



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlord to perform emergency and regular repairs to the rental unit, pursuant to section 33; and
- an order authorizing the recovery of the filing fee from the landlord for this application pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to perform emergency repairs to the rental unit?

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The tenants gave the following testimony. SH testified that her tenancy began on May 2, 2021 and that the heating system has been a problem throughout. SH testified that the heating system regularly kicks the breaker requiring her to go into the basement to flip the power back on. SH testified that despite numerous attempts to have the landlord fix it, he has refused. LH testified that it makes her anxious knowing that the heat is most likely not going to work throughout the night and that she or her mother may have to flip the breaker again. SH testified that the landlord doesn't want to fix it. SH testified that on December 3, 2021 the landlord turned off the furnace and provided space heaters as an alternative.

The landlord gave the following testimony. The landlord testified that he did turn off the heat as of December 3, 2021 but only because the tenants kept saying that they would be electrocuted if they continued flipping the breaker when the heating system kicked it off. The landlord testified that he stayed in the basement suite for a week in late November into early December and the heating system worked "flawlessly". The landlord testified that the tenants misuse the thermostat in their unit and are causing the system to lock them out. The landlord testified that the heating system was installed in February 2021 and is one of the most efficient and comfortable systems there is. The landlord testified that technicians are unable to find a problem because there is no problem.

Analysis

The relationship between the parties is an acrimonious one. Both parties stated that the other was being untruthful during the hearing. Both parties alluded to another hearing regarding the tenancy. The landlord testified that the tenants have filed this application in response to him issuing them a One Month Notice to End Tenancy for Cause. The

tenants testified that the notice was issued because of the repeated requests to repair the heating system in the home. 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 the preservation or use of residential property. The act also states that emergency repairs were 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.

The landlord testified that the tenant doesn't know how to use the heat pump and EM (emergency heat) backup furnace system. The landlord testified that the tenants improper use of the system is the actual problem and not the system itself. The tenants testified that if the heating system is less than a year old, than it should work perfectly, but isn't.

Both parties agree that the landlord turned off the furnace of the residential property on December 3rd, 2021. The landlord advised the tenant to use space heaters that he provided if she was concerned about using the heating system.

However, as heating is included as a service in the tenancy agreement, the landlord must provide the tenants the ability to use the heating system, despite the tenants having to pay the cost for it. Also, I find it illogical for the landlord to turn off a heating system that works "flawlessly". The landlord cannot simply turn it off and remove a service without providing a similar type service; two space heaters is not similar type service.

Accordingly, and pursuant to sections 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 can adjust the heat to their

specific needs. In addition, I order the landlord to arrange a time that is agreeable to both parties so that he can explain and demonstrate the proper use of the heating system, and that must be done by February 7, 2022.

The tenants are also entitled to a one time rent reduction of \$100.00 for the full recovery of the filing fee, that rent reduction will be for the rent due on February 1, 2022.

Conclusion

The tenants are successful in their application for emergency repairs to the residential property. The landlord is ordered to turn on the furnace and leave it on. The landlord is also ordered to demonstrate and explain the proper use of the heating system by no later than February 7, 2022.

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: January 20, 2022

Residential Tenancy Branch