



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on November 25, 2022. The Tenant applied for an expedited hearing to have the Landlord make emergency repairs to the rental unit, pursuant to section 33 of the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence packages and no service issues were raised. I find both parties sufficiently served each other for the purposes of this proceeding.

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

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make emergency repairs?

Background and Evidence

This rental unit is the upper unit in a 4-plex. The 4-plex is contained within a large single-family style home, which was converted into 4 distinct rental units many years ago. The Tenant has lived in the unit since around 2008.

A copy of the tenancy agreement was provided into evidence, and it lists the following as included in utilities:

b) **What is included in the rent:** (Check only those that are included and provide additional information, if needed.)
The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Stove and Oven	<input checked="" type="checkbox"/> Window Coverings	<input checked="" type="checkbox"/> Storage
<input type="checkbox"/> Electricity	<input checked="" type="checkbox"/> Dishwasher	<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Garbage Collection
<input checked="" type="checkbox"/> Heat <i>excluding base board heater</i>	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Laundry <i>(free Coin-op)</i>	<input type="checkbox"/> Parking for <input type="text"/> vehicle(s)
<input checked="" type="checkbox"/> Furniture	<input checked="" type="checkbox"/> Carpets	<input type="checkbox"/> Sheets and Towels	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Additional Information: <input type="text"/>			

During the hearing, the Tenant was asked what specific repairs she is seeking. She stated that she is seeking an order for the Landlord to change the set temperature of the main thermostat in rental unit #1, where the main central thermostat is located for the forced air furnace that sends heat to all the rental units. The Tenant stated that the furnace has sufficient capacity but her main issue is that the thermostat needs to be set higher in order for her to be sufficiently warm at night. The Tenant requests that the Landlord set the temperature on the thermostat to 23 degrees Celsius at all times of the day and night, as this is the temperature that is required for her to feel sufficiently warm at night.

The Tenant provided a detailed overview of her history in the property, and with the Landlord. Generally, the Tenant noted that there is one baseboard heater in her rental unit, which is a 2-bedroom unit on the upper floor of an older home. The Tenant stated she rarely uses the baseboard electric heat, partly because she finds it insufficient, partly because it is expensive to operate (she pays her own electricity on top of rent, whereas the central furnace consumption costs are included in base rent), and partly because she finds the heater emits a strange smell when used.

The Tenant explained that there are two heating sources for her suite. One of which is by way of an electric baseboard heater in the living room of her suite, and the other heat source is by way of a forced air furnace (controlled by a thermostat in unit #1) that supplies air to the different rental units. The Tenant explained that there are 4 forced air vents in her rental unit. The Tenant largely takes issue with the heat supplied by these air ducts during the night, when she feels too cold. The Tenant stated that from 2008-

2017, she didn't have any issues with the heat, but in 2017, the heat that was being emitted from the furnace ducts started "lessening". The Tenant stated that the Landlord came to check on the furnace, and around that time, she stated she started smelling laundry fumes coming through two of the ducts. The Landlord stated this is a physical impossibility as no changes were made to the ducts, and only air from the furnace can expel from the vents that are connected.

The Landlord explained that they have the furnace maintained annually, and they have also had the furnace checked on other occasions, due to the complaints from the Tenant. However, no issues have been found, and the system was functioning correctly. Invoices from heating contractors were provided corroborating the inspections and the findings on multiple occasions. The Landlord pointed out that the heating technician found that the Tenant had placed several objects around the heating ducts which would likely impact delivery of heat.

The Landlord also stated that she had an electrician come to inspect the baseboard heater in the rental unit, since the Tenant seemed concerned that it was unsafe to use because of a smell it emitted. However, as per the invoice provided from the electrician, dated October 30, 2022, the heater was in good working condition with no defects, and is appropriately sized for the rental unit.

The Landlord opined that the Tenant is choosing not to use her baseboard heat because she does not want to pay for it, since she has her own separate electricity meter for her rental unit. The Landlord stated that she believes the Tenant wants all of her heat to come from the central furnace, which is free for the Tenant. However, the rental unit was never set up this way, which is why there was a baseboard installed in the unit in the first place. The Landlord stated that the intention was always to use the baseboard to supplement the heating in the rental unit.

The Landlord stated that they recently installed a locked thermostat so that only the Landlord has access to heat settings, in order to alleviate conflict between this Tenant and the Tenant who has access to the thermostat (unit 1). The Landlord stated she sets the thermostat at 22 degrees Celsius from 5:30 am to 6:00 pm, 23 degrees Celsius from 6:00 pm until midnight, and then 19 degrees from midnight until 5:30 am. The Landlord stated she cannot set it higher than this because the Tenant in unit 1 complains of it being too hot.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings.

The onus is on the Tenant to demonstrate the emergency repairs are required.

First, I turn to Section 33(1) of the Act, which defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

At the hearing the Tenant was asked to clarify what emergency repair she is seeking, and she stated that her request is for the Landlord to set the temperature of the thermostat (located in unit 1) higher. The Tenant stated that she believes the central furnace has sufficient capacity, when it is turned on. However, her opinion is that the set temperature is not high enough.

I have considered the Tenant's statements and evidence on this matter. As noted above, section 33 defines what an "emergency repair" is. However, I note "repair", generally, is not defined specifically under the Act. As per Black's Law Dictionary (2nd edition), "repair" is defined as:

The restoration of a damaged, broken or failed device to return it to its original intent.

I find that in order to qualify as an emergency repair, as defined by the Act, it must also be a "repair", generally speaking, which is to restore a damaged, broken or failed device. In this case, I find there is insufficient evidence that there is a damaged, broken, or failed device. As such, I am not satisfied that this request qualifies as an emergency repair for the purposes of this section of the Act.

As such, I dismiss the Tenant's request, in full.

Conclusion

The Tenant's application for emergency repairs, 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: November 25, 2022

Residential Tenancy Branch