



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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, as she said that the Landlord will not turn on the furnace back on, if the temperatures drops, once she has turned it off on June 1.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the .

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents and her evidence by Canada Post registered mail, sent on June 24, 2021. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and she confirmed these addresses in the hearing. The Tenant also confirmed her understanding that the Decision would be emailed to both Parties.

At the outset of the hearing, I advised the Tenant that she is not allowed to record the hearing, and the Tenant affirmed that she was not recording it.

Issue(s) to be Decided

- Should the Landlord be ordered to make emergency repairs, and if so, which repairs?

Background and Evidence

The Tenant confirmed the following details in the tenancy agreement. She confirmed that the fixed-term tenancy began on July 15, 2020, and runs to July 31, 2021, and then operates on a month-to-month basis. She said that she pays the Landlord a monthly rent of \$1,220.00 on the first day of each month. The Tenant confirmed that she paid the Landlord a security deposit of \$610.00, and no pet damage deposit. The Tenant said that the residential property is more than 60 years old, and that it can be colder inside than outside at times.

In her Application, the Tenant summarized the issue, as follows:

Landlord refuse to turn on the furnace when the temperatures have dropped. I contacted the landlord last night at about 8:28 via text to request she turns on the heat as it is 9 degrees. She informed me that the furnace was turned off June 1 and she cant keep turning it on and off! She told me to put on an extra sweater and put the blinds down. I have 2 wool blankets over my duvet and am dressed like it's winter. It's June 7th today. I thank you for your help.

The Tenant read me an email that the Landlord had sent her in response to being served with the Tenant's Notice of Hearing documents and evidence. In this email the Landlord said:

Dispute

Hi [Tenant]

I received your notice of dispute, I will not, however, be attending the meeting on July 19. There was never an emergency.

Your bullying tactics and incessant complaints must stop now.

[Landlord].

In the hearing, the Tenant said that she is getting older, and that her tolerance for the cold is less than it used to be. She also said that she has had broken bones, and that when the temperature is low that her foot hurts.

The Tenant said:

I would appreciate that there is heating when the temperature drops. Right now, we don't need heat, but she turns off the furnace, which means I cannot access heat when it drops.

She talks about my incessant complaints. When the time falls back an hour in November, the lighting goes on later in the common areas. I asked her to put on the lights - the back of the building has no lighting. I send her a text message and she didn't respond. Her way of responding is to do nothing.

When the temperature drops, if we have an early fall, I just want heat. I think my request is quite reasonable.

It's a very old building, so there is floor or hot water heating. There are valves on the registers in each register. But when the furnace is turned off there's no heat.

I think each person has a tolerance for cold, I think nine degrees is very cold in an old building that has poor insulation. This building is older than I am.

Also, there is no ventilation, so I would have to open the windows, because there is no ventilation. I was away from the apartment for 5 – 10 days once, and I come back home and it is - I can't describe it – stuffy - and I have to open the windows, even if it is cold. There's no fan in the bathroom. I'm not a builder, so I don't know how the ventilation is done.

I've never had an issue with a landlord not providing heat.

I asked the Tenant what would be a reasonable temperature at which the Landlord turned on the furnace each year; she said she did not know. She said she remembered when it was already above 17 degrees outside that she was very cold. She said: “I was very cold – it was warmer outside than inside. The insulation is so poor in this building.”

The Tenant said:

When I first moved in, I heard this banging sound and it happened to be the fridge. My friend said it could be the I called [the Landlord] and she came and checked it, and she said, ‘As long as it is working, I’m not repairing it.’ These are the kind of ‘incessant complaints’ I make.

The Tenant submitted a copy of a weather report for June 6, 2021, at 9:02 p.m. This report showed that although the daily temperatures for the week could get up to 19 degrees, the temperature at sunset was consistently nine degrees. It said the wind was “ENE 10 km/hr” and that it “feels like 8°”.

Analysis

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

Section 32 of the Act requires that a landlord maintain the rental unit 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, which make it suitable for occupation by the tenant. [emphasis added]

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. .

[emphasis added]

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. Section 1 of the Act defines "service or facility" to include "heating facilities or services". Clause 4 of the tenancy agreement states that heat is included in the rent; therefore, I find that the Landlord is not at liberty to deprive tenants of heat in the residential property.

The Tenant testified that the Landlord turned off the furnace of the residential property on June 1, 2021, and that she told the Tenant to wear more sweaters if she's cold. I find that the tenancy agreement includes heat, which must not be withheld by the Landlord.

I find that the Landlord's operation of the primary heating system in this residential property has caused significant discomfort to the Tenant during cold spells in the weather. The Tenant advised that the building is over 60 years old and has poor insulation. I find that the Landlord has not considered the age and/or character of the residential property in her operation of the heating system, as I find the poor insulation renders this building colder than other buildings with better insulation. I find it more likely than not that this affects the tenants' level of comfort in the building, and that the Landlord should consider this when operating the primary heating system.

Accordingly, and pursuant to sections 32, 33, and 62 of the Act, **I Order the Landlord** to turn on the furnace and to leave the furnace on, so that the Tenant (and other occupants of the building) can adjust their respective registers appropriately to their specific needs. When the weather is warm, they will not need to use the heat and the Landlord will save money. On those occasions when the temperature dips to uncomfortable levels, the tenants can increase their comfort by turning on the registers in their units.

I Order the Landlord to advise the Tenant by text or email when the Landlord has turned on the furnace, pursuant to section 62 of the Act.

If the Landlord has not turned on the furnace and advised the Tenant of this via text or email, such that the Tenant's registers can emit heat, then **the Tenant is authorized to deduct \$122.00 a month in rent until the furnace is turned on.** The Tenant is not required to reimburse the Landlord for this deduction, should the Landlord turn on the furnace early in the respective month. The Tenant is at liberty to apply to the RTB for further compensation from the Landlord, should this problem continue.

Conclusion

The Tenant is successful in her Application for emergency repairs to the residential property. The Landlord is **Ordered** to (i) turn on the furnace, and (ii) leave it on in this residential property. The Landlord is also **Ordered** to advise the Tenant by text or email of when the Landlord has turned the furnace on, such that the Tenant can obtain heat from the registers in her rental unit.

If the Landlord has not turned on the furnace by July 31st, 2021, then **the Tenant may deduct \$122.00 or 10% of her rent** every month until the furnace is turned on. The Tenant is not required to reimburse the Landlord for any deduction(s) made to rent pursuant to this Decision, once the furnace is turned on. If this problem persists, the Tenant may apply to the RTB for further compensation from the Landlord.

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: July 19, 2021

Residential Tenancy Branch