



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

On January 23, 2020, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement.

The Tenant and agents for the Landlord were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch 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

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 15, 2017 and is on a month to month basis. Rent in the amount of \$375.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$187.50 was paid by the Tenant to the Landlord.

Both parties testified that the tenancy agreement provides that rent includes the provision of heat. Heat to the unit is provided using hot water baseboard heating.

The Tenant testified that he is seeking compensation for his increased hydro costs associated with his need to provide additional heat to the rental unit.

The Tenant testified that in winter months the rental unit is colder and the temperature in the unit drops to 14 degrees despite that the Landlord has programmed the thermostat for 22 degrees. The Tenant testified that the Landlord has been trying to fix the heating issue for three years. The Tenant testified that he purchased an electric space heater which he uses to supplement heat into the rental unit during winter months. The Tenant provided images of temperature readings showing a temperature of 14 degrees.

The Tenant testified that the space heater runs on electricity that he pays for. The Tenant testified that his claim is calculated at \$10.00 per month for six months of each year where the outdoor temperature is cooler. The Tenant is seeking compensation for sixteen months starting December 2017 to March 2020.

In response, the Landlord stated that they are not in agreement to pay compensation to the Tenant. The Landlord testified that the rental building is a relatively new building with an energy efficient system.

The Landlord submitted that even though the Tenant says he is cold there is no evidence to prove that the Tenants unit is cold. The Landlord referred to the Tenants evidence showing a thermostat at a temperature of 22 degrees.

The Landlord's maintenance person, Mr. A.R. testified that the building is 2.5 years old and designed that the temperature cannot exceed 23 degrees. He testified that some Tenants have stated that they are cold and that space heaters are provided to some tenants. He testified that a technician was sent to the Tenants rental unit on two occasions and the heating system was found to be operating properly.

The Landlord Mr. R.Y. testified that on December 17, 2018 the Landlord entered the Tenants unit and the temperature was 22 to 24 degrees.

The Landlords position is that they provide adequate heating to the rental unit.

The Landlord referred to a document in their evidence that indicates an exhaust fan located in the Tenants bathroom runs 24 hours per day and exhausts the air from inside the bathroom and brings in air from outside. The Landlord indicated that the exhaust fan, or ERV unit could be turned off in the winter months.

In reply, the Tenant testified that the rental unit gets cold at night and the application on his phone shows the temperature to be 15 degrees.

Analysis

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

Section 65 of the Act provides that the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Upon review of the tenancy agreement I find there is nothing that indicates the level or amount of heating to be provided. The Tenant has provided no evidence of health, safety and housing standards required by law in regard to the provision of heat.

I also find that the provision of heat under the arrangement the parties had from the start of the tenancy has not been altered in any way. However, I find that the rental unit is designed to have a fan running 24 hour per day which exhausts the air from inside the rental unit and draws in air from outside.

I find that it is reasonable to conclude that when the outside temperature drops at night during the winter months, the fan is drawing in the cold air from outside. This finding supports the Tenant's testimony that the rental unit gets cold at night during the winter months. I accept the Tenants evidence that the temperature in the rental unit is cold at night and I accept the Tenants evidence that the temperature has dropped to 15 degrees.

I find that due to the continuous operation of the fan, the Landlord is not able to provide a consistent temperature, and thus is not providing consistent heating to the rental unit as required under the tenancy agreement.

I find that the Tenant is using a space heater and is paying hydro costs to provide heat to the unit at night in the winter months. I find that the Tenant is suffering a loss of value in the tenancy and entitled to compensation. I find that the Tenants claim of \$10.00 per month (\$0.33 cents per day) is reasonable.

I award the Tenant compensation in the amount of \$160.00 for 16 months of increased hydro costs associated with running the space heater.

I authorize the Tenant to deduct the amount of \$160.00 from one (1) future rent payment.

Conclusion

The Tenant's application for money owed or compensation for damage or loss is successful. The Landlord is not providing consistent heat to the rental unit as required under the tenancy agreement.

The Tenant is authorized to deduct the amount of \$160.00 from one (1) future rent payment.

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 17, 2020

Residential Tenancy Branch