



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Burr Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order for emergency repairs.

The Tenant and three agents for the Landlord, H.L., A.L., and F.H. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agents said they had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Agents confirmed that the Landlord had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, the Tenant requested that he be sent a transcript of the hearing, as he said another arbitrator had told him that this was possible. However, I advised the Tenant that RTB hearings are not recorded, and therefore, it would be impossible for the RTB to provide him with a transcript. However, Rule 6.12 provides the following direction to parties regarding transcriptions of hearings:

6.12 Official transcript

A party requesting an official transcript by an accredited Court Reporter must make a written request stating the reasons for the request to the other party and to the Residential Tenancy Branch directly or through a Service BC Office not less than seven days before the hearing.

An arbitrator will determine whether to grant the request and will provide written reasons to all parties and issue any necessary orders.

If permission is granted, **the party making the request must:**

- a) prior to the hearing, provide the Residential Tenancy Branch with proof of the Court Reporter's accreditation;
- b) make all necessary arrangements for attendance by the accredited Court Reporter and their necessary equipment;
- c) pay the cost of the accredited Court Reporter's attendance at the dispute resolution hearing;
- d) pay the cost of the Court Reporter's services and the cost of transcripts; and
- e) provide all parties and the Residential Tenancy Branch with official copies of the transcript.

While the Tenant submitted a request for a transcription of the hearing dated February 8, 2021, he did not provide the RTB with proof of his having arranged for a Court Reporter or prior to the hearing, provide the RTB with proof of the Court Reporter's accreditation. I find the Tenant took no steps to follow Rule 6.12, other than having requested a transcript be produced.

I advised the Tenant in the hearing that he was allowed to arrange for a Court Reporter to transcribe the hearing, but that this was for the Tenant to arrange; however, the Tenant had not taken any steps in this regard, and therefore, I did not grant the Tenant's permission for the transcription of the hearing that took place on February 25, 2021.

Issue(s) to be Decided

- Should the Landlord be Ordered to complete Emergency Repairs, and if so, which repairs?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 15, 2020, with a monthly rent of \$800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$400.00, and a pet damage deposit of \$400.00.

In his Application, the Tenant said:

Bedroom below health standards for heat. cannot use electric heater due to fuse blowing with electric heat use. NO hot water radiators work since Oct.29 2020. When temperature outside goes to 0 F or below living room temp below health standards 65 F

Further, the Landlord submitted one letter to the RTB dated February 23, 2021, in which they said the following:

SUBJECT: HEAT

Further to the issue of the lack of heat in your apartment our office was unaware of your situation, regrettably the emails you sent us had a typo in the address, you sent it to [Landlord's email address] note the omission of the letter "e" and the resident manager did not convey your predicament to our office and tried to deal with the matter independently.

You finally called my office February 1, 2021 and said you did not have heat in your unit since October.

We spoke with the resident manager who advised us that you had electric space heaters and the parts have been ordered, in any event we had the plumbers out to the property to figure out the problems and come up with a solution.

During this time we also offered you a replacement apartment which was unfortunately not workable due to the staircase.

The plumbers reported that three radiators in your unit had failed, they located parts and restored heat to your unit on Friday February 19, 2021.

I understand that you spoke with the landlord in which you stated that your unit is now too warm and you require handles to be installed on the radiators to control the temperature.

Effective February 23, 2021 one handle has been installed on one of your radiators, we are having difficulty locating handles for the other two radiators but will do our best, in the meanwhile if it gets too warm please crack a window open.

Please let me know if you have any questions.

Sincerely,

[A.L.'s signature]

[A/L]

Property Manager

The Agent submitted this letter a mere two days prior to the hearing, which rendered it inadmissible due to the lateness, pursuant to the Rules. However, I found that it could be useful in resolving the matters before me, and therefore, I asked the Tenant to explain whether his heat issues had, in fact, been resolved, further to his Application for dispute resolution. In the hearing, the Tenant said:

This issue is resolved in the kitchen and the bedroom – the radiators are hot to the touch. It's about body temperature. It is supposed to be body temperature. I would prefer it hotter.

The living room is - it's warm to the touch – not the same heat as the other rooms' temperature. [H.L.] took a temperature and it came out to 88 degrees. But the temperature in the kitchen is different. He used a hand-held digital thermometer.

I'm seeking to have the radiator near body temperature – around 76 or 78. I have an electric heater, and it will blow the fuses if I use it.

I asked the Tenant what he would like the Landlord to do, and he said:

Get a control valve on the living room radiator, so that I can turn it up to maximum and not use as much electricity to maintain a temperature that's comfortable to me.

The Agent, A.L., said:

I spoke to [the Tenant] yesterday and he said the radiators were very hot. He said there's an issue in the living room, and it isn't as hot as he'd like it. It might be a blockage in the line, because this boiler services seven apartments. The plumber would be better to do it in the summer. The Landlord measured the living room temperature, and I recorded 88 degrees. Plus, an electric heater might have been provided by resident manager - no it's [the Tenant's] - as he returned the one the manager gave him and bought his own.

We believe that it is comfortable for the moment and we will do our best to figure this out when we shut the boilers down in May.

