. I do not find that this is a reasonable period of time for the Tenants to be without the primary heat, and I am not satisfied that the Tenants were provided with a comparable service. As such, I find that the Tenants are entitled to recover the filing fee in the amount of \$100.00, which they may deduct from the next month’s rent or otherwise recover from the Landlord.

Conclusion

As the repair has been made by the Landlord, I decline to make an Order with respect to this issue. As the Tenants were successful in their Application, I allow the Tenants to recover the \$100.00 filing fee by deducting it from the next month’s rent or otherwise recovering it from the Landlord.

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: January 7, 2020

Residential Tenancy Branch