



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 74 AVE PROJECTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out emergency repairs pursuant to section 33.

The tenant attended with the advocate JA (“the tenant”). The tenant was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant stated that they were provided with an address for the landlord by letter from the landlord received October 5, 2020.

The tenant testified that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the address provided by the landlord on October 27, 2020 thereby effecting service 5 days later pursuant to section 90, that is, on November 1, 2020. The tenant provided the tracking number in support of service and submitted copies of the receipts. The tenant submitted a signed

and witnessed Proof of Service document in the RTB form.

Further to the uncontradicted testimony of the landlord and the supporting documentary evidence, I find the tenant served the landlord pursuant to the Act.

At the outset of the hearing, the tenant requested an amendment to the property description to remove the word “basement” as the unit rented is a complete building. The address description is accordingly amended throughout.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The verbal monthly tenancy began on September 1, 2018 for rent of \$2,000.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,000.00 to the landlord which the landlord holds.

The tenant stated that the landlord’s agent came to the unit monthly to collect the rent which was paid in cash. The tenant testified that the landlord did not attend to collect rent due September 2020 and has not come to the unit since.

The tenant testified that they had no address, email or phone number for the landlord until they received a letter from the landlord on October 5, 2020 providing the name and address of an agent.

The tenant stated that the unit has not had a properly functioning furnace for the duration of the tenancy; heating has been performed by space heaters which are inadequate to heat the building in winter and expensive to operate. The tenant stated that they frequently asked the landlord to fix the furnace and the landlord failed to do so.

The tenant stated as follows in their written submissions (added emphasis by tenant noted below in bold):

The furnace has not been working for two years now, however, the tenant has done everything he can to minimize his loss by purchasing space heaters and

blankets to keep warm and by verbally requesting on numerous occasions that the landlord fix the furnace. Unfortunately, [the tenant] could not put this request in writing because the landlord was breaching s. 33(2) of the Residential Tenancy Act by not providing a name and telephone number of a person that could be contacted for emergency repairs as set out below:

Emergency repairs

33 (1) In this section "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing

...

- (iii) the primary heating system,

...

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

[The tenant] (and his roommates) have suffered significantly as a result of the landlord's gross negligence. They have attempted to keep warm during the winter and continued to pay high hydro bills [attached] despite not having any heat. At the time that the hydro account was set up by Mr. Shannon (a roommate) a security deposit was requested because of the historical electrical usage previously recorded for this address

The tenant submitted written statements from each of his three roommates which provided supporting evidence of the tenant's submissions that the unit was uncomfortably cold and expensive to attempt to heat with space heaters.

The tenant requested that the landlord provide a working furnace by November 16, 2020 and that the tenant be provided with a letter at that time from a certified technician that the furnace is in proper working order.

Analysis

This application involves consideration of the duty of a landlord to provide a functioning

primary heating system. The relevant sections of the Act are discussed.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 32(1) and (2) of the *Act* outline the following obligations of the landlord to repair and maintain a rental property:

32 (1) 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.

Section 62(3) of the *Act* states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The tenant submitted well-prepared, complete and credible evidence including indexed written submissions and three supporting witness' statements. I place considerable weight on the tenant's evidence.

Based on the testimony of the tenant and the supporting documentary evidence, I find that the tenant has met the burden of proof on a balance of probabilities for an Order for Emergency Repairs.

I find that the tenant has established that elements of section 33 are present in this situation. Further to section 33(3), I find that the unit's heating system does not work as stated by the tenant and his three roommates. As the area in which the unit is located will soon be in the winter season, I find that emergency repairs are needed. I also accept the tenant's testimony that they have verbally requested the furnace to be fixed on several occasions but have not called the landlord because no phone number was provided. I accept the testimony that the landlord has not been to the unit since the agent collected rent in early August 2020. I find the landlord has not provided required

contact information until October 5, 2020.

I therefore order that the landlord perform repairs to the primary heating system of the home as required by section 32 of the Act as stated above. I direct that the repairs be completed by 5:00 PM on November 16, 2020, seven days from the date of this hearing.

I direct the landlord to provide a letter to the tenant by that time and date from a certified technician certifying that the furnace is in good working order.

Conclusion

I order that the landlord perform emergency repairs to the primary heating system of the unit and that the repairs be completed by 5:00 PM on November 16, 2020.

I direct the landlord to provide a letter to the tenant by that time and date from a certified technician certifying that the furnace is in good working order.

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: November 09, 2020

Residential Tenancy Branch