



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1147979 B.C. LTD
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OLC, RP, RR, FFT

Introduction

On January 21, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to request an order for the Landlord to comply with the *Act*, to request an order for the Landlord to conduct regular repairs to the rental unit, for a rent reduction for repairs, services or facilities agreed upon but not provided, and to recover the filing fee paid for this application. The matter was set for conference call.

The Property Manager, and the Resident Caretaker (the “Landlord”) as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that the Tenant severed their documentary evidence to the Landlord. However, the Landlord testified that they did not serve their documentary evidence to the Tenant. Accordingly, the Landlord evidence will not be considered in this decision.

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.

Issues to be Decided

- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to an order for regular repairs to the rental unit?
- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to the recovery of the filing fee of her application?

Background and Evidence

The undisputed testimony of both parties confirmed that the tenancy began on June 1, 2013. That rent in the amount of \$1,012.00 is due on the first day of each month, and the Tenant paid the Landlord a \$458.50 security deposit and the beginning of the tenancy.

The Tenant testified that they had repeatably verbally reported to the Landlord, between October 2018 and May 2019, that the heating system in the rental unit would not turn off, that the Tenant was unable to adjust the temperature of the heat provided to the rental unit and that the heating system was making so much noise that she could not sleep. The tenant Testified that the Landlord did not respond to the Tenant's repeated verbal request for repairs.

The Tenant testified that the Landlord has continually refused to make the required repairs to the heating system in the rental unit, advising the Tenant that "it was all in her head" and that "it was just normal heating noise for a boiler heating system."

The Tenant testified that they again reported the malfunctioning heating system to the Landlord in June 2019, this time verbally and in writing. The Tenant submitted a copy of the June 2019 letter requesting repairs to the heating system in the Tenant's rental unit into documentary evidence.

The Landlord testified that the Tenant's June 2019 requests to repair the rental unit had been received and actioned. The Landlord testified they had the building heating system inspected, as well as repairs completed. The landlord testified that the motor and valve supply to the rental unit had been replaced on May 29, 2019, and that the heating system thermostat in the rental unit had been replaced on July 3, 2019.

The Tenant testified that these repairs did solve the problem for a few weeks; however, the heating system remained very noisy and continued to disturb the Tenant's sleep. The Tenant also testified that the heating system began to malfunction again that fall, which the Tenant again reported, verbally in September 2019 and in writing in October 2019, to the Landlord.

The Landlord testified that again the Tenant's requests to repair the heating system for the rental unit had been received and actioned. The Landlord testified the heating system for the rental unit is a boiler heat system that is old and requires service often, and can cause noise. The Landlord testified that they had a professional into service to

building heating system, at least thirteen times between October 2019 to December 2019.

The Landlord testified that due to the age of the building, they plan on making major renovation, including upgrading the heating system but that they are waiting on the approval of building permits submitted to the city. However, the city in which the rental property is located has put a freeze on all renovation requests at the moment.

The Landlord testified that currently, they have the heating system regularly attended to by professional heating technicians and that they are making all repairs that the technicians advise them to make. The Landlord also testified that the professional heating technician they use has advised that the current heating system for the rental property is performing as required and is in good working order to provide heat to all the renters living on the rental property. The Landlord went on to testified that the professional heating technician advised them that the heating system and controls for the Tenant's heat in the rental unit were working properly.

The Tenant testified that the professional heating technicians had been in to the rental unit, and that the technicians used by the Landlord must not understand what they are doing as the heating system is still not working properly in the rental unit and that the Tenant continues to be disturbed by the noise caused by the heating system.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I find that the entirety of the Tenant's application rests on the issue stemming from the Tenant's claim that there is something wrong heat system in her rental unit and that the heating system for the rental property is malfunctioning and that the Landlord is refusing to make the necessary repairs.

I accept the agreed-upon verbal testimony of the Tenant and Landlord that the Tenant had advised the Landlord verbally and in writing that the heating system was not working correctly in the Tenant's rental unit. I also accept the agreed-upon testimony that the Landlord has sent in a professional technician to investigate and repair the heating system in the Tenant's rental unit as well as the central heating system for the entire rental property.

However, during the hearing, I heard contradictory testimony from both parties regarding the continued need for the heating system for the rental as well as the rental property to be repaired. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Tenant.

After careful review of the Tenant's documentary evidence, I find that the Tenant has not provided sufficient evidence to support the claim that the heating system in the rental unit or the larger system for the rental property requires additional repairs.

Therefore, I find that the Tenant has failed to provide evidence sufficient to prove the Tenant's claim that the heating system is malfunctioning and needs repair. Consequently, I dismiss the Tenants' application for an order for regular repairs.

As the Tenant has not been successful in proving the need for repairs to the rental unit, I decline to award the Tenant's request for a rent reduction due to repairs not being completed to by the Landlord.

Additionally, I find that the Tenant has not proven that the Landlord has breached the *Act* during this tenancy. Accordingly, I dismiss the Tenant's application for an order for the Landlord to comply with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this claim, I decline to award the return of their filing fee for this application.

Conclusion

I dismiss the Tenant's application in its entirety.

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 25, 2020

Residential Tenancy Branch