



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

On April 2, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") for an order for the Landlord to make emergency repairs to the rental unit. The matter was set for a conference call.

The Tenant attended the hearing and was affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified the Application for Dispute Resolution and Notice of Hearing had been posted to the front door of the Landlord's home. I find that the Landlord has been duly served in accordance with the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at 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

Issue to be Decided

- Is the Tenant entitled to an order for Emergency repairs to the rental unit?

Background and Evidence

The Tenant testified that the tenancy began on August 15, 2017, as a month to month tenancy. The Tenant also testified that the current rent is \$1,300.00 per month, to be paid by the first day of each month, but that there was a \$100.00 rent reduction awarded to the Tenant through a previous dispute resolution proceeding. The Tenant confirmed that the Landlord collected a \$650.00 security deposit at the outset of this tenancy, and that there is no written tenancy agreement.

The Tenant advised this Arbitrator that there had been two previous dispute resolution proceedings for this tenancy, and provided the file numbers for those proceeds, which have been recorded on the style of cause page for this decision. The Tenant also advised that there is a fourth dispute resolution proceedings scheduled for two days from the date of these proceedings.

The Tenant testified that on March 16, 2020, the Landlord turned off the heat and power to the rental unit. The Tenant testified that they had repeatedly requested the Landlord turn the heat and power back on, both verbally and in writing, but the Landlord had refused. The Tenant submitted a copy of their written request as well as copies of their text message requests into documentary evidence.

The Tenant testified that the Landlord has refused to speak to them, except their normal cash payments for rent, and has been trying to evict them, since the decision from the dispute resolution proceedings of December 17, 2019, was issued. The Tenant went on in their testimony that the only communication they have received from the Landlord is through the wall that connects the Landlord's unit to the Tenant's rental unit, and that the communication is the Landlord's girlfriend banging on the wall, yelling, "if you don't like no heat and no power, then move out."

The Tenant testified that the harassment they have received at the hands of the Landlord and the Landlord's girlfriend has been so extreme and stressful, combined with the fact they have no heat that the Tenant's son has had to stay elsewhere for their safety.

The Tenant also testified that the Landlord has turned off their access to the internet, which has made the Tenant's life extremely difficult during the current state of emergency in the province and restrictions due to the requirement to self-isolate. The Tenant confirmed that they understood that the internet is a regular repair and did not meet the definition of an essential service under the *Act*, and therefore cannot be

address in this proceeding. However, the Tenant testified that they feel the removal of the internet is just another means the Landlord has chosen to do to harass the Tenant.

Analysis

Based on the evidence before me, the testimony of the Tenant, and on a balance of probabilities:

I find that there have been two previous decisions, which are identified on the style of cause page of this decision, rendered regarding this tenancy. I have reviewed these decisions and I find that they remain outstanding and are in full force and effect based on the evidence before me. I have also reviewed the testimony provided by the Tenant during these proceedings and their documentary evidence, and overall, I find that the Tenant has provided a credible account of the history of this tenancy during this proceeding.

I accept the Tenant's testimony that the Landlord has refused their cash payment of rent for January 2020, February 2020, March 2020 and April 2020.

I accept the Tenant's testimony that the Landlord has turned off the heat and electricity for the rental unit as of March 16, 2020.

As for the Tenant's application of an order for emergency repairs to the rental unit, I find that the rental unit is not in need of emergency repairs, as indicated in the Tenant's application but that essential services or facilities have been willfully terminated or restricted by the Landlord to the rental unit. Section 27 of the *Act* states the following:

Terminating or restricting services or facilities

- 27(1)** A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a *material term of the tenancy agreement*.

I find that heat and electricity are essential services to this tenancy and that the Landlord has breached section 27 of the *Residential Tenancy Act* by turning off these essential services.

I order the Landlord to immediately reinstate the terminated essential services, of heat and electricity, to the rental unit for this tenancy.

Additionally, due to what I deem to be the Landlord's blatant and willful disregard for the *Residential Tenancy Act*, the personal welfare of the Tenant and the Tenant's family, I find it appropriate to award the Tenant compensation. I award the Tenant the recovery of their full rent for the period of time in which the essential services have been terminate, 38 days between March 16, 2020 to April 21, the date of this hearing, at a per diem rate of \$42.74.

Monthly Rent	\$1,300.00
Yearly Rent	\$15,600.00
Per Diem	\$42.74
Days Refunded	38
Awarded to Tenant	\$1,624.11

Accordingly, I award the Tenant \$1,624.11 in compensation for the Landlord's breach of the *Act*. I grant permission to the Tenant to withhold this amount from their rent for this tenancy in full satisfaction of this award.

Additionally, I order that the Tenant shall receive additional compensation, at the rate of \$42.74 per day, from the date of this hearing until the terminated essential services are restored. I grant the Tenant permission to withhold \$42.74 per day from their rent, in compensation, for each day the Landlord does not comply as ordered above, for the period of April 22, 2020 onward.

If there is a dispute between these parties as to the date when the terminated essential services are restored, I order that it is the Landlord who must apply for and obtain a decision from this office to resolve that dispute.

Conclusion

I order the Landlord to immediately reinstate the terminated essential services of heat and electricity for this tenancy.

I grant the Tenant permission to withhold \$1,624.11, in rent, in compensation for the termination of essential services to this tenancy, for the period between March 16, 2020 and the date of this hearing, April 21, 2020.

I grant the Tenant permission to withhold an additional \$42.74 per day from their rent, in compensation, for each day the Landlord does not comply as ordered above, for the period of April 22, 2020 onward.

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 21, 2020

Residential Tenancy Branch