



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to make repairs to the rental unit and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The tenant and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issues –

The landlord confirmed receiving the tenant's application by email, but said they did not receive any evidence. The tenant confirmed that he did not serve his evidence to the landlord. The evidence consisted of 6 pages of text messages. As a result of the tenant not serving the landlord as required by the Rules, I have excluded the tenant's documentary evidence from consideration in this matter.

As the landlord did not provide evidence, the hearing proceeded on the parties' respective oral evidence.

As another preliminary matter, the landlord's agent, HG, said that the name of the landlord was a named company and that he was not the landlord. As a result, I have amended the tenant's application and used the company name as the landlord. This change is reflected on the cover page.

Issue(s) to be Decided

Is the tenant entitled to orders requiring the landlord to make repairs and to comply with the Act, tenancy agreement, or Regulations?

Background and Evidence

The tenancy began on November 1, 2021, for a monthly rent of \$1,100, and a security deposit being paid by the tenant in the amount of \$550. No written tenancy agreement was filed in evidence.

The evidence shows the rental unit has a total of 5 floors, 54 units and the tenant's rental unit is in the top floor, corner unit.

As to the tenant's request for repairs, the tenant wrote in his application, the following:

Proof of it not being repaired will be given on a separate sheet No heat from Nov 1 – present

[Reproduced as written]

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenant wrote the following in his application:

I moved on Nov 1 and there was no heat I have tried to get them to fix it. I have test messages as proof. He showed up from Feb - April and still it is broken. I think a brand new heater is needed

[Reproduced as written]

The tenant said he moved in on November 1, 2021 and was told by the building manager, TD, that there was a problem with the heating and that it would be fixed. The tenant said that he had no heat and it has really cold in the rental unit, requiring him to wear layers in the unit to stay warm.

The tenant said he was told the landlord would give him a heater, but did not need that as he already had one. The tenant said that TD told him the water line to the heater had to be drained. The tenant said that TD came to the rental unit in March and April, but that the heating has not been fixed.

The tenant acknowledged that the landlord has provided him a monthly rent reduction to account for extra power costs due to the heater he has been using.

Landlord's response –

The landlord, HG, said that heating was not included with the monthly rent and that they offered the tenant space heaters. HG said the building is almost 60 years old.

TD testified that the rental unit is on the top floor, corner unit with an extra window. TD said that since air rises, the rental unit is typically the coldest in the building and that this information was provided to the tenant before the tenancy began. TD said he lives in the building and wants happy neighbours, so he provides full disclosures to potential tenants about any issues with the rental units. TD said that the building is old, from 1968, and that the rental unit is typically cold.

TD said the least amount of heat is on the top floor and that this rental unit is furthest from the boiler room. TD explained that all units are heated by the same system, which is a hot water heated, boiler system. TD explained that the issue with the tenant's rental unit is that the water line heating the system has to be periodically bled, or drained, and is an easy process, which has been explained to the tenant. TD said the heater will not work if the water line is not drained, which he has done periodically for the tenant.

TD said the heating in the building does work and that he has had complaints from other tenants about there being too much heat in their rental units. TD explained that he turns off the heating system in the spring each year and turns it back on in October, as there is not the need for heating in the summers.

TD said that he believed he had the heating fixed this year, but will look at the tenant's heater when the heating is turned back on in October. TD asserted that draining the water line is as easy as turning on a water hose, by turning a valve. If the water is not drained, there will be cold air trapped in the water line, not allowing the hot water in to heat the rental unit.

TD said he thought the issue had been resolved, but explained it is an old system in an old building.

The tenant submitted that he was sorry that the situation had come to this, but it seems like his heating system is broken.

HG said that the heating is an on-demand system and it is not broken, as the other units have heating. The landlord submitted that they will have a plumber come to the rental unit in the fall.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 32 of the Act requires that a 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.

Where a tenant requests repairs, I find the landlord must be afforded a reasonable amount of time to take sufficient action.

I find the evidence shows that the tenant was given full disclosure prior to entering the tenancy agreement that the rental unit he was moving into would be colder than other units, due to the location of being on the top floor, corner unit, with extra, single pane windows.

I find the evidence shows that the heating system is old, but still functioning in the building and that the only remedy for the tenant is to take measures that have been outlined to him, which is, to regularly bleed the water line. I find the landlord took the further measure of offering a space heater, which was declined, and granting the tenant a monthly rent reduction to offset the use of a space heater.

For these reasons, I find that the landlord dealt with the tenant's request for heating.

The landlord said they would have a plumber come inspect the heater in the rental unit in the fall when the heating is turned back on, and therefore, I will not order the landlord to make repairs. As a result, I find the landlord fulfilled their obligation under the Act of maintaining the rental unit that complies with the housing standards required by law and having regard for the age, character, and location of the rental unit.

For these reasons, I **dismiss the tenant's application** for an order requiring the landlord to make repairs to the rental unit and for an order requiring the landlord to comply with the Act, tenancy agreement, or Regulations **without leave to reapply**.

Conclusion

The tenant's application for a request for an order requiring the landlord to make repairs and for an order requiring the landlord to comply with the Act, tenancy agreement, or Regulations is dismissed without leave to reapply, for the reasons stated above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 30, 2022

Residential Tenancy Branch