



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SLICE REAL ESTATE INVESTORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, RR, MNDCT, RP, OLC

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness E.F. who affirmed to tell the truth. This hearing lasted 67 minutes. At the end of the hearing, both parties were provided with a final opportunity to present evidence and testimony otherwise not presented during the body of the hearing.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

As set out in Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) both parties were advised that evidence must be presented by the party who submitted it and that evidence not presented may not be considered.

Preliminary Issue- Service

The tenant testified that she served the landlord with her application for dispute resolution and evidence via registered mail on or around April 16, 2022. The landlord testified that she received the above documents around that time. I find that the landlord was served with the above documents in accordance with sections 88 and 89 of the *Act*.

The landlord testified that the tenant was served with the landlord’s evidence via registered mail that was sent on July 7th or 8th, 2022 and via posting on July 7th or 8th, 2022. The tenant testified that she received the landlord’s evidence in person on July 17, 2022 and later received the registered mail. The landlord agreed that service may have been on July 17, 2022, and not July 7th or 8th, 2022. I find that the landlord’s evidence was served on the tenant in accordance with section 88 of the *Act*.

Preliminary Issue- Claims No Longer Applicable

Both parties agree that the landlord sold the subject rental property, and that the landlord is not the tenant’s current landlord. Both parties agree that the new landlord took possession of the subject rental property on April 19, 2022.

I find that as the tenancy has ended between the parties, the tenant no longer has standing to claim for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement and an Order for regular repairs. I cannot Order the landlord to make repairs on a property they no longer own or order the landlord to comply with a tenancy agreement, Act or Regulation when a tenancy between the parties is no longer in place.

Pursuant to my above findings, I dismiss the above claims without leave to reapply.

Preliminary Issue- Severance

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the tenant's claim for a rent reduction for insufficient heating is not sufficiently related to the tenant's claim for a Monetary Order for damage or compensation because the claim for damage and compensation is based on a claim of loss of quiet enjoyment of the property related to issues other than the heat.

I find that the tenant's claim for damage and compensation is unrelated to the tenant's claim for a rent reduction because the basis for the tenant's claim for monetary damages under section 67 of the *Act* rests largely on facts not germane to the question of whether there are facts which establish the grounds for the claimed rent reduction pursuant to section 65 of the *Act*. I exercise my discretion to dismiss the tenant's claim for a Monetary Order for damage and compensation, pursuant to section 67 of the *Act*, with leave to reapply.

Issues to be Decided

1. Is the tenant entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on May 5, 2021. Monthly rent in the amount of \$1,550.00 is payable on the first day of each month. A security deposit of \$775.00 and a pet damage deposit of \$775.00 was paid by the tenant to the landlord.

The tenant testified that she still resides in the subject rental property.

Both parties agree to the following facts. The subject rental building is a house with two suites and that the tenant resides in the lower basement suite. The house (and both suites) is heated by a single gas furnace. The control for the thermostat is located in the upper suite and the tenant is unable to control the temperature in the basement suite.

Tenant's Evidence

The tenant testified that the subject rental property was not properly heated by the furnace and never reached above 18 degrees Celsius between September 2021 and March 2022. The tenant testified that the upper suite received a considerable amount of sunlight which brought up the temperature in the upper suite and so the furnace turned off, but the basement suite remained cold as it was not heated by the sun and the furnace was off.

The tenant testified that she started talking to the landlord about the lack of heat in the basement in September of 2021 but the landlord was dismissive and denied that anything was wrong. The tenant testified that she started really pushing the landlord in January of 2022 and the landlord purchased two space heaters for the tenant to use in either December 2021 or January 2022.

The tenant testified that the space heaters were not enough to heat up the two-bedroom suite and the property overall remained cold. The tenant testified that the space heaters were not an appropriate solution to the heating problem because they could not be left on when the tenant was not home or at night and so the home remained cold most of the time. The tenant testified that the space heaters also cost her extra money to run and that she was already paying for gas heating that wasn't working and did not want additional electricity charges.

The tenant entered into evidence photographs of a digital thermometer reading to show the temperature in the subject rental property. The following digital readings for readings on the following dates were entered into evidence:

- November 14, 2021- 17.2°C
- November 18, 2021- 17.7°C
- November 21, 2021- 17.1°C
- November 29, 2021- 16.7 °C
- December 16, 2021- 13.8°C

- December 17, 2021- 17.2°C
- January 25, 2021- 15.2°C
- February 15, 2022- 17°C
- February 17, 2022- 15.8 °C
- February 25, 2022- 15.8°C
- March 6, 2022- 17.3°C

The tenant testified that her indoor plants died from the lack of heat. The tenant testified that the landlord told her that having a room 12°C is normal. The tenant entered into evidence a text message from the landlord dated January 10, 2022 which states:

Just so you can compare this is my work space this morning.

