



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes ERP

Introduction

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

- an order requiring the landlords to complete emergency repairs to the rental unit, pursuant to section 33.

The "first hearing" on March 13, 2020 lasted approximately 27 minutes and the "second hearing" on April 9, 2020 lasted approximately 54 minutes.

"Landlord FA" did not attend both hearings. Landlord WR ("landlord") attended the first hearing only. "Landlord DR," the tenant, and the tenant's advocate attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he had permission to represent landlord FA at the first hearing. Landlord DR confirmed that she had permission to represent landlord FA and the landlord at the second hearing (collectively "landlords"). At the first hearing, the landlord confirmed that landlord FA is the owner of the rental unit and the landlord and landlord DR are managers on behalf of the owner. The tenant confirmed that her advocate had permission to represent her at both hearings.

"Witness EB" and "witness CT" testified on behalf of the tenant at the second hearing. Both parties had equal opportunities to question both witnesses at the second hearing.

"Witness KL" did not testify on behalf of the tenant, as I found her evidence would not be relevant or helpful at the second hearing. The tenant's advocate confirmed that witness KL had not been inside the tenant's rental unit since last summer 2019 and she was a tenant for 12 years living in the upper portion of the same rental property, but she was no longer living there now.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on March 13, 2020 was adjourned because the landlords' lawyer was unable to attend the hearing and the landlords wanted to ensure that he could be present. The tenant had opposed the landlords' adjournment request.

By way of my interim decision, dated March 13, 2020, I adjourned the tenant's application to the second hearing date of April 9, 2020. Both parties confirmed receipt of my interim decision and the notices of rescheduled hearing to the April 9, 2020 date and the second hearing occurred on this date.

Both parties confirmed that they were ready to proceed with the second hearing and they had no objections. Landlord DR stated that the landlords chose not to have their lawyer attend the second hearing because it was too expensive.

At the second hearing, landlord DR confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. Landlord DR confirmed that the landlords submitted additional evidence after the first hearing and the tenant's advocate confirmed receipt of this additional evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence packages.

Issue

Is the tenant entitled to an order requiring the landlords to complete emergency repairs to the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below. The below evidence and testimony were provided at the second hearing.

Both parties agreed to the following facts. This month-to-month tenancy began on December 1, 2014. Monthly rent in the amount of \$905.00 is payable on the first day of each month, as the tenant is currently receiving a rent reduction of \$20.00 per month for no laundry access. A security deposit of \$450.00 was paid by the tenant and the landlords continue to retain this deposit. No written tenancy agreement was signed by

the parties. The tenant continues to reside in the rental unit. The rental unit is the basement suite of a house, where the landlord and landlord DR occupy the upper floor.

The tenant seeks an order for the landlords to turn the furnace on at the rental property, so that she can have heat in her rental unit. The tenant stated that she already has electric heaters, that are not sufficient to heat her entire rental unit. She said that she does not want additional electric heaters, offered by the landlords, because she does not want an electricity overload, due to the high number of electrical outlets currently being used at the rental unit.

The tenant's advocate maintained that it is the landlords' reasonability to remediate the mold and odour issues in the rental unit, not the tenant's, since the tenant did not create the issues. She explained that the tenant's two witnesses, who have been recently present inside the rental unit, confirmed that it is too cold inside the unit and they did not notice any issues with smell or cleanliness inside the unit. She confirmed that the landlords' and the tenant's mold reports were submitted at the previous RTB hearing in November 2019, and the Arbitrator decided the issue, so the tenant's mold report was not resubmitted for this hearing. She agreed that the furnace vents were cleaned, and the filters were replaced by the landlords on December 6, 2019, but the furnace was not turned back on by the landlords. She claimed that the landlords were focused on evicting the tenant, as per previous RTB hearings, rather than fixing the heating issues. The tenant provided copies of three previous RTB hearing decisions, issued in April, October and November 2019. The file numbers for those hearings appear on the front page of this decision.

The landlord confirmed that the furnace is currently turned off and that electric heat was provided in the winter months. She said that the rental property hydro bill was higher because heat was provided to the tenant. She claimed that the landlords offered the tenant additional electric heaters, but they never heard back from the tenant. She explained that the landlords cannot turn the furnace on because of the mold issue and the foul odour that occurs when the furnace is turned on. She said that the landlords' mold report showed that the tenant's poor care and maintenance caused the mold inside the rental unit. She stated that if the tenant rectifies the mold issue inside her unit, then the landlords can turn on the furnace again. She confirmed that many rental units in the same City do not provide gas heat, only electric heat. She testified that she has reports from pest control, the fire department and a mold company, indicating a foul odour, mold and uncleanness at the tenant's rental unit.

