



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PACIFIC QUORUM PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR RP PSF FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on March 6, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant 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.

The Tenant provided a copy of a document showing the Landlord and the Tenant agreed to serve each other via email. Pursuant to that agreement, the Tenant stated he sent his Notice of Dispute Resolution Proceeding and evidence to the Landlord on November 9, 2022, via email. Since the parties agreed to service via email, in writing, I find this is an acceptable way to serve the above noted documentation. Section 89 of the Act allows the RTB to authorize other methods of service by way of the *Residential Tenancy Regulations*. Section 43 of the *Regulations* specifies that documents may be served by email, provided the email has been given for the purposes of serving and exchanging documentation. Section 44 of the *Regulations* further specify that documents served in this manner are deemed to have been received 3 days after they were sent. Pursuant to the above noted sections of the *Act*, and the *Regulations*, I find the Landlord is deemed served with the above Notice of Dispute Resolution Proceeding and evidence package on November 12, 2022.

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.

Preliminary Matters

During the hearing, the Tenant stated that he is no longer seeking an order for repairs, and is only seeking a rent reduction for issues with his heating. I hereby amend the Tenant's application accordingly.

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction due to loss of heat in the rental unit?

Background and Evidence

The Tenant stated monthly rent is set at \$999.77, and is due on the first of the month. The Tenant stated that he has lived in the rental unit since 2016, and sometime in December 2021, the central heat in his apartment starting acting up. The Tenant stated that this continued into 2022, and finally in February of 2022, he put his complaint in writing (email) to the property manager. The Tenant provided a copy of this email. The Tenant further stated that the Landlord was aware of the issue and stated they were going to fix it.

The Tenant stated that the heat was not fixed until November 9, 2022, almost 10 months later. The Tenant stated that he has a corner unit, which has a lot of windows, and his rental unit was so cold he could not sleep there overnight during the months of February 2022, until June 30, 2022. The Tenant stated that he was able to stay in his apartment for July and August, since the weather was warm enough, but again in September 2022 he had to stay elsewhere at night. The Tenant stated that he spent all nights during those periods at his girlfriends apartment, which was across town, and was very inconvenient.

The Tenant stated he is seeking a 100% reduction in rent for February, March, April, May, June, September, and October 2022, as these were the months he was unable to sleep in his own apartment due to the lack of heat. The Tenant pointed out that heat is supposed to be provided, as per his tenancy agreement, yet it wasn't for most of last year. The Tenant stated he even tried to get a space heater, but it could not keep up and his apartment was still too cold. The Tenant stated that at some points he could see his breath in his apartment, and it was down to 9 degrees Celsius inside.

The Tenant explained that he still used the apartment in a limited fashion during the day, since all of his belongings were still there. The Tenant stated that he would still use the washroom, do some cooking, and do some basic computer work during the above noted colder months.

Analysis

A party that makes an application against another party has the burden to prove their claim. In this case, the burden of proof rests with the Tenant.

The Tenant is seeking compensation for a 7 month period where he had insufficient heat in his rental unit. I note that section 1 of the Act defines a “service or facility” as:

“Service or facility” includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;*
- (b) utilities and related services;*
- (c) cleaning and maintenance services;*
- (d) parking spaces and related facilities;*
- (e) cablevision facilities;*
- (f) laundry facilities;*
- (g) storage facilities;*
- (h) elevator;*
- (i) common recreational facilities;*
- (j) intercom systems;*
- (k) garbage facilities and related services;*
- (l) heating facilities or services;*
- (m) housekeeping services;*

[My emphasis underlined]

I accept the undisputed testimony that heat is supposed to be included as part of the tenancy agreement, and for most of last year, it was completely non-functional.

Residential Tenancy Policy Guideline #22 - Termination or Restriction of a Service or Facility states as follows:

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

[...]

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

After considering the evidence before me, I note the Landlord was aware of the issue with the heat and the Tenant told the Landlord, formally, via email in February. Although delays are not uncommon for significant repairs to large boiler systems in residential complexes, I find this delay is excessive and unreasonable, particularly in a city with access to trades and services. I accept that having no heat would cause a significant interference with the Tenant's use and enjoyment of the rental unit, particularly in the colder months. I note the Tenant is not seeking compensation for the warmer summer months (July and August). In any event, I find the Landlord failed to diligently pursue a remedy for the broken boiler system, and this inaction contributed to a reduction in the value of the tenancy for the Tenant over the material time. I find the Tenant ought to be entitled to a reduction in rent for the 7 months he claimed. However, I do not find a 100% rent reduction for those months is reasonable.

Given the Tenant was still using the rental unit, off and on, for a variety of purposes (using washroom, kitchen, and some basic computer work), I find a more reasonable rent reduction is 50% during the material months (February – June 2022, September – October 2022 = 7 months). I award the Tenant 50% of \$999.77 x 7 months = \$3,499.20.

Pursuant to section 72 of the Act, and given the Tenant was successful in his application, I award him recovery of the filing fee he paid for this application.

Accordingly, the Tenant is entitled to \$3,599.20. The Tenant may withhold this amount from future rent payments, until the amount has been reimbursed.

Conclusion

I grant the Tenant 3,599.20, as above. The Tenant may withhold this amount from future rent payments, until the amount has been reimbursed.

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: March 7, 2023

Residential Tenancy Branch