I asked the Tenant if the heat had been restored enough to consider that the emergency nature of the matter had been resolved. I asked him if he could make do with a space heater to supplement the heat provided by the three radiators in the rental unit. I said that his evidence was that he relied on the space heater, alone, for heat prior to the Landlord getting the three radiators working again.

The Tenant said:

I can only turn it up half way [on the electric space heater], and maintain a temperature in the room of 70 degrees with both heaters going. But if I turn it up any higher than that, then it blows the fuse for my neighbour and myself.

88 degrees is the temperature of the surface of the radiator. He took the measurement, and it was 70 degrees in the living room, because I have a thermometer in the living room that I use to determine the temperature. The temperature at the radiator may be 88 , but there is a window above it and couch in front of it

With three radiators working, and an electric heater at half, I will allow the delay to have the radiator turned up. They say they won't remove me from the schedule when they remove the hot water from the system.

The Agent, A.L., said: "I'm not aware of the hot water being turned off." However, the Agent, H.L., said:

We tried to satisfy the seven tenants – someone wants it hotter; someone wants it lower - so we try to get it to everybody. We put a timer on, so it's a cycle - maybe three hours on and an hour off, and the thing is on again. It's hard to get a temperature to every room, so we tried to get a schedule to every room that everyone is comfortable with. We've had no complaints from rest of the tenants. Sometimes if it's too hot, they then open the window. It's a hot water heating system, and some people like it very warm.

I have taken the temperature with a temperature gun. On February 22, the radiator in the living room was 98, the kitchen was 109, and the bedroom was 97 – he can't control in living room, but 98 degrees is not bad for heating the room.

The manger supplied him a heater, but he didn't like it, so he bought his own. Two and a half weeks ago I found a better heater – electric oil – I bought a new one for him, and he used it one night and gave it back to the manager, because he didn't want it. We tried to please him. He says he has no controls. Older equipment is hard to get parts for. For controls on it, out of the three, we got two with controls. The third one the stem is broken, but it is risky – we can't guarantee to put it back in one day, so we thought we'd leave it to Springtime and then look at it. I believe [the Tenant] likes a hot room for his temperature. I read it with my manager, and the manager read the temperature on his thermometer in his room. The gun can't read the room temperature, but I have a gun for the radiator. The lowest was 90 on the living room. I think it's lower because it's two feet long – a big rack - so the heat would be a bit more the bigger it is. His room is warm, because my manager will confirm the reading on it together. The hydro is paid by us, not the Tenant, so it's included in rent. Whether he used an electric heater or not - it's included in the rent.

The Agent, F.H., said:

I'm not a specialist, but needless to say, I'm just guessing that a gas boiler system can only go to such a temperature to be safe for the surroundings, and it is dissipated through the air depending on circulation. I would think that 120 would be fairly normal; we have been providing that type of service for years. It's hard to make everybody comfortable. That's why he was provided with an electric heater.

I asked this Agent if a space heater would blow a fuse in building, if the Tenant set the temperature of the space heater more than halfway up. F.H. said:

I don't know if he can change the setting, but I'm around the property, if the breaker pops. It's a combination of he has a lot of things plugged in, as well. That's why they have the safety device of a breaker. Unfortunately, you have to be on your own system, if you want the TV, and stereo, and toaster on, and the heater, too; unfortunately, that is designed to pop. Everything is to Code with the fire department.

The Tenant responded:

Fifteen amps for an entire apartment by today's standard is inadequate, and that's between the two apartments. I can only control how much stuff I have running at any one time. That's where the fuses broke. That's why I can't turn the heater up, and I have to compensate.

The Agents said:

Regarding the electric power, there's no way to increase the power for [the Tenant]. The building was originally a motel, and so these are large rooms leased out as apartments. They were designed in the 50s, so the electric supply is what it is at the property.

The Tenant said: "Yes that sounds right." In his final statement, the Tenant said:

Now that the lines of communication between the three of us are more open, and I can reach out to the property manager when I need to; I believe it's a good situation.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are 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,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

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.

. . .

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement. .

[emphasis added]

Although it took time, because the Tenant had not used the right email address to alert the Landlord of his heating problem, I find that the Tenant's heating issues have been predominantly resolved, aside from repairing the control mechanism of the living room radiator, once the boiler can be turned off for more than a day in the Spring.

I Order the Landlord, at their own cost, and by **May 15, 2021**, to have a certified, licensed professional inspect the radiator in the living room of the rental unit, in connection with the residential property's boiler. I further Order the Landlord to repair or replace the living room radiator or make other necessary repairs to the heating system, as recommended by the professional, by **June 15, 2021**, in order to resolve the Tenant's remaining problem with heat in the rental unit.

If the Tenant has any remaining concerns in this regard after June 15, 2021, he may

apply to the RTB for further dispute resolution, using this Decision in support of any subsequent applications.

Conclusion

The Tenant is successful in his Application for emergency repairs. I find that the Landlord has taken appropriate steps to resolve the Tenant's heating concerns for the most part. I find that minor adjustments are still to be made when the building boiler can be turned off for more than one day in a row in the warmer Spring weather.

The Landlord is Ordered to resolve the Tenant's remaining heating issues, as soon as possible and **by June 15, 2021 at the latest.**

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 01, 2021

Residential Tenancy Branch