Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

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

- an order requiring the landlord to complete emergency repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, tenant JT ("tenant") and "tenant MB" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 37 minutes from 9:30 a.m. to 10:07 a.m.

The landlord and the two tenants confirmed their names. The landlord confirmed that she owns the rental unit. Both tenants agreed that the tenant would be the primary speaker at this hearing, on behalf of both tenants.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties attempted to settle this application but were unable to do so. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The tenants filed this application on March 30, 2022 and a notice of hearing was issued to them by the RTB on March 31, 2022. The tenants were required to serve that notice, the application, and all other required evidence in one package to the landlord, within one day of receiving the documents from the RTB, as per RTB *Rule* 10.3.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence.

Issues to be Decided

Are the tenants entitled to an order requiring the landlord to complete emergency repairs to the rental unit?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019. Monthly rent in the amount of $2,030.00 is payable on the first day of each month. A security deposit of $1,000.00 and a pet damage deposit of $300.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by the landlord and the tenant. The tenants continue to reside in the rental unit.

The tenant testified regarding the following facts. When the tenants moved into the rental unit on September 1, 2019, the main source of heat was two woodstoves, which they were using. On January 20, the tenants sent a text message to the landlord saying that smoke was filling their house from the living room wood stove. The tenants did not use the wood stove after this date. On January 25, the tenant saw the landlord in person, had a discussion with her, and the landlord looked at the wood stove in the rental unit. On February 1, the landlord told the tenants that the fireplace technician

would be coming on February 8. Someone came to look at the fireplace but did not actually inspect it properly because it was $100.00 cash job. The landlord came over to discuss the heat pump installation but said that she wanted a rent increase from the tenants, so they questioned why. On March 13, the landlord sent a letter to the tenants regarding a chimney sweep to be done on March 31 and she said that the tenants were responsible to pay for damages to the rental unit. On March 16, there was a meeting with the landlord, the tenant, and a witness, when the landlord said not to use the in-floor heating at the rental unit because it had not been used in eight years and she was not sure if it worked. The tenants provided an audio recording of this conversation. The landlord said to use the one kitchen wood stove and then said not to, in her letter. The landlord indicated that plug-in heaters would be supplied to the tenants. On March 17, the landlord provided a letter that woodstoves were the main source of heat at the rental unit for 12 years. The landlord sent a letter to the tenants, cancelling the chimney sweep on March 31, and the heat pump installation on April 1.

The tenant stated the following facts. On March 21, the landlord sent a letter to the tenants, saying that she would install the heat pump if the tenants would agree to a date of eviction. The tenants are using three plug-in heaters and their hydro has tripled in cost. There is a backroom baseboard heater, but it does not heat the entire rental unit as it does not heat past the laundry room. The tenants provided a copy of a letter from the person whom they bought the firewood from, indicating that they bought 6 cords, they never had any issues with the firewood, and they bought the same firewood for two years in a row with no issues. The landlord told the tenants that it was not safe to use the chimney and the landlord did not clean around the wood stove. The tenants called a company who told them it was ok to use the wood stove. However, the landlord said not to use it because it was unsafe for her health. The tenant ordered a part, for the broken door handle, from a local supplier, that said it would take eight weeks to reach the tenants. Tenant MB ordered the part last September, which shows how long it takes for the part to arrive. The landlord bought a heat pump, the installer came to install it, but it was never actually installed. That is the reason why the tenants waited to file this application because they thought the landlord would install the heat pump.

The landlord testified regarding the following facts. She called the company, a representative came and looked inside the fireplace with a mirror, and he said it was plugged. On January 25, the landlord was told by the tenant about the issues, she immediately went over and set up the cleaning brush on the roof, but she could not get the brush all the way in because it was plugged. The landlord cleaned both chimneys in September. Tenant MB said that he broke the handle on the new door and told the landlord that he would buy a new handle online. The landlord had to chip away and

hammer because it was hard to get inside the fireplace. It was four months of burning, which is not normal, since the landlord has had fireplaces for 40 years and has been able to clean the wood stove. This is the second time that the landlord was cleaning and it was loaded. The landlord called the company on February 8 to look at the fireplace, and the representative said that they need dry wood, not unseasoned wood, and he sold the same wood to other people, which caused the same problems. The wood was brought in October, and tenant MB was scrambling to find wood and did not use his regular supplier. The tenants did not use split wood, there was no wood anywhere to be found, and the price was unreasonable for seasoned wood. The landlord gave notices to the tenants that she could turn on the in-floor heating at the rental unit, which is expensive, but the tenants did not respond. The landlord is willing to turn on the in-floor heating at the rental unit, it is available, but the tenants do not want it. The landlord is not going to install the heat pump because she cannot trust the tenants anymore to use the other wood stove because of the broken handle. The tenants have used cat litter to burn in the fireplace, which is not allowed. The landlord does not want to rent the house in the condition that it is anymore, since it is too much for her as a landlord, and she does not want to have tenants at the property. The landlord properly cleans the fireplace and did not receive any complaints from the tenants for the past two years.

