Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, ERP, RP, PSF

Introduction

This hearing was convened in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / and an order instructing the landlord to provide services or facilities required by law. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

The subject unit is 1 of what are 110 one-bedroom units located in a 12 storey apartment building. The tenant states that while she has been living in the building for approximately 10 years, in August 2006 the parties entered into a tenancy agreement for the unit in which she presently resides. While a copy of the template tenancy agreement was presented at the hearing, the portions of the agreement completed are principally limited to identification of the parties, and little more. Despite this, there is no dispute between the parties that the payment of rent includes the provision of heat. Heating is provided to all units by way of hot water baseboard radiators.

The tenant claims that inadequate heat is provided in her unit and that her comfort and health have been compromised as a result. The landlord claims that the level of heat in the building is regularly monitored, and that included in the landlord's consideration of how much heat to provide are factors such as variable outdoor temperatures, utility costs and energy savings.

The landlord emphasized the importance of keeping personal possessions, including furnishings, away from the baseboard radiators, noting that failure to facilitate the "free and clear passage of air to transfer the heart from the radiator to the air" could lead to a reduction in the warmth of the unit.

The landlord has previously offered to make available, without cost to the tenant, a portable heater to provide additional heat to the unit. However, the tenant takes the position that a portable heater should not be necessary, and notes that use of such an appliance would have the result of increasing her cost for hydro which is not included in the rent.

In their respective documentary submissions, both parties make reference to the local government's "Standards of Maintenance By-law #5462" (the "By-law"). Clause #18.1(1) of the By-law provides as follows:

> Heating systems shall be maintained in a safe and good working condition so as to be capable of safely attaining and maintaining an adequate temperature standard, free from fire and accident hazards and in all residential accommodation capable of maintaining every room at a temperature of 72 [degrees] Fahrenheit (22 [degrees] Celsius) measured at a point 5 feet (1.51 m) from the floor.

The tenant testified that she contacted the local government authority in late 2010, and reported a concern around "lack of heat." Included in the tenant's documentary evidence is a facsimile copy of the 2 page "Property Use Inspection Report" issued following a site visit by the Property Use Inspector (the "Inspector"). While the document was not fully readable, in a portion of the text the Inspector notes, in part, that "the tenant also keeps her sliding patio door open a crack to allow for fresh air to reduce condensation on the windows, and to provide fresh air for her pet dog." Further, the text reads in part, that "…constantly keeping the patio door open may have skewed the temperature reading slightly."

The landlord notes that on occasions when the Inspector has visited the building, he "undertakes his measurements and advises us of his findings." The landlord claims that the landlord has not been cited for non-compliance with the By-law since the time when he was appointed property manager in 1992.

The tenant testified that she is not alone in her concern that heat in units is inadequate, and claimed that other residents simply prefer not to raise this potentially contentious matter with the landlord.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/ The attention of the parties is drawn to particular sections of the Act as set out below.

The Act provides in section 1 that **“service or facility”** includes, but is not limited to, “utilities and related services,” and “heating facilities or services” that are “provided or agreed to be provided by the landlord to the tenant of a rental unit.” As earlier noted, pursuant to the agreement between the parties, I find that the landlord’s provision of heat is included in the tenant’s payment of rent.

Section 27 of the Act addresses **Terminating or restricting services or facilities**, and provides in part:

> 27(1) A landlord must not terminate or restrict a service or facility if
>
> (a) the service or facility is essential to the tenant’s use of the rental unit as living accommodation, or
>
> (b) providing the service or facility is a material term of the tenancy agreement.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides 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 addresses **Emergency repairs**, and provides 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
>
> (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.

Based on the documentary evidence and testimony of the parties, I find that there is no evidence that the method used by the landlord to provide heat to the tenant's unit is broken and in need of repair.

I further find that there is insufficient evidence that the amount of heat provided in the tenant's unit leads directly to a unit temperature which falls below the levels required pursuant to the By-law. Rather, I find on a balance of probabilities, that the tenant's placement of possessions / furnishings close to the baseboard heaters has the effect of hindering the maximally effective distribution of heat within the unit. I further find on a balance of probabilities that the tenant's practice of leaving her "patio door open a crack," contributes to a reduction in the temperature of the unit.

Additionally, I note that there is no evidence before me of other residents in the building who share the tenant's concern that heat provided to their units is inadequate.

Conclusion

Following from all of the above, the tenant's application is hereby dismissed.

Despite sufficient evidence that the landlord has not complied with the "health, safety and housing standards required by law," I nevertheless hereby ORDER the landlord to comply with the provisions set out in section 32 of the Act, as above, with specific consideration to the relevant local government By-law, also referenced above.

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*.

DATE: July 15, 2011

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Residential Tenancy Branch