Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act)*, I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- recovery of the filing fee, pursuant to section 72 of the Act.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with service of the application and the evidence (the materials). In accordance with sections 88 and 89 of the Act, I find that both parties were duly served with the materials.

Issues to be Decided

Is the tenant entitled to:

1. a reduction in rent for services or facilities agreed upon but not provided?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed the tenancy started on February 01, 2020 and the tenant is currently residing in the rental unit. Monthly rent is $2,750.00, due on the first day of the month. At the outset of the tenancy a security deposit of $1,375.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence. Both parties also agreed the rental unit is a modern three-year old suite.

The tenant affirmed the landlord stated during the move-in inspection that the heating system was functioning properly.

The tenant had a temporary living arrangement until February 13 when she moved into the rental unit. The tenant affirmed when she was moving the rental unit was very cold and she had to wear a jacket all the time. On February 13 the landlord came to the rental unit and showed the tenant how to turn on the heating system.

On February 23 the tenant texted the landlord and stated the thermostat which controls the heating system is still not functioning. The landlord sent her instruction on how to operate the thermostat.

On March 01 the tenant informed the landlord she was still not been able to heat the rental unit. On March 02 the landlord replied and asked for a photograph of the thermostat. The landlord affirmed the photographs submitted by the tenant indicate the rental unit was not cold, as the temperature was set for 18.0c but the unit was warmer, at 22.1c.

On March 03 the landlord stated: “I will schedule with a technician to come and check the system”. By March 11 there was still no visit from a technician; March 11 is the last night the tenant stayed in the rental unit due to the lack of heat.

On March 17 the landlord informed the tenant that because of Covid19 difficulties it is taking longer for the technician to visit the rental unit.

On March 19 the tenant explained to the landlord she has not been able to sleep in the rental unit since March 11. A text message was submitted into evidence.

On March 26 a technician visited the rental unit and concluded the thermostat’s wires were not correctly placed. The technician e-mailed the landlord:

> Our technician visited your unit to examine the thermostat on March 26th, 2020 and when I got there, the unit was warmer than the thermostat set point.

> After checking the thermostat, It appeared that the wires weren't in the correct locations and it seemed that possibly someone else has probably manipulated the thermostat before as a jumper has been added, causing the thermostat not able to set the temperature. This not a manufacturer's standard. So, I decided not touch it, closed the thermostat as it was, in order to talk with the owner first.

The tenant affirmed the only person that manipulated internally the thermostat since the beginning of the tenancy was the technician.

On March 29 the landlord texted the tenant:

> If the unit is too cold to get in, you can buy 2 electric heaters and I will reimburse all the cost. I'm in contact with them to send someone sooner to fix the thermostat.

The tenant replied two days later:

> I also didn't pay for an apartment with electric heather but rather with a working heating system. It could've worked if you had offered on feb 23rd to bring heater for a couple of days while you were getting the system fixed Now that I have found a place to stay while you fix the system, the heaters are not the solution [e-mail]
>
> As I said when my daughter got badly sick and we were worried about her having caught the virus we left the unit on March 11 to be in a place where it is safer for her to recover. We will be back only when the temperature issue is fixed. We have proof of not having used any electricity or internet showing that we didn't live in the unit since the date my daughter got sick, and passed by only to pick up our personal stuff. [text message].

The landlord affirmed on March 30 a technician tried to contact the tenant, but was not able as she does not have a Canadian phone number. The landlord provided the technician's phone number to the tenant. The tenant called the technician and learned the landlord provided the wrong phone number to the technician. The tenant corrected her phone number and the technician no longer had difficulties to contact her.

On March 31 the landlord offered the tenant to end the tenancy because of the heat issue. The tenant did not accept this offer and explained because of covid19 it would be very hard to find a new rental unit.

The tenant affirmed on April 03 the heating system was repaired and it has been functioning properly since that date. Two invoices dated April 06, 2020 were provided by the landlord. Both invoices indicate there was an issue with the wires of the thermostat

caused by previous manipulation and the thermostat was functioning properly after the repairs.

