



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Marlborough Holdings LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, PSF, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlord make repairs to the rental unit or property; an order that the landlord provide services or facilities required by the law or the tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

The landlord has provided a registered mail receipt to prove that the tenant was served with the landlord's evidentiary material, however none of the landlord's evidence has been uploaded to the Residential Tenancy Branch automated system. No other issues with respect to service or delivery of documents or evidence were raised and all evidence provided by the tenant has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant withdrew the application for an order reducing rent for repairs, services or facilities agreed upon but not provided, reserving the right to apply again at a later date. Therefore, I dismiss that portion of the application with leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 1, 2020 and expired on May 31, 2021, thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,390.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$695.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a 3-story complex and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the rental unit currently has single pane windows which are not insulated. The landlord's agents have been turning off the heat in the building which causes the rental unit to be very cold and drafty. The tenant has nerve problems with his hands and heat is a substantial requirement. Further, the tenant's home office is in a bedroom in the front of the building, and the tenant can hear all the people on the street. The thermostat in the rental unit has a knob that controls the temperature in the rental unit, however the building heat has been turned off a number of times which prevents the tenant from controlling the heat with the thermostat. The tenant seeks an order that the landlord replace the windows to insulated double pane windows in the living room and the bedroom. If windows are replaced with ones that can be slid open and agreed to avoid turning off the building heat, the tenant would be happy to not reduce the rent.

The tenant has provided a copy of a by-law entitled "Standards of Maintenance" which requires heat to be at 22 degrees:

18.1 (1) Heating systems shall be maintained in a safe and good working condition so as to be capable of safely attaining and maintaining an adequate temperature standard, free from fire and accident hazards and in all residential accommodation capable of maintaining every room at a temperature of 72E Fahrenheit (22E Celsius) measured at a point 5 feet (1.52 m) from the floor.

A photograph of the thermostat in the rental unit has also been provided for this hearing which shows a temperature of below 15 degrees Celsius. Numerous requests have been made by email, and copies have been provided commencing on September 20, 2020 until April 29, 2021.

The landlord's agent testified that she does not like tenants to force her to do things, but prefers to communicate. The landlord's agent does not tell all tenants what she is

doing, however COVID-19 has caused delays with contractors. When the landlord's agent tells tenants she will "look into it," it's a matter of having budget issues.

Rent is reasonable, and the landlord doesn't renovate much in order to keep the rent low. COVID-19 has also caused the tenant to be working at home. A lot of tenants have been residing in the building for many years and only move out when they buy a home. If a tenant isn't happy, they have every right to move out.

Top floor suites are very hot, and the landlord tries its best to keep all tenants comfortable. If the tenant were to buy blinds, it would be less noisy.

The landlord cannot raise the rent due to COVID-19 and the landlord has no budget to change windows. The previous plumber was elderly and has retired, and a new plumber has been hired. Now the heat doesn't have to be turned off to the entire building. The landlord's agent asked the plumber in May, 2021 to call the tenant to ensure it was okay, and the plumber said that the tenant had no issues with the heat anymore. Once rent can be increased, the landlord will have the budget to replace windows, but does not like it when people make her do something. Everything takes time.

Analysis

Firstly, I refer to the Residential Tenancy Branch website, which states, in part:

Standards of Maintenance

The *Residential Tenancy Act* requires landlords maintain their rental properties in a state that is suitable for occupancy – they must meet housing, safety and building standards required by law. However the Act does not outline specific requirements for building maintenance standards, such as what the correct temperature is for heating a building.

Local governments have the authority to establish and enforce standards of maintenance bylaws for buildings. Tenants may contact their local government to have municipal inspectors investigate their property to see if any conditions violate health or safety requirements.

I have also reviewed the by-law for the City provided as evidence by the tenant, which clearly sets out that 22 degrees Celsius is a requirement. The *Residential Tenancy Act* specifies that a landlord must provide and maintain residential property, whether or not the tenant knew of a breach of that Section of the *Act* at the time that the tenancy

agreement was made. Therefore, the testimony of the landlord's agent that she doesn't like to be told what to do is of little value in a tenancy and not contemplated by the law:

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.

I have also reviewed the email thread provided by the tenant and note that the landlord replied to the first of the tenant's emails saying that the tenant's unit is the coldest, which I find is an acknowledgement. It appears that it took 3 days to turn the heat on. On April 23, 2021 the tenant again asked the landlord's agent about heat, and indicated that other units that are in warmer locations in the building have double pane windows, which would solve the tenant's issues. On April 28, 2021, 5 days later, the tenant received a response that the landlord would look into a new window soon. The landlord's agent testified that that meant the landlord is having budget issues. The following day the tenant responded that the by-law also states that exterior windows must be maintained and be weather tight.

The tenancy agreement states that heat is included in the rent. If heat is turned off, or if the rental unit, due to its placement in the rental building becomes too cold, that means the landlord has not complied with the *Act* or the tenancy agreement. The tenancy agreement also specifies: "The landlord must not take away or make the tenant pay extra for any facility or service that is included in the rent, unless a rent reduction is made in accordance with the *Act*."

Whether or not the landlord has a budget or not is not, the landlord has an obligation to comply with the terms of the tenancy agreement and the law. I order the landlord to replace the windows in the bedroom and living room of the rental unit with double pane windows by July 15, 2021. I further order the landlord to avoid turning off the heat except for required maintenance with notice to the tenant.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount as full recovery.

Conclusion

For the reasons set out above, the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed with leave to reapply.

I hereby order the landlord to replace the windows in the bedroom and living room of the rental unit without double pane windows by July 15, 2021.

I further order the landlord to avoid turning off the heat except for required maintenance with notice to the tenant.

I further order that the tenant be permitted to reduce rent for a future month by \$100.00 as recovery of the filing fee.

This order is final and binding and may be enforced.

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 15, 2021

Residential Tenancy Branch