Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARTISTIC PRIME MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on January 10, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in January of 2020 were sent to the Landlord, via registered mail, at the service address noted on the Application. She stated that the package was returned to her by Canada Post. The Tenant submitted Canada Post documentation that indicates the package was unclaimed by the recipient. On the basis of this undisputed hearing, I find that the aforementioned documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act).*

As the aforementioned documents were properly served to the Landlord, the hearing proceeded in the absence of the Landlord and the evidence submitted in January of 2020 was accepted as evidence for these proceedings.

On May 25, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, the evidence was not accepted as evidence for these proceedings. The Tenant stated that she wished to proceed with the hearing, with the understanding that the evidence submitted in May would not be considered.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to compensation due to an inadequate heat source?

Background and Evidence:

The Tenant stated that:

- The tenancy began on September 01, 2019;
- She signed a fixed term tenancy agreement, the fixed term of which ended on August 31, 2020;
- She agreed to pay monthly rent of $900.00;
- She paid rent for November and December of 2020;
- Heat to the unit was provided through vents;
- The temperature was controlled by a thermostat in another suite in the residential complex;
- On November 30, 2019 she came home to find no heat in her rental unit;
- Neither cold nor warm air was coming from her heating vents;
- She reported the problem to an Agent for the Landlord on November 30, 2019;
- On November 30, 2019 the Agent for the Landlord informed her that the person who has the thermostat in their suite assured her that the heat was functioning;
- On November 30, 2019 the Agent for the Landlord informed her that none of the other suites in the residential complex were having a problem with the heat;
- On December 01, 2019 she again informed the Agent for the Landlord that the heat was not working and asked that it be repaired;
- A contractor came to the rental unit on December 02, 2019;
- The contractor concluded that the heat was not working in the rental unit and he was unable to determine why it was not working;
- On December 02, 2019 she informed the Agent for the Landlord that the contractor concluded the heat was not working and asked how the Landlord intended to rectify the problem;
- On December 03, 2019 the contractor provided the Tenant with a space heater;
- The space heater was not adequate, as it only warmed a small area of the rental unit;
- On December 03, 2019 she sent the Agent for the Landlord written notice that there was still no heat in the rental unit, she gave a deadline of 24 hours to rectify the issue, and she notified the Agent that she had the right to end the tenancy if this breach of the tenancy agreement was not rectified by December 04, 2019; and
- On December 04, 2019 the Agent for the Landlord told her that the contractor who inspected the unit on December 02, 2020 told her there was ambient heat in the rental unit;
- On December 04, 2019 she sent an email to the Agent for the Landlord, in which she informed the Landlord she would be moving out on December 14, 2019 because the Landlord had not corrected the issue with the heat;

- On December 05, 2019 she sent letter to the Agent for the Landlord, in which she informed the Landlord there was still no heat; that the heating system had not been repaired; and that she was vacating the rental unit on December 14, 2019;
- On December 12, 2019 someone inspected the heating system in the residential complex, however heat in her unit was not restored;
- The Landlord did not communicate any plans for repairing the heat, even after the unit was inspected on December 04, 2019 or December 12, 2019;
- She vacated the rental unit on December 14, 2019;
- There was no heat in the rental unit between November 30, 2019 and December 14, 2019;
- She did not sleep in the rental unit between November 30, 2019 and December 14, 2019 because it was too cold, although she visited daily to care for her cat; and
- Other occupants of the residential complex told her they were having difficulty with some of their heating vents.

The Tenant is seeking a rent refund for the entire month of December of 2019, in the amount of $900.00, and $30.00 for November 30, 2019**.** She is also seeking $48.15 for moving costs.

Analysis:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

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A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, if a landlord fails to ensure the heating system, it could be established that the tenant's right to quiet enjoyment because the rental unit cannot be comfortably occupied.

On the basis of the undisputed evidence, I find that the heating system in the rental unit did not work between November 30, 2019 and December 14, 2019. I find that being without heat in November and December constitutes a breach of the Tenant's right to the quiet enjoyment of the rental unit.

Although the rental unit is located in one of the warmer climates in the province and the Tenant was provided with a single space heater, I find that the breach was a significant. On the basis of the undisputed evidence that the Tenant did not sleep in the rental unit because of the cold between November 30, 2019 and December 14, 2019, I find that the Tenant was largely unable to use the rental unit for its intended purpose. I therefore find that the Tenant is entitled to a rent reduction of 75% between November 30, 2019 and December 14, 2019.

As the Tenant was paying monthly rent of $900.00, I find that the per diem rent for November was $30.00 ($900.00 divided by 30). As I have granted her a rent reduction of 75% for November 30, 2019, I find that she is entitled to compensation of $22.50 for that one day.

I find that the per diem rent for December of 2019 was $29.03 ($900.00 divided by 31). As I have granted her a rent reduction of 75% for 14 days in December, I find that she is entitled to compensation of $304.82 for those 14 days.

In determining that the Tenant is only entitled to a rent reduction of 75% of her rent between November 30, 2019 and December 14, 2019, I was influenced by her testimony that she visited the rental unit daily and that she kept her cat in the unit. As

she had partial use of the unit for that period of time, I find that she is not entitled to a full rent refund for that period.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the Landlord's failure to provide adequate heat in the rental unit constitutes a material breach of the tenancy agreement.

On the basis of the undisputed evidence, I find that on December 03, 2019 the Tenant gave the Landlord written notice that there was still no heat in the rental unit, she gave a deadline of 24 hours to rectify the issue, and she notified the Agent that she had the right to end the tenancy if this breach of the tenancy agreement was not rectified by December 04, 2019. I find that this letter serves as written notice that the Landlord has breached a material term of the tenancy agreement.

On the basis of the undisputed evidence, I find that on December 04, 2019 the Tenant gave the Landlord written notice that she would be moving out on December 14, 2019 because the Landlord had not corrected the issue with the heat. I find that most reasonable people would agree that providing heat, particularly during the winter months, is a material term of any tenancy agreement.

As the Tenant gave the Landlord written notice of the breach of this material term and there is no evidence that the Landlord rectified the problem, or that the Landlord informed the Tenant that the problem would be rectified in a timely manner, I find that the Tenant had the right to end this tenancy on December 14, 2019, pursuant to section 45(3) of the *Act*.

As the Tenant had the right to end this tenancy on December 14, 2019, I find that she is entitled to a rent refund for the last 17 days of December, which is $493.51. As the Tenant incurred unexpected moving costs because of Landlord breached a material term of the tenancy, I find that she is entitled to recover the $48.15 moving costs she incurred.

Conclusion:

The Tenant has established a monetary claim of $868.98, which includes $327.32 for loss of quiet enjoyment for the period between November 30, 2019 and December 14, 2019, a rent refund of $493.51, and moving costs of $48.15.

I grant the Tenant a monetary Order for $868.98. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 04, 2020

Residential Tenancy Branch