



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, RP, and RR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make repairs; and for authorization to reduce the rent for repairs, services, or facilities agreed upon but not provided.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me. Neither party called witnesses.

Issue(s) to be Decided

The issues to be decided are whether there is a need for an Order requiring the Landlord to make repairs to the furnace; whether the Tenant is entitled to financial compensation for living with an inadequate heating system; and whether the Tenant's rent should be reduced to compensate for living with a heating system that the Tenant believes is inadequate.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began approximately five years ago and that the Tenant is currently required to pay monthly rent of \$500.00. The Tenant stated that he is currently living in the carport at the residential complex because the dust mites in the rental unit are infecting his lungs.

The Tenant stated that the furnace was serviced approximately six months ago. He stated that the technician did a "very good job" but he failed to disinfect the heating system after the furnace was cleaned. He stated that immediately after the furnace had been cleaned he could not breathe, he started choking and he turned blue. He stated that the person living above him is also concerned for his health and they have mutually agreed not to use the furnace until it has been disinfected.

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The male Landlord stated that he had the furnace cleaned in 2008 and again on May 26, 2009. He stated that it was cleaned by a qualified furnace professional and he has no reason to believe that the cleaning was inadequate or that the furnace requires disinfecting.

The Tenant submitted no medical evidence to corroborate his statement that he is experiencing difficulty breathing or that the furnace has contributed to any physical symptoms he is experiencing. The Tenant submitted no evidence to corroborate his statement that the person living above him in this residential complex also has concerns about the furnace. The Tenant submitted no evidence to support his contention that the furnace requires disinfecting.

Analysis

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to 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.

I find that the Tenant has submitted insufficient evidence to establish that the heating system in the rental unit does not comply with section 32(1) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Tenant's statement that the heating system is contributing to any physical symptoms he is experiencing and by the absence of evidence from a heating technician that establishes the furnace was not properly cleaned.

There is a general legal principle that places the burden of proving that compensation is due on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Tenant and I find that the Tenant has submitted insufficient evidence to show that the furnace requires further cleaning or that the furnace has contributed to any physical symptoms he is experiencing.

Conclusion

As the Tenant has failed to establish that the furnace requires further servicing, I hereby dismiss the Tenant's application for an Order requiring the Landlord to make repairs to the rental unit.



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As the Tenant has failed to establish that the furnace has contributed to any physical symptoms he is experiencing, I hereby dismiss his application for financial compensation and his application for a rent reduction.

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: July 03, 2009.

Dispute Resolution Officer