Witness EB testified that she is a senior support outreach worker. She said that she first came to the tenant's rental unit on March 6, 2020 for 90 minutes and the temperature was cold, she had to keep her jacket on, the space heater did not heat the

kitchen and she could not feel the heat from it, and there were no unusual smells. She stated that she attended one week later at the rental unit, she spent four hours there, and she had to wear a sweater with a jacket because it was cold.

Witness CB testified that he is a housing support worker. He said that he has been to the rental unit about 20 to 30 times over the last year, he spends one hour each time, and March 12, 2020 was his last visit. He stated that he did not notice any objectionable smells, odour, garbage, visible mold, or pests inside the rental unit. He confirmed that the rental unit was clean and smelled good. He said that the last few visits in the rental unit, it was cold, less than safe, and the temperature was sub 70 degrees Fahrenheit. The landlord inquired as to whether witness CB believed the landlords' report from the fire department was false regarding the foul odour coming from the rental unit. Witness CB answered that the tenant added her own thermostat and he smelled around the furnace and it was ok.

Analysis

Section 32 of the *Act* discusses the landlords' responsibility for the rental unit:

- 32(1) 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 the following with respect to emergency repairs:

- 33(1) In this section, "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*
 - (iii) the primary heating system*

Residential Tenancy Policy Guideline 1 states the following:

SERVICES AND FACILITIES

- 1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.*

FURNACES

The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

I find that the tenant's request for an order for the landlords to turn the furnace on is an emergency repair that is urgent, necessary for the health of the tenant, and relates to the primary heating system, in accordance with section 33 of the *Act*. I find that the landlords are required to maintain heating in the rental unit in a state of repair that complies with health, safety and housing standards, as per section 32 of the *Act*.

I find that that heat is a service that is essential to the tenant's use of the rental unit as living accommodation, as per Residential Tenancy Policy Guideline 1. I also find that it is the landlords' responsibility to inspect and service the furnace, as per Residential Tenancy Policy Guideline 1.

On a balance of probabilities, I find that the tenant provided sufficient evidence that there is insufficient heat at her rental unit and the electrical heaters currently being used are insufficient to properly heat the unit. The tenant provided her own testimony and the testimony of two witnesses, who have been inside the rental unit as recently as March 2020. During the second hearing, landlord DR did not question or dispute the testimony of the tenant's two witnesses regarding the cold conditions inside the rental unit on repeated occasions. Further, the landlords were cautioned in the most recent previous RTB hearing decision, dated November 26, 2019, to ensure that the tenant had heating facilities as part of her tenancy agreement and to maintain the furnace. I find that the landlords had more than sufficient notice of their responsibilities under the *Act*, at that previous RTB hearing as well as another previous RTB hearing on October 24, 2019. Both parties' mold reports were analyzed at both of the above previous RTB hearings in relation to the landlords' efforts to end the tenant's tenancy.

I order the landlords, at their own cost, to have a certified, licensed professional inspect and repair, if recommended by the professional, the furnace at the rental property, to ensure that it is in working order by May 9, 2020.

I order the landlords to turn the furnace on at the rental property by May 9, 2020, so that the tenant has access to sufficient heat in her rental unit at all times throughout her tenancy, not just in the winter months.

I order the landlords, at their own cost, to have a certified, licensed professional inspect and remediate mold at the rental property, by May 9, 2020.

The landlords have claimed that they cannot turn the furnace on, due to the mold smell, so the above order has been made to ensure that the furnace can be used and to rectify any mold issues that could affect the tenant's health and safety at the rental unit, as per section 32 of the *Act*. I find that the landlords provided insufficient evidence that the tenant caused the mold inside the rental unit.

If the parties disagree as to whether the above orders have been complied with, they may apply to the RTB for determination.

I order both parties to abide by section 29 of the *Act* to facilitate the above orders. Both parties are required to abide by the health and safety guidelines of the governmental authorities during the COVID-19 pandemic. I have allowed for extended deadlines above, due to the physical distancing measures required, due to the COVID-19 pandemic. Both parties are required to abide by *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020. The above are emergency repair orders.

Conclusion

I order both parties to comply with the above orders.

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: April 9, 2020

Residential Tenancy Branch