



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 in response to an application by the Tenants for an order for emergency repairs pursuant to section 32 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to an order for emergency repairs?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on November 1, 2014. The furnace has not been working since February 2017 and the Landlord was aware of this at the time.

The Tenant’s Agent (the “Agent”) states that the Tenants were afraid to attend the hearing because of the Landlord’s behavior and are represented therefore solely by the Agent. The Agent states that they sent a request to the Landlord to repair the furnace on September 3, 2021 and followed up with a verbal conversation on September 8, 2021 informing the Landlord, among other things, that the two space heaters that the Landlord had provided were insufficient. The Agent states that when they spoke with

the Landlord about the repairs the Landlord would not listen to the Agent's request and became verbally hostile. The Agent states that the furnace has not been repaired to date. The Agent asks for an order for the repair of the furnace no later than November 15, 2021 as the weather is becoming colder.

The Landlord states that the Parties entered into an agreement that the Landlord would not have to repair the furnace and would provide portable heaters instead. The Landlord states that the Parties also agreed that the Landlord would not increase the rent in exchange for not repairing the furnace. The Landlord argues strenuously that this agreement means that the Landlord does not have to make repairs to the furnace. I note that when the Landlord was given an opportunity to agree to the repairs and to provide a date for the repairs the Landlord became agitated, raised their voice and repeated their evidence of the agreement insisting that the Landlord did not have to make repairs to the furnace. The Landlord was cautioned about their behavior at the hearing however the Landlord's behavior continued until the hearing was ended.

Analysis

Section 33(1) of the Act defines emergency repairs as 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,
 - (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.

Although the Landlord's evidence is that the Tenants have heat in place by virtue of having portable heaters, I consider that this is not evidence of providing a primary heating system and that the repairs to the furnace are therefore properly emergency repairs.

Section 32(1) of the Act provides that 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 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Whether or not there was an agreement by the Tenants to go without use of the primary heating system, as such an agreement would result in the Landlord avoiding their obligation to maintain the unit and to make it suitable for occupation, I find that this agreement is of no effect.

Given the undisputed evidence that the furnace is not working, accepting the Tenant's evidence that the portable heaters are insufficient and that the weather is becoming colder, I find that the Tenants are entitled to an order for the repair of the furnace as soon as possible. Given the Tenant's request for the date for repairs to be completed I order the Landlord to repair or replace the furnace no later than 5:00 p.m. on November 15, 2021.

Should the Landlord fail to make the repairs as ordered I refer the Parties to Section 87.3(1)(b) of the Act, which provides that, subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has failed to comply with a decision or order of the director.

Conclusion

The Landlord is ordered to repair or replace the furnace no later than 5:00 p.m. on November 15, 2021.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 14, 2021

Residential Tenancy Branch