



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

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

- an order requiring the landlord to make emergency repairs to the rental unit, pursuant to section 33.

The landlord did not attend this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 33 minutes from 9:30 a.m. to 10:03 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the online teleconference system that the tenant and I were the only people who called into this teleconference.

The tenant confirmed the names and spelling for him and the landlord. He provided his mailing address for me to send a copy of this decision to him after this hearing. He confirmed the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the tenant affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the tenant. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The tenant filed this application on April 27, 2023, and a notice of dispute resolution proceeding, dated April 28, 2023, was issued to him by the RTB on May 1, 2023. The tenant was required to serve that notice, the application, and all other required evidence in one package to the landlord, within one day of receiving the documents from the RTB, as per RTB *Rule* 10.3.

The tenant testified that he served the landlord with a copy of the tenant's application for dispute resolution hearing package on May 2, 2023, by way of registered mail to the landlord's address, as provided on the parties' written tenancy agreement. He provided a Canada Post receipt and tracking number with his application. He provided the landlord's address and the Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on May 7, 2023, five days after its registered mailing.

The landlord did not submit any documentary or digital evidence for this hearing.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Background and Evidence

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

The tenant stated the following facts. This tenancy began on November 15, 2021. Monthly rent in the amount of \$840.00 from April to September, and \$750.00 from October to March, is payable on the first day of each month. A security deposit of \$525.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to occupy the rental unit. The rental unit is a cabin, which the tenant occupies as his permanent primary residence.

The tenant testified regarding the following facts. The furnace needs to be repaired. The landlord brought a heat technician, but it was not fixed. The tenant provided written letters to the landlord because he was told to do so by the RTB. He asked the caretaker, and nothing happened. He was served with an eviction notice by the landlord, and he has an RTB hearing coming up in 2 weeks. The RTB told the tenant that the heat issue is different than the eviction notice issue, so this is an expedited hearing for emergency repairs only. The furnace and heat have not been repaired. The tenant uses space heaters which are unstable. There is no electronic thermostat, and the heat is not automatic. He has been miserable for 2 months. He still pays for rent and utilities. It is not freezing at night anymore, but the tenant could not sleep for 2 months, and he could not keep up with basic functioning and daily tasks. On April 19, 2023, a man, who did not provide his contact information, was yelling and shouting at the tenant from the porch. The tenant was given notice for maintenance on the April 23, 2023, and he assumed it was for the heat. April 23, 2023 came and went, the tenant's property was damaged, and the heat was not fixed.

The tenant stated the following facts. On May 21, 2023, a man was looking in the tenant's window, banging on the tenant's door, and yelling through the door. The tenant thought the heat would be repaired but he was given another maintenance request for May 25, 2023. That was the day before this hearing, and the heat was not repaired, and the tenant's property was damaged again. He does not appreciate the yelling. A notice was posted with duct tape to his window. He cannot sleep for the full night. The heat cannot be adjusted automatically. This has exacerbated his medical conditions. When he woke up in the morning, he could see his breath, and he had to wear a sweater and winter jacket inside the house. There was a strange man yelling at him in the window, who did not provide his contact information and damaged the tenant's belongings. The tenant feels like he has to prove his innocence. The RTB and service BC have been helpful to the tenant, who needed assistance. Legal assistance guided the tenant. The tenant has been cooperating.

Analysis

Section 32 of the *Act* states the following, in part:

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 of the Act states the following, in part:

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

(iii) the primary heating system...

Residential Tenancy Policy Guideline 1 states the following, in part:

SERVICES AND FACILITIES

- 1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.*
- 2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

On a balance of probabilities and based on the undisputed, affirmed testimonial and documentary evidence of the tenant, I find that the tenant provided sufficient evidence regarding his application.

I find that the tenant's request for an order for the landlord to provide heat is an emergency repair that is urgent, necessary for the health of the tenant, and relates to the primary heating system, in accordance with section 33 of the Act. I find that the landlord is required to maintain heating in the rental unit in a state of repair that complies with health, safety and housing standards, as per section 32 of the Act.

I find that heat is a service that is essential to the tenant's use of the rental unit as living accommodation, as per Residential Tenancy Policy Guideline 1.

I accept the tenant's undisputed affirmed testimony that space heaters are insufficient to properly heat the entire rental unit, the tenant is required to wear warm winter clothing

and jackets, and the tenant cannot properly sleep or complete activities of daily living in the rental unit.

I accept the tenant's undisputed affirmed testimony that he is paying full rent to the landlord to occupy the rental unit, and he is paying full utilities to the utility companies, in order to heat his rental unit.

I accept the undisputed written evidence provided by the tenant, which is a letter, dated April 23, 2023. This letter is addressed to the landlord, requesting a licensed repair person to fix the primary heating system at the rental unit, and giving a deadline of April 27, 2023. The letter states that the heating system has not been functional since March 21, 2023, and that no repair was made on March 24, 2023. I accept the tenant's undisputed affirmed testimony that the heat was not fixed on April 23, 2023, May 21, 2023, or May 25, 2023, as per the maintenance request notices provided to the tenant by the landlord. I accept that the heat still has not been repaired, as of the date of this hearing, May 26, 2023.

I order the landlord, at her own cost, to hire a certified, licensed professional to inspect and repair the primary heating system at the rental unit, and ensure that it is in safe, proper, working order and provides sufficient heating for the tenant's entire rental unit, by June 30, 2023.

I order both parties to comply with section 29 of the *Act* to facilitate the above order.

Section 29 of the *Act* states the following:

Landlord's right to enter rental unit restricted

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

The tenant's application is granted.

I order the landlord, at her own cost, to hire a certified, licensed professional to inspect and repair the primary heating system at the rental unit, and ensure that it is in safe, proper, working order and provides sufficient heating for the tenant's entire rental unit, by June 30, 2023.

I order both parties to comply with section 29 of the *Act* to facilitate the above order.

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: May 26, 2023

Residential Tenancy Branch