



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 7 May 2023 [the 'Notice'].
2. Reduction of rent by \$320.00 *per* month for landlords' failure to provide heat [the 'Rent Reduction'].
3. Repair of heating system [the 'Repair Claim'].
4. Reimbursement for the \$100.00 filing fee for this application.

The landlords did not participate in the hearing on 29 June 2023. The tenants did participate.

Preliminary Matter - Non-appearance at the Hearing

The landlords did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and ended about 50 minutes later. I confirmed:

1. that *via* registered mail on 12 May 2023 the tenants sent a copy of the 'Notice of Dispute Resolution Proceeding' to the address of the landlords as recorded in the landlords' Notice of 7 May;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing; and
3. by reviewing the teleconference system, that the tenants and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords failed to attend this hearing, but I conducted it in their absence. The tenants satisfied me that they had correctly notified the landlords of this hearing and how to participate.

Issues to be Decided

Should I cancel the Notice?

Are the rental unit's furnace and living-room window [the 'Window'] in a state of disrepair?

If so, must the landlords repair these?

If so, have the landlords failed to repair these?

And if so, then should the rent be reduced as a consequence of this failure?

Should the landlords reimburse the tenants for the cost of filing this application?

Background and Evidence

The tenants told me that they pay \$760.00 each month in rent.

This unit is in the mountains, where it gets cold and snowy in the winter. I am told conditions last there from the end of November until the end of April.

Despite these conditions, the furnace hasn't worked. And so the tenants have had to use space heaters to heat the unit. As a result of this, their electricity bill has drastically increased this last winter. The tenants provided a summary of their electricity bills, showing the following electricity charges during the cold months:

- 21 October 2020 to 20 May 2021 = \$505.00
- 22 October 2021 to 19 May 2022 = \$612.00

- 21 October 2022 to 20 March 2023 = \$1,750.00

Last winter, the tenants contacted the landlords, requesting that they repair the furnace, and noting that the unit's pipes were freezing as a result of the furnace malfunctioning.

Also, the Window leaks, such that water gets into the unit. The tenants also contacted the landlords about this leak.

According to the tenants, the landlords have done nothing to fix either the furnace or the Window.

As noted above, the landlords did not participate in this hearing, and so I had no evidence from them as to the Notice itself or why it was issued.

Analysis

Should I cancel the Notice?

Section 46 (2) of the *Residential Tenancy Act* [the 'Act'] requires a notice to end tenancy for unpaid rent to comply with section 52 of the Act. And the landlords did not participate in this hearing to give evidence of whether the Notice complied with section 52. Without such evidence, I cancel the Notice.

Are the rental unit's furnace and Window in a state of disrepair? I accept the uncontroverted statements of the tenants that these things need repairing.

Must the landlords repair the furnace and Window? Section 32 of the Act requires a landlord to maintain the rental unit (and there is no indication that the tenants themselves damaged the furnace or Window). And so I find that the landlords must repair these things.

But I also accept that the landlords have probably not done so: the tenants have told me that the landlords have done nothing despite being made aware of the need for these repairs, and their electricity bills support their claim that their costs have increased as a result of the faulty furnace. They have tried to minimise the impact of this faulty furnace by using space heaters.

Section 65 (1) (f) empowers the Director of the RTB (whose delegate I am) to reduce future rent where I find that a landlord has not complied with the Act. As noted above, the landlords in this dispute have failed to comply with section 32, and so I accede to the tenants' request to reduce their rent.

I note that the accounts provided for the winter of 2022/2023 only cover part of that season, and yet are almost triple the charges for the previous two winters.

In light of this, the tenants' request that their rent be reduced by \$320.00 is reasonable.

As the tenants succeeded in their application, I also order that the landlords reimburse them for the cost of filing the application.

Conclusion

I order *per* section 65 (1) (f) that for the months of November, December, January, February, March and April, the tenants can reduce their rent by \$320.00 until the landlords repair the furnace and the Window.

In compensation for the cost of filing this application, I also order that the tenants can reduce their rent payment for September 2023 by \$100.00.

For greater clarity, I also order that the landlords effect these repairs by doing the following:

1. repairing the furnace so that it maintains heat consistently throughout winter months; and
2. replacing the main living-room window and siding such that water no longer leaks into the house.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 1 August 2023

Residential Tenancy Branch