



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, OLC, LRE, FFT

Introduction

On December 31, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an order for regular repairs to the rental property, for a rent reduction, for an order requiring the Landlord to comply with the *Act*, for an order to restrict the Landlord’s access to the rental unit and to recover the filing fee for this application. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The hearing process was explained, and the parties were provided with an opportunity to ask questions about the hearing process.

The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters - Unheard Issues

During the hearing, it became apparent there would be insufficient time to hear the evidence and submissions relating to the full application filed by the Tenant.

Accordingly, I find it appropriate to dismiss with leave to reapply the Tenant's claims for an order requiring the Landlord to comply with the *Act* and for an order to restrict the Landlord's access to the rental unit.

I will proceed with this hearing on the Tenant's claim for an order for regular repairs, for a rent reduction, and to recover the filing fee for this application.

Issues to be Decided

- Is the Tenant entitled to an order for regular repairs to the rental unit?
- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to the recovery of the filing fee of her application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that on October 8, 2021, they reported to the resident building manager that there was no heat in the rental unit. The Tenant confirmed that the building manager took immediate action, attending the rental unit right away and calling the contracting repair company who had recently been working on the heating system of the rental property to attend to investigate the reason for the malfunction.

The Landlord testified that they learned of the malfunctioning heating system in the rental property on October 21, 2021. However, they agreed that the Tenant would have been required to advise the resident building manager first before they would be contacted. The Landlord testified that they spoke to their contractor on October 17, 2021 and understood that the malfunction had been resolved. The Landlord testified that they offered the Tenant a 50% rent reduction for the period between October 8 to 15, 2021, due to the malfunctioning heating services during this time.

The Landlord and Tenant agreed that the Landlord had paid the Tenant \$262.50 in compensation in the form of a 50% rent reduction for the period between October 8, 2021, to October 15, 2021.

The Tenant testified that the heat in the rental unit has never been completely repaired, stating that they would occasionally get heat, at most warming the rental unit to 17 degrees on a warm day but that the heat would consistently fail again, cooling the rental unit to very cold temperatures. The Tenant testified that often if they have heat, their neighbour does not, and if their neighbour has heat, they do not.

The Tenant and the Landlord agreed that there are several rental units in the rental property that had experienced heating system malfunctions between October 2021 to February 2022.

The Landlord testified that they had their repair contractor attend the rental property and this rental unit every time they received a notification of the malfunction and that they have been making every attempt to determine the cause of the malfunction and to repair the primary heating system. However, the Landlord agreed that as of the date of these proceedings, the heating system malfunctions had not been completely resolved. The Landlord testified that they had supplied the Tenant with three portable electric heaters to use while they worked on the heating system repairs.

The Tenant testified that during the recent cold weather snap, the average temperature in their rental unit was 5 degrees, with both the portable electric heaters running. The Tenant also testified that if they attempt to use the third portable electric heater, it overloads their electrical system and flips the power breaker for the rental unit, so they are unable to run three portable electric heaters at the same time.

The Tenant testified that they have often had to stay elsewhere, due to the lack of heat in the rental unit, especially on really cold days, as they find the rental unit uninhabitable at such low temperatures.

The Landlord offered a 25% rent reduction and to pay 100% of the Tenant's electricity bills as a settlement offer during these proceedings. The Tenant declined this offer, requesting that this Arbitrator render a decision on their request for a 50% reduction.

The Landlord testified that they did not feel that the Tenant should be entitled to a 50% rent reduction, as they are attempting to fix the problem, that they have provided the Tenant with portable electrical heaters to use and that the heat was not always off in the rental unit.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

During these proceedings, both the Tenant and the Landlord agreed that the primary heating system for the rental property has been malfunctioning since October 8, 2021. Section 33 of the *Act* states the following:

Emergency repairs

33 (1) *In this section, "emergency repairs" means 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.*

Pursuant to section 33 of the *Act*, I find that the repairs required to this rental property constitute an Emergency Repair and must be completed as soon as reasonably possible. I also find that the *Act* requires a landlord to provide a reliable primary heating source for all their tenancies.

I accept the Landlord's testimony that they have secured a repair/contracting company to complete the necessary repairs and that they have been working to affect these repairs since October 2021 but that as of the date of these proceedings, the primary heating system continues to malfunction, alternating between providing minimal to no heat to this rental unit. Although I find that the Landlord has taken reasonable action to attempt to repair the malfunctioning primary heating system, I find it completely unreasonable that this Tenant and the other renters living in this rental property have had to live with a consistently malfunctioning primary heating system, for 123 days.

I also accept the Landlord's testimony that there is a plan to complete additional repairs to this system that they and their repair company believe will resolve ongoing issues

with the malfunctioning heating system. Accordingly, I order the Landlord to complete all repairs to the primary heating system for the rental property within 60 days of the date of these proceedings and no later than April 8, 2021. The Landlord must use a certified technician were required for these repairs.

If the Landlord requires more time to complete the repairs to the primary heating system of the rental property, the Landlord must apply for and obtain an order from this office to extend the timeline to complete these repairs.

As for the Tenant's request for a rent reduction, due to the required repair being an emergency repair under the *Act*, and combined with the fact that this system has been malfunctioning for 123 days and that this Tenant is reliant on the use of portable electric heaters to provide heat to their rental unit, at their own cost, I find that it appropriate to retro-actively reduce the monthly rent for this tenancy by 50% as compensation to the Tenant for the Landlord's failure to reliably provide a contracted service under the tenancy agreement and the *Act*.

Therefore, I order that the rent for this tenancy is retro-actively reduced by 50%, from \$1,750.00 to \$875.00 per month for the period between October 8, 2021, to February 28, 2022, a total of 136 days at the daily rate of \$28.77 per day, and in a total awarded amount of \$4,142.47.

Monthly Rent	\$1,750.00
Yearly Rent	\$21,000.00
Per Diem	\$57.53
50% Rent Reduction Per Diem	\$28.77
Days Refunded	144
Awarded to TT	\$4,142.47

Additionally, I order that the future monthly rent for this tenancy, starting March 1, 2022, is also reduced by 50%, to \$875.00 per month until such a time as the Landlord has completed all repairs to the primary heating system for the rental property.

If there is a dispute between these parties as to the date of the completed repairs, the Landlord must apply for and obtain an order from this office in order to return the reduced rent to the normal monthly amount.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

I grant permission to the Tenant to deduct \$3,979.97 from their future monthly rent payments in full satisfaction of the amounts awarded to them in this decision, consisting of \$4,142.47 in a retroactive rent reduction, \$100.00 in the recovery of their filing fee for these proceedings, less the \$262.50 that the parties agree the Landlord has already paid to the Tenant.

Conclusion

I hereby order the Landlord to make all necessary repairs to the primary heating system for the rental property no later than April 8, 2022.

I order that the monthly rent for this tenancy is reduced by 50%, to \$875.00 per month until such a time as the Landlord has completed all repairs to the primary heating system for the rental property.

I grant permission to the Tenant to deduct \$3,979.97 from their future month rent payment in full satisfaction of the amounts awarded to them in this decision.

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: February 7, 2022

Residential Tenancy Branch