Attached to the above text is a photograph of a digital thermometer reading 12 °C.

In support of the tenant's testimony that the landlord was unresponsive to her complaints, the tenant entered into evidence the following text exchange between the landlord and the tenant:

- Undated
 - Tenant:
 - Hello. Both disrespectful and unlawful to ignore head and noise complaints. If someone is not here by tomorrow to fix the heat, I have the RTBs permission to take this emergency into my own hands. Cheers.
- December 28, 2021
 - Tenant:
 - When talking with [the upper tenant's] household about noise, please discuss utilities. I don't feel it's fair to pay one third of lights being left on when no one is home. The garage light is on 24/7. I'm already taking on their additional person and the snake incubator with no complains but leaving lights on for no reason or when no one is home I'm not alright with.
 - Landlord:
 - I am happy to send over a space heater or have [the upstairs tenant] turn the furnace [remaining text not submitted into evidence.]

The tenant entered into evidence another undated text exchange between the landlord and the tenant, only a portion of the landlord's text was submitted.

- Landlord:
 -the thermostat on them so you don't have to adjust multiple times during the day or night. I believe they can be programmed as well.
- Tenant:
 - Miss, you have an obligation to provide each unit with sufficient heat. It is urgent and an emergency. You don't have one address here you have two. It's not my job to absorb your inadequacies or to accept your lack of communication or lack of urgency. Heat is an emergency and you have been given month plus 24 hours to deal with it. You have refused and only offer suggestions that cost the tenants more. That's unacceptable. It has been over the max time for you to respond. I have express permission from the tenancy bureau to have my own repairs done and to bill it to rent. All I need from you is your full address for court papers please and thank you.
 - Fyi: in addition to space heater not being accepted as it makes us pay twice for heat that is supposed to be there, you cannot leave space heaters on unattended, I also am an illegal suite with no fire door between me and [the upper tenant] so it would be irresponsible for you to suggest this as the solution.

The tenant testified that a December 23, 2021 email to the landlord regarding heat was ignored. The tenant entered into evidence a screen shot of an email from the tenant to the landlord dated December 23, 2021. The portion of the email that is viewable does not pertain to heating issues.

The tenant testified that she does not have any evidence of the landlord's failure to respond prior to November 2021 because it was lost from her phone.

The tenant testified that she is seeking the landlord to return 70% of rent paid from September 2021 to March 2022 for a total of \$6,510.00 for failure to provide adequate heating. The tenant's written submissions state that she is seeking 70% of rent for 180 days or six months. I note that September 2021 to March 2022, inclusive of the start and end months, is seven months. This discrepancy was not addressed by the tenant in the hearing. The tenant did not request an amendment to her claim to increase the quantum sought.

The tenant testified that she is seeking 70% of rent because that's what she read another tenant in a different Residential Tenancy Branch proceeding was awarded when their landlord failed to provide adequate heat. The previous Residential Tenancy Branch decision was entered into evidence for consideration.

The tenant testified that the lack of proper heating had a large impact on her because during the time the rent reduction is claimed, she was a graduate student working at the hospital and spent a large amount of time working at her computer in the subject rental property. The tenant testified that it was really difficult to sit and work on her computer in a cold room. The tenant testified that her roommate has a five year old child who comes to visit and is always cold and bundled up because it is so cold.

Both parties agree that the landlord had the HVAC ducts cleaned to try and help resolve the heat issues. The tenant testified that while the ducts were filthy and hadn't been cleaned in years, and that their cleaning did not resolve the temperature issues.

Landlord's Evidence

The landlord testified that she did not ignore any messages from the tenant regarding the heat and was always responsive. The landlord testified that she agrees that temperatures in the subject rental property were less than 21 degrees in the claimed period and that she worked with the upstairs tenant to increase the temperature in the subject rental property.

The landlord testified that in response to the tenant's complaints about heat she:

- had the tenant from the upper suite (witness E.F.) close the vents in his unit, to force more heated air to the basement suite,
- asked witness E.F. not to use his electric fireplace so that the furnace didn't turn off due to the additional heat coming from the fireplace,
- asked witness E.F. to turn up the temperature for the entire house, and
- offered the tenant space heaters.

The landlord testified that the tenant was very against space heaters and that she sent them to the tenant anyways to help with the heating issues. The landlord testified that the tenant told her that the space heaters helped but were not enough. The landlord testified that she would have sent the tenant more space heaters if she was receptive, but she was not. The landlord testified that replacing the HVAC system was not an

option while the tenant was living there as that scope of work to replace the HVAC system would require the unit to be empty.

