



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *RP, OLC, LAT, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for a temporary loss of heat supply to the rental unit. The tenant also applied for an order directing the landlord to comply with the *Act* and carry out repairs. The tenant applied for permission to change the locks, for a rent reduction and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidence in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing the tenant confirmed that the repairs she was seeking were already done but she was still seeking compensation in the amount of \$400.00 by way of a one-time rent reduction. Accordingly, this hearing only dealt with the tenant's claim for compensation, for permission to change the locks, for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Issues to be decided

Is the tenant entitled to compensation and the other remedies she has applied for?

Background and Evidence

The background facts are generally undisputed. The tenancy started on September 01, 2013. The rental unit is an apartment located in a building that houses a total of 43 rental units and is approximately 65 years old. The tenant testified that on June 04, 2020, the heating in the building was not working and the landlord was informed of the problem. The landlord stated that he checked the heater and found it to be in alarm mode. He attempted to reset the unit but was unsuccessful in getting the heater to start.

The landlord contacted the heating and plumbing company that services the unit and they informed the landlord that the unit needed to be replaced.

The landlord stated that he did some research, consulted with the owner of the building and decided to go ahead with the replacement of the unit. On June 12, 2020, the landlord contacted the plumbing company and authorized them to carry out the repairs. The landlord testified that the parts were ordered immediately but work only started after the parts arrived. The tenant agreed that the heat was restored on July 24, 2020.

The tenant is claiming \$400.00 as compensation for the period of June 04 to July 24, 2020, that she was without heat. She stated that June 2020 was unusually cool and therefore she suffered the inconvenience of having to dress warmly, inside the rental unit. The tenant stated that she considered purchasing a heater but did not do so. The tenant confirmed that her access to hot water was not affected by this problem.

The tenant stated that she wished to change the locks because she found the landlord "*irresponsible, reckless and untrustworthy*". The landlord objected to this description of his character and integrity. The tenant was not able to cite any incidents to support her allegations that warranted a change of locks. The tenant agreed that the landlord always provided at least 24 hours written notice prior to entering the unit. The landlord filed multiple witness statements written by other occupants of the building that support the landlord's efficiency and integrity.

The tenant applied for an order directing the landlord to comply with the *Act*. The tenant complained that smoking in common areas was an issue and that the landlord smoked inside his office. The landlord agreed that he smoked inside his office but stated that he has put signs up prohibiting the occupants of the building from smoking in common areas. The tenant also complained of occupants of the building walking their dogs off leash and that the landlord posted inappropriate jokes in the elevator. The landlord responded by testifying that during the Pandemic, he posted jokes to get people to lighten up. The landlord agreed to stop posting jokes.

Analysis

Compensation - \$400.00

Based on the documentary evidence and sworn testimony of both parties, I find that the supply of heat was interrupted when the boiler ceased working. I further find that the landlord took immediate action to have the replacement of the boiler done.

I find that the delay that occurred to complete the job was due to the late arrival of purchased parts and was not within the control of the landlord.

In order to prove an action for a breach of the covenant of quiet enjoyment and an entitlement to compensation, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In this case, I find that the landlord carried out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. However, in order to carry out this duty, the landlord had to replace the boiler that supplied heat to the building. This resulted in inconvenience to the tenant caused by the lack of heat to the rental unit, for the time it took to replace the boiler. I also find that the interruption of the heat supply occurred in summer.

Section 32 of the *Residential Tenancy Act* addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit.

In this case, I find that the landlord fulfilled his obligations by acting on the tenant's complaints in a timely manner and making the necessary arrangements to replace the boiler. The building is 65 years old and therefore the heating equipment had to be replaced. Since the interruption in service occurred in summer, I find on a balance of probabilities that it is more likely than not that room temperature would be mild to hot. The tenant could have requested the landlord for a heater if she needed it.

Residential Tenancy Policy Guideline# 06 addresses a tenant's right to quiet enjoyment and states that temporary discomfort or inconvenience does not constitute a basis for 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.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was temporarily inconvenienced by the lack of heat. Therefore, I find that the tenant is not entitled to compensation and her claim for \$400.00 is dismissed.

Changing the Locks

Residential Tenancy Policy Guideline #7 addresses locks and access and states that:

Where a tenant can prove that the landlord has entered contrary to the Residential Tenancy Act, the tenant may apply to have the locks to the rental unit changed.

The tenant agreed that the landlord has never entered the unit without providing at least 24 hours written notice. Even though the tenant described the landlord as “*irresponsible, reckless and untrustworthy*” and stated that these characteristics of the landlord are the reason she wants the locks changed, I find that the tenant has not proven these allegations and therefore her request to change locks is dismissed.

Other remedies:

Based on the testimony of both parties, I order the landlord to carry out the following:

1. Post signs prohibiting smoking in common areas
2. Post signs mandating dog owners to have their pets on leash in common areas
3. Stop posting jokes in the elevators
4. Observe city by-laws regarding smoking inside and around residential buildings

Since the tenant has not proven her case for compensation, she must bear the cost of filing her application.

Conclusion

The tenant’s application is dismissed.

The landlord must comply with the orders listed above.

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: August 11, 2020

Residential Tenancy Branch