The tenant stated the following facts in response to the landlord's submissions. The chimney has never been professionally cleaned, since the landlord has done it personally in the past few years. The landlord has not had any issue with the use of the tenants' firewood in the other wood stove. The tenant only used a little bit of cat litter to burn in the fireplace. The landlord trespassed to take pictures and submit it for this hearing. The tenants called the representative from the company, who said that he would provide a report, but it would be a "cash job," so it was "off the record." The tenants need heat now at the rental unit and they do not accept the landlord's offer for in-floor heating because it is too expensive, and it has not been used in so long so they do not know if it will work. If the landlord inspects and feels it is safe to use the in-floor heating at the rental unit, maybe it will work, but the tenants do not know. The tenants are prepared to pay for wood to use the wood stove and they would not have taken the rental unit, if they knew there was only in-floor heating available. The tenants are inhaling the smoke and fumes in the house because the landlord counselled the chimney sweep.

Analysis

Section 32 of the *Act* states the following:

32(1) 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 33 of the *Act* states the following, in part:

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

(iii) the primary heating system…

Residential Tenancy Policy Guideline 1 states the following:

SERVICES AND FACILITIES

1. *A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.*
2. *If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

On a balance of probabilities and based on the testimony and evidence of both parties, I make the following findings.

I find that the tenants' request for an order for the landlord to provide heat is an emergency repair that is urgent, necessary for the health of the tenants, and relates to the primary heating system, in accordance with section 33 of the *Act*. I find that the landlord is required to maintain heating in the rental unit in a state of repair that complies with health, safety and housing standards, as per section 32 of the *Act*.

I find that heat is a service that is essential to the tenants' use of the rental unit as living accommodation, as per Residential Tenancy Policy Guideline 1.

I find that both parties agreed that the electric heaters currently being used by the tenants, are insufficient to properly heat the entire rental unit.

During this hearing, the landlord agreed to turn on the in-floor heating at the rental unit, so that the tenants have access to sufficient heat. The tenants refused this offer, stating that the in-floor heating was too expensive, and they did not know if it would work because the landlord said it had not been used in eight years. However, the tenants are not permitted to select what type/source of heating they want to use at the rental unit. Both parties' written tenancy agreement, which is on the standard RTB form, indicates that heat is excluded from the monthly rent cost, so the tenants are required to pay the cost for the use of heat. There is no specification in the tenancy agreement regarding the type of heat to be used (whether wood burning stoves or in-floor heating or other sources) or the cost/limit for the use of heat, at the rental unit. The tenants did not refer me to written documentation during this hearing, to indicate that they are entitled to select the type/source of heat to be used, the cost/limit for same, or other such information. The landlord is required to provide heat as an essential service at the rental unit and the tenants can choose to use it or not.

I order the landlord, at her own cost, to have a certified, licensed professional inspect and turn on the in-floor heating at the rental unit, and ensure that it is in safe, proper, working order and provides sufficient heating for the rental unit, by May 15, 2022.

I order both parties to abide by section 29 of the *Act* to facilitate the above order. Section 29 of the *Act* states the following:

> *Landlord's right to enter rental unit restricted*
> *29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
>
> > *(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
> > *(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
> >
> > > *(i) the purpose for entering, which must be reasonable;*
> > > *(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit;
(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The landlord offered to turn on the in-floor heating for the tenants, as per an email, dated March 30, 2022, which was provided by the landlord, as evidence for this hearing. The landlord offered the above again at this hearing, which the tenants refused. In this decision, I ordered the landlord to turn on the in-floor heating at the rental unit. Therefore, the tenants' application to recover the $100.00 filing fee is dismissed without leave to reapply, since the tenants were unsuccessful in obtaining their specific type/source of heat to use at the rental unit.

Conclusion

I order both parties to comply with the above orders.

The tenants' application to recover the $100.00 filing fee is dismissed without 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 26, 2022

Residential Tenancy Branch