The landlord testified that the intent of the January 10, 2022 text message was not that the tenant should “suck it up”, just that houses have cooler areas and that she uses a space heater in her space as well.

The landlord testified that its speculative that the tenant’s plants died because of the heat.

The landlord called witness E.F. who affirmed to tell the truth. Witness E.F. testified that the landlord was always very responsive to any issues that arose with the house and that the landlord usually got back to him within the hour or the day when an issue was raised.

Witness E.F. testified that he resided in the upper suite of the subject rental property from roughly May or June of 2021 to March of 2022 and that during this time the landlord contacted him on a number of occasions to help with the heat in the subject rental property. Witness E.F. testified that the landlord asked him to raise the temperature the furnace was set to, close his vents to re-direct heat to the basement and stop using his electric fireplace. Witness E.F. testified that he followed the landlord’s above direction; however, on some occasions his upper suite was very hot and so he did not raise the thermostat setting every time the landlord asked.

Witness E.F. testified that the tenant used to speak directly with him regarding the heat and not with the landlord but the number of complaints he received about the heat bordered on harassment, so he directed all complaints to be made to the landlord.

Analysis

Section 65(1)(c)(i) of the *Act* states:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

Section 32(1) of the *Act* states:

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(1)(c)(iii) defines an emergency repair as a repair made for the purpose of repairing the primary heating system.

Pursuant to section 32(1) and section 33(1)(c)(iii) of the *Act*, I find that the landlord had an obligation to provide adequate heat to the subject rental property. Based on the testimony of both parties and the temperature readings entered into evidence by the tenant, I find that the landlord breached section 32(1) of the *Act* by failing to provide adequate heating. I find that heating ranging from 13.8°C to 17.7°C is below a reasonable level which is commonly known to be between 21°C and 22°C, a fact for which I take judicial notice.

I find that the landlord's initial solution to the heating problem such as closing the upper unit's vents, not using the upper unit's fireplace and increasing the thermostat temperature setting, clearly did not work as the temperature readings provided by the tenant did not improve over time. I accept the tenant's undisputed testimony that the space heaters did not provide enough consistent heat through the day and night to heat the space. I accept the tenant's undisputed testimony that leaving space heaters on overnight and while the subject rental property is empty is a safety concern and was therefore not a long-term solution to the heating problems.

Residential Tenancy Branch Policy Guideline 2B states that furnace replacement usually has a minimal disruption to tenants and is unlikely to require vacancy. I find that the landlord has not proved, on a balance of probabilities, that replacing the furnace or otherwise repairing it, was not a valid option. I find that the landlord breached section 32(1) of the *Act* by failing to fix the heating problems faced by the tenant.

The tenant submitted that she is seeking 70% of rent paid over a six month period for a total of \$6,510.00 and that the quantum sought is based on what another tenant who was not provided with heat was granted in a separate dispute.

Section 64(2) of the *Act* states:

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant did not provide any evidence as to why she was entitled to a 70% rent reduction other than that's what someone else was granted. As stated in Rule 6.6 set out above, the burden of proof is on the applicant. I find that while the value of the tenancy was undoubtedly reduced by the inadequate heat and the landlord's failure to fix the lack of adequate heating; I find that the tenant has not proved that she lost 70% of the value of the entire tenancy.

The tenant did not testify that she was unable to use the subject rental property for 70% of the tenancy, just that it was difficult to sit in the cold at her computer. I accept the tenant's testimony on this point but find a 70% rent reduction to be excessive and that the tenant has not proved that the value of the tenancy was reduced by 70%. I find that a 40% rent reduction is more reasonable as the tenant was able to continue to reside in the subject rental property throughout the tenancy, even though the heating was inadequate. I note that pursuant to section 64(2) of the *Act*, I am not bound by previous Residential Tenancy Branch decisions.

Pursuant to section 65(1)(c)(i) of the *Act*, I order the landlord to repay the tenant 40% of six months' rent paid by the tenant. I award six months' rent as this is the amount claimed by the tenant in the application for dispute resolution and because no amendment was sought in the hearing.

The calculation for 40% of six months' rent is as follows:

$\$1,550.00 \text{ (monthly rent)} * 6 \text{ (month of rent claimed)} = \$9,300.00 \text{ (6 months' rent)}$

$\$9,300.00$ (6 months' rent) * .4 (40%) = **$\$3,720.00$**

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the Act.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$3,820.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 03, 2022

Residential Tenancy Branch