



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

On December 11, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an emergency repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with E.D. attending later as a witness for the Tenant. T.D. and P.P. attended the hearing as well, as agents for the Landlord. T.D. confirmed the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended to reflect this change.

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. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no disputes over receiving the Tenant’s Notice of Hearing and evidence package. As such, the Tenant’s documentary evidence will be accepted and considered when rendering this Decision.

T.D. confirmed that there was no documentary evidence submitted by the Landlord for consideration on this file.

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 entitled to an emergency repair Order?
- Is the Tenant entitled to recover the filing fee?

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 August 1, 2021, that rent was originally set at \$3,035.00 per month, that it is currently established at an amount of \$3,185.00 per month, and that it is due on the first day of each month. Both parties were informed that the rent increase implemented by the Landlord has exceeded the maximum allowable amount, and likely was an illegal rent increase. A security deposit of \$1,517.50 was also paid. An unsigned copy of the tenancy agreement was submitted by the Tenant as documentary evidence for consideration.

The Tenant advised that the primary heating system has not been producing adequate heat since November 5, 2022, and that she was provided with P.P.'s contact information to have this addressed. She testified that she texted him again on November 10, 2022, to follow-up with an update on the heating situation, and P.P. acknowledged that other units had heating problems as well, but the main system should be fixed by the following Friday. She stated that the heat was still insufficient, so she texted P.P. on November 24, 2022, and he replied that the Landlord was working with the municipality to increase the boiler temperature.

She submitted that regardless of what temperature she set the thermostat at, the rental unit would only get to 21 degrees at the most, so she texted P.P. again about this issue on December 2, 2022. She stated that P.P. had a technician attend the rental unit, that

the filter was changed, that the system was reset, and that if there was still an issue, P.P. would contact the manufacturer. As well, she stated that she was provided with P.P.'s regional manager's contact information. She testified that the heat issue was still not corrected on December 3, 2022, so she contacted P.P. to contact the manufacturer, and he replied that they were contacted; however, she did not hear back from him after this. She stated that she ran into P.P. in the hall on December 28, 2022, and he told her that he believed the problem was fixed, and that this issue was rectified in other units as well.

She advised that she sent an email to the regional manager on December 4, 2022, informing of the issue with the primary heating system, and she received a response that their HVAC contractor has been contacted. In the email response of December 12, 2022, she stated that the regional manager noted that the BC Building Code sets the ambient indoor living temperature at 22 degrees and that the Tenant's reported heat is a half a degree off that.

The Tenant testified that regardless of how high she sets the thermostat at, the rental unit will now get up to 23 degrees at the most, which she finds acceptable. However, prior to this, and especially through the recent cold snap, the temperature would get to 19 degrees at the most. She referenced the documentary evidence submitted to support her position.

Witness E.D. advised that he spent a number of days in the rental unit in November 2022, and he confirmed that the Tenant was not able to bring the unit up to room temperature, which he determined to be 23 degrees. He testified that regardless of what temperature the Tenant sets the thermostat at, the temperature in the rental unit would fluctuate between 19.5 degrees to a maximum of 21 degrees. He stated that any response from the Landlord about any issues was extremely slow.

Neither P.P. nor T.D. had any questions for E.D., so E.D. exited the teleconference.

P.P. advised that he received the Tenant's initial message, that he provided her with updates, and that he followed up with the manufacturer and installer. He referenced the Tenant's documentary evidence where the temperature in the rental unit was 22 degrees on November 24, 2022. As well, he confirmed that the filter was changed on December 2, 2022, and he believed that there were no further issues. He acknowledged that the maximum temperature in the rental unit got to 19 degrees when there was a cold snap, but there were no complaints from any residents of the building. He also

confirmed that the boiler temperature was raised on or around December 2, 2022, and that the maximum temperature the Tenant can get in her rental unit is 23 degrees.

T.D. advised that the primary heating system is a heat pump system, and that it is unable to provide as much heat when the outdoor temperature gets really cold outside. He confirmed that there was no documentary evidence submitted to corroborate what temperature the local municipality or BC Building Code has established as adequate heat.

