



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties
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 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 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he 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 Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide his 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 Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application and the Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents and his evidence by Canada Post registered mail, sent on January 11, 2022. The Tenant provided a Canada Post tracking number as evidence of service. I checked Canada Post's website and determined that the package was delivered on January 14, 2022. 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 he confirmed his address in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Tenant that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Tenant affirmed that he was not recording the hearing.

Issue(s) to be Decided

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

Background and Evidence

The Tenant stated that the tenancy began on November 1, 2016, with a current monthly rent of \$900.00, due on the first day of each month. The Tenant said that he paid the Landlord a security deposit of \$425.00, and no pet damage deposit.

The Tenant said that he has two problems with the residential property. First, he said he has had no heat for five years, although the Landlord has made promises in this regard, but never came through.

The Tenant's second claim is for security of the residential property. The Tenant said that the window has been missing on his patio door since he moved in on November 1, 2016. In the hearing, the Tenant said:

My two primaries are heat and the security of the patio door – it can't be closed, and when it is closed as best it can, there's a ¼ of an inch of space. Wind blows through my place. I have to throw stuff down to prevent cold air from coming in. The patio door – see pictures – it doesn't seal. The top ¼ inch of space is open; the door isn't sitting properly in the track. It rattles in the wind. If it shatters, they'll come after me; I have warned them many times about this. With the wood in the window, I can't secure the place. They said they would replace the window, but they haven't to date. They have boards sitting in the window frame.

There's a thermostat on the wall, but there's no spark. The plumber pointed out all this – he pointed out what was needed: the thermostat controller, the water valve regulator on the heating pipe itself, and that's basically the two major things that the plumber pointed out. It's about \$1,500.00 worth of repairs to replace the valve. It's been a nightmare. I paid my [rent] increases, even though they didn't do the repairs they promised.

The only thing he has done is three weeks ago, he bought me a little heater. I told him it's awesome, but it's not proper heating. I'm paying the hydro for the heater and it's on 24/7. I have valuables in my house, but I can't secure it properly with my windows. I'm on the third floor, but people can climb balconies.

I've sent copies of the emails and texts I've had with them. When the owners came through to do suite inspections, I'd point out these problems and they say talk to the manager. Robert is the new building manager, and he agrees that these are problems. But he said there's nothing he can do, because he's not the property manager, who changes from time to time. I've been getting the run-around for five years.

The Tenant submitted a copy of the tenancy agreement, which states at page three, part three that heat is included in the rent.

The Tenant submitted photographs of the large boards placed in front of window frames, and the door gap through which the cold air blows.

The Tenant submitted texts and emails he wrote to the Landlord requesting that these problems be rectified. One example is the following request on March 11 [year not given]:

I am writing a reminder, I have no heat, wind blowing through our apartment. We are not the only ones without heat, our hydro bill is 3 times normal to try to heat on very cold nights, my wife has to stay elsewhere due to cold and be try to sleep for work, I will be asking assistance from tenant residence board, I don't receive any calls from your office, I will ask them for their services and reducing our rents back to first year since no repairs or window installed since first day, And a judgement on the hydro bills we're paying for heat.

Hopefully you can make speedy repairs and readjust rent..

[reproduced as written]

The Tenant also submitted a response he received from the property managers on March 11, as follows:

Acknowledging receipt of your email.

While we have changed the 1st boiler in the building, 2nd one now needs to be replaced. Compounding the issue are the main heating pipes that distribute from boiler. We are sourcing out all the materials needed and will take some time due to supply change issues. Will continue to find ways to have this resolved.

The Tenant submitted another email he sent to the property managers; however, it is undated, but it contains the same sentiments as the other communications. The Tenant submitted another email dated December 8, 2021, in which he said:

Still waiting for heat in our apartment it's been 5 years, I have written to . . .

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. .

[emphasis added]

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. I find that an apartment in Canada without heat is not suitable for occupation by a tenant, and as such, that the Landlord

has not complied with section 32 in this regard.

Section 65 of the Act states that if the Director finds that a landlord or tenant has not complied with the Act, the regulation or a tenancy agreement, the Director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy. This is supported by Policy Guideline #22, "Termination or Restriction of a Service or Facility", which states:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

. . .

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

Section 1 of the Act contains a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. "Heating facilities or services" are included within this definition, as is "damaged or defective locks that give access to a rental unit".

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services. 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.

Policy Guideline #22 ("PG #22"), states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

The Tenant submitted text and email communications he had with the Landlord, in which he requested that repairs be made to the residential property. The Tenant

requested the repairs when the Landlord would conduct inspections of the rental unit. I find that the Landlord did not respond to these requests for repairs, and therefore, the Landlord breached section 32 of the Act.

Part C of PG #22 addresses when a rent reduction is reasonable in the circumstances where a service or facility had been reduced or eliminated.

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

. . .

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

I find from the Parties' communications that the Landlord was aware of the heating issue, and was taking steps to repair the problems. However, as the Tenant notes, this has been going on for five years. The security problems are related to the heating issues, as the poor fit of the patio door allows cold air in, as well as not allowing the rental unit to be fully locked.

I find that the Landlord has been unreasonable in not having made these repairs. I find that the repair of the patio door and the heat in the residential property are both necessary to make the rental unit suitable for occupation.

Pursuant to sections 33 and 62 of the Act, **I Order the Landlord**, at their own cost, to have a certified, licensed professional inspect the heating system in the residential property by March 1, 2022, and to repair or replace the heating system **by May 1, 2022**.

I Order the Landlord, at their own cost, to have a certified, licensed professional inspect the patio door/window in the rental unit by March 1, 2022, and to repair or replace the patio door/window **by April 1, 2022**.

Pursuant to sections 7, 27, and 65 (1) (f) of the Act, I **authorize** the Tenant **to deduct half of his rent** from all future rent payments until both of these repairs have been completed. This reflects the Landlord's neglect and apparent indifference to the condition in which the Tenant has been living, since he moved in. It also motivates the Landlord to comply with the Act in making the repairs in a timely manner.

Pursuant to sections 7 and 65 (1) (f) of the Act, I also award the Tenant with a reduction of his past rent of **\$4,500.00**, which is five months rent, representing one month for every year that the Landlord has allowed these essential services to be neglected. I authorize the Tenant to **deduct \$375.00** from his rent **for 12 months** in complete satisfaction of this award.

Conclusion

The Tenant is successful in his Application for emergency repairs. The Landlord breached section 32 of the Act by not maintaining the rental unit in a state of repair that complies with health, safety and housing standards required by law.

As set out above, the Landlord is **Ordered** to repair the heating system such that the rental unit is provided with sufficient heat, pursuant to the tenancy agreement and the legislation. The Landlord is also **Ordered** to repair the patio door such that it can be secured, and to prevent outside air from entering the rental unit, pursuant to the Order noted above.

The Tenant is granted a fifty percent **rent reduction** or **\$450.00 per month** until the Orders noted above are complied with by the Landlord.

The Tenant is awarded **\$4,500.00** from the Landlord in recognition of the years that he has lived in the rental unit without these essential services. The Tenant is authorized to deduct **\$375.00** from his monthly rent (including from the months in which the repairs have not been completed), **for 12 months** in complete satisfaction of this award.

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: February 01, 2022

Residential Tenancy Branch