Both the tenant and her daughter chose not to live in the rental unit from March 11 to April 04 and lived with their relatives. This was very stressful for the tenant's daughter, as her school is very close to the rental unit and she had a very long commute from another city during this period.

The landlord disputed that he was aware on March 19 that the tenant was not occupying the unit and affirmed it was not until March 26 that the tenant informed him she was not living in the rental unit. The landlord also affirmed the tenant did not have extra living expenses when she did not live in the rental unit as she was living with relatives.

The landlord affirmed the tenant "could undertake the repairs and claim for reimbursement if it was a real emergency repair, but she didn't even try."
The tenant affirmed she did not contact the emergency contact person indicated in the tenancy agreement because she was always able to contact the landlord and he always replied to her.

The tenant submitted a monetary order worksheet claiming for $5,500.00 (two months of rent).

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 32(1) of the Act states 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. During the winter months, heat is necessary to make a rental unit suitable for occupation by the tenant.

Residential Tenancy Branch Policy Guideline 01 states 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.

The landlord learned on February 23 the rental unit's heating system was not functioning and provided instructions to the tenant on how to operate the system. On March 03 the landlord informed the tenant he will schedule a technician to repair the heating system, as the tenant was still not able to use it. On April 03 the system was repaired.

I find the landlord's testimony about Covid19 causing the delays making the repairs was too vague. The landlord did not provide evidence or details of why the heating system could not be repaired when the tenant reported the problem. The landlord provided the incorrect contact information for the tenant to the technician which caused delays; I do not find that the tenant caused any delay in repairing the heating or had any role in the malfunctioning of the heating system.

I find the landlord failed to comply with section 32(1) of the Act and the tenancy agreement by not providing a functioning heating system during the winter, specifically from the date the tenant reported the lack of heat, February 23 to April 03.

Pursuant to section 7(2) of the Act, the tenant was obligated to mitigate her damage or loss due to the landlord's delay in repairing the non-functioning heating system. Residential Tenancy Branch Policy Guideline 05 provides addition information about the duty to minimize the loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.
> In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.
> Partial mitigation

> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

The landlord asserted that the tenant could have made the repairs and sought reimbursement thus implying the tenant did not minimize her loss. I find that the tenant acted to minimize the impact of the lack of heat by contacting the landlord several times and communicating with the technicians. I find it is reasonable that the tenant declined to move back to the modern three-year old rental unit with electric heaters because she had already moved to a temporary living arrangement before the alternative solution was provided by the landlord. I also find that the landlord could have provided electric heaters when he first learned the heating system was not functioning on February 23, 2020. As such, the landlord did not offer timely efforts to provide heat in the rental unit as required by section 32(1) of the Act.

Section 65(1)(f) of the Act authorizes me to order a reduction in the tenant's future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement due to the landlord's failure to comply with section 32(1).

I find the value of the tenancy was reduced due to the landlord's failure to provide a heated rental unit as follows:

- Reduction of 33% of rent from February 23 (the date the landlord learned the heating system was not functioning) to March 18, as the tenant was living in the rental unit but without a basic service (2,750.00 / 30 = 91.66 * 25 days = 2,291.66 * 0.33 = **756.25**);
- Reduction of 80% of rent from March 19 (the date the landlord learned the tenant was not able to sleep in the rental unit) to April 03 (the date the heating system was repaired), as the tenant used the rental unit only to store her belongings (91.66 * 16 days = 1,466.56 * 0.80 = **1,173.24**);

Thus, the tenant is entitled to reduce future rent to the landlord by **$1,929.49** due to the reduction in the value of her tenancy from February 23, 2020 to April 03, 2020.

As the tenant was success with her application, pursuant to section 72 of the Act, I authorize her to recover the $100.00 filing fee.

Conclusion

Pursuant to section 65(f) of the Act, I authorize the tenant to deduct the amount of $2,029.49 from a future rent.

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 12, 2020

Residential Tenancy Branch