



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, RP, RR, PSF, MNRT

Introduction

On February 17, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, and seeking a Monetary Order for the cost of emergency repairs pursuant to Section 33 of the *Act*.

The Tenant attended the hearing. As well, G.J. and S.R. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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.

The Tenant advised that the Landlord was served the Notice of Hearing and evidence package by hand on or around February 22, 2022, and G.J. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the

Tenant's Notice of Hearing and evidence package. As such, this evidence will be accepted and considered when rendering this Decision.

G.J. advised that the Tenant was served with the Landlord's evidence by hand on March 15, 2022, and the Tenant confirmed receiving this package. As such, this evidence will be accepted and considered when rendering this Decision.

The Tenant was notified that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, the Tenant was advised to choose the most pressing matter that he would like addressed in this hearing. Consequently, this hearing primarily addressed issues related to his allegations that the heat in the rental unit was not functioning properly. The Tenant's other claims are dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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 to a repair Order?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2021, that rent was established at \$850.00 per month, and that it was due on the first day of each month. A security deposit of \$450.00 was also paid. G.J. and S.R. were cautioned that the Landlord was not permitted to collect more than half the amount of rent for a security deposit, pursuant to Section 19 of the *Act*. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that the heat has not been working in the rental unit since November 2021. He stated that despite turning the control for the heat on fully, nothing comes out of the radiators. He submitted that he called, emailed, and went to the Landlord's officer to speak about this issue directly, but nothing was ever fixed despite some repair people attending the rental unit. He stated that these people confirmed to him that it was cold in the rental unit and that the heat was not working. However, he did not provide any documentary evidence to corroborate these statements. He submitted that he was provided with a space heater, which has led to increased hydro bills. He referenced a letter and two emails that he sent to the Landlord regarding fixing this issue.

He stated that he became sick, and he went to the hospital where he was diagnosed with frostbite; however, there was no medical documentation to corroborate this claim. He cited the doctor's note and the prescription for Reactine to support his position that he was significantly ill from the lack of heat in the rental unit.

G.J. advised that there were two maintenance requests submitted as documentary evidence where the Landlord had sent in a repair person to check the heat issue. On one occasion, it was determined that the heat was functioning. On the other occasion, the heat was not even turned on by the Tenant. This repair person turned on the heat, waited, and then left after it was evident that the heat was in fact working. She stated that maintenance people went into the rental unit on two other occasions and determined that the heat was fully functioning. Although, she acknowledged that this corner unit will not get as warm as some other units that are not exposed to the outside on both walls. She referenced the documentary evidence submitted to support the Landlord's position that the heat is functioning.

The Tenant suggested that the maintenance people that the Landlord sent may not have been accredited professionals, and he stated that these people advised him that they could not walk into the rental unit as it was so cold. He refuted the submissions that he was offered a different rental unit to live in.

G.J. confirmed that the Landlord's maintenance person checked the heating issue, as well as a separate plumbing and heating company. She reiterated that the Tenant was offered to move to a different unit in the existing building. In addition, he was also offered to move to a different building where heat was included, and there would be no cost to the Tenant to move as the Landlord would cover this. However, the Tenant declined this offer as well.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* states that the Landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

In addition, a claim such as this regarding a heat issue would also fall under Section 33 of the *Act* with respect to an emergency repair.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Furthermore, given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

As noted above, the burden of proof rest with the Tenant to prove that the heat is not functioning in the rental unit. When weighing the totality of the evidence before me, apart from his mostly subjective thoughts about the heat, I do not find that he has submitted sufficient compelling or persuasive documentation to support his claim, on a balance of probabilities, that the heat is not working. Furthermore, given that his medical documentation does not indicate any diagnosis of frostbite, and as the prescription appears to be for an allergy medication, I do not find that these documents corroborate any suggestion of illness, let alone any suggestion that whatever illness the Tenant is suffering from was due to a lack of heat. As such, I find that I give little weight to the Tenant's evidence or submissions.

Conversely, I have documentary evidence from the Landlord confirming that responses to the Tenant's concerns were addressed, that maintenance and repair people were dispatched on numerous occasions to investigate those concerns, and that it was determined that there is no issue with the functioning of the heat in the rental unit. As such, I find that I prefer the Landlord's evidence on the whole.

As I am not satisfied that the Tenant has met the burden of proof in this claim, I dismiss his Application, for a repair Order of the heat, without leave to reapply. The remaining claims in the Tenant's Application are dismissed with leave to reapply.

Conclusion

The Tenant's Application with respect to a repair Order for heat are dismissed without leave to reapply.

The Tenant's other claims that have been severed are dismissed with leave to reapply.

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: April 7, 2022

Residential Tenancy Branch