The Tenant advised that when the outside temperature is above 5 degrees, she will only be able to obtain a maximum temperature in the rental unit of 23 degrees. As well, she stated that when the outside temperature is below 5 degrees, she will only be able to obtain a maximum temperature in the rental unit of 22 degrees.

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* requires that the Landlord provide and maintain residential property in a state of decoration and repair that “complies with the health, safety and housing standards required by law” and “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* below outlines the Landlord’s and Tenant’s duties when an emergency repair is required.

Emergency repairs

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
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,

- (iii) the primary heating system,*
- (iv) damaged or defective locks that give access to a rental unit,*
- (v) the electrical systems, or*
- (vi) in prescribed circumstances, a rental unit or residential property.*

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;*
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

When reviewing the totality of the submissions before me, the consistent and undisputed evidence is that the heating system referred to in this Application is the primary heating system, and I am satisfied that this issue would fall under the emergency repair Section of the *Act*. I am also satisfied that the Landlord has been alive to this issue since the Tenant made them aware of it on or around November 5, 2022. In addition, the consistent and undisputed evidence according to the text messages provided is that P.P. first took steps to attempt to correct this issue likely prior to November 14, 2022, and continued to do so at least until December 5, 2022.

Moreover, I find it important to note that the Senior Property Manager stated in an email dated December 12, 2022, that there was a “delay with parts on back order, however the part arrived today and the system has been fixed.” Given this statement, the text message from P.P. on November 14, 2022, stating that “there is a problem in the main system which is giving heating issues to a few units”, and the subsequent actions that P.P. took to attempt to correct this matter, I find it reasonable to conclude that there was some sort of defect with the primary heating system, and that it was not functioning correctly. However, despite the Landlord’s efforts, the consistent and undisputed evidence is that the temperature in the rental unit will still not get over 23 degrees.

While the Senior Property Manager claimed in an email dated December 12, 2022, that the ASHRAE standards and 2018 BC Building Code establishes that the ambient indoor livable space temperature is set at 22 degrees, the Landlord has not submitted any documentary evidence to support this position. Furthermore, the Landlord has not provided any documentary evidence to support a finding that outlines this basic requirement for adequate heat as set by any municipal guidelines. As such, I am not satisfied that the Landlord is only required to provide the Tenant with heat up to 22 degrees in the rental unit.

Regardless, even if I were to agree that 22 degrees was the acceptable level of heat that the Landlord is required to provide, given that the agents for the Landlord acknowledged that the maximum temperature provided to the Tenant during the most recent cold snap was less than this suggested temperature, I find it plainly evident that the Landlord has not been providing the Tenant with an adequate source of heat in the rental unit.

I acknowledge T.D.'s claim that due to the nature of the primary heating system being a heat pump, the maximum temperature that can be provided to the Tenant is dependent on the outside temperature. However, I do not accept that the Tenant should be deprived of an adequate source of heat because of deficiencies or shortcomings of the type of primary heating system that the Landlord elected to install. Moreover, given that the Tenant's ability to increase the heat improved after P.P. increased the boiler temperature, I am satisfied that there are likely some steps that the Landlord can take to rectify this matter.

Based on my assessment of the documentary evidence and testimony before me, I find that the Landlord is negligent and is responsible for rectifying this emergency repair issue. As such, I **Order** the Landlord to hire a qualified professional to investigate and assess the nature of the heating system within a week of being deemed to receive this Decision.

I further **Order** that the Landlord have the necessary repairs commence, by a qualified professional, within a week of receiving the assessment of the required repairs. As a note, the Tenant may serve a copy of this Decision to the Landlord in a manner in accordance with the *Act* to expedite receipt of this Decision, and consequently the start of the emergency repair Order.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the filing fee in the amount of \$100.00, which she may deduct from the next month's rent or otherwise recover from the Landlord.

Conclusion

I **Order** that the Landlord complete the following actions:

- As soon as is reasonably possible, and within a week of being deemed to have received this Decision, the Landlord must hire a qualified professional to investigate and assess the nature of the issue with the primary heating system.
- As soon as is reasonably possible, and within a week of receiving the qualified professional's recommendation for repairing the primary heating system, the Landlord must have the necessary repairs commence. These repairs must be fully completed within a reasonable period of time after the work commences.

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: January 13, 2023

Residential Tenancy Branch