



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant testified that she personally served the landlord with her dispute resolution hearing package on January 14, 2015. The landlord confirmed receipt of the notice. In accordance with section 88 of the Act, I find that the landlord was duly served with the tenant's notice, as declared by the tenant.

Issues to be Decided

Is the tenant entitled to reduce the rent for repairs, services or facilities (a fireplace) agreed upon but not provided by the landlord?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

By way of background, a previous hearing was convened as a result of this tenant's application for repairs to her rental unit. As a result of that hearing, the arbitrator ordered that the landlord make repairs, particularly repairs to her rental unit fireplace. The landlord sought a review of that decision, claiming that new and relevant evidence could be provided. On review, another arbitrator considered the original decision;

The Arbitrator considered the Landlord's submissions, but determined that the Landlord failed to prove that the Tenant caused the alleged damage and failed to prove that the fireplace is not repairable. I find that the contents of the e-mail provided with the

Landlord's Application for Review was available at the time of the Hearing, or could have been available with due diligence.

The arbitrator at the original hearing ordered repair of the fireplace by January 9, 2015 and further ordered that "if the landlord fails to complete the repairs as provided above the tenant has liberty to re-apply seeking an order for the reduction of rent until the repairs are completed".

This month to month tenancy began in 2001 with a rental amount of \$675.00. The current rental amount is \$839.38. The tenant testified that the tenancy agreement listed one of the amenities of the apartment rental unit as a fireplace. The landlord confirmed the tenant's testimony with respect to the tenancy agreement. The tenant testified that the fireplace had, on occasion, broken down over the course of the tenancy but that, as of two years ago, the fireplace stopped working. The tenant testified that she requested repairs by the landlord but none were completed. She further testified that her delay in bringing this matter to hearing was a result of health issues, a battle with cancer.

The tenant testified that her rental unit has another source of heat – in-floor radiant heat, but that, on December 27, 2014, that source of heat stopped, as well. Despite requesting emergency repairs, the tenant testified that her in-floor heat was not repaired for four days. During those days, the tenant testified that she relied on her stove to provide heat to her 900 square foot rental unit. With respect to her fireplace, she testified that it still does not work.

The landlord confirmed that no repairs had been done to the tenant's fireplace. She testified that the fireplace *cannot* be repaired but did not provide any documentation in support of this claim. She also claimed, as she did in the original hearing, that the tenant damaged the fireplace. She also provided no evidence with respect to this claim.

The landlord confirmed that the gas fireplace in the rental unit has not worked for two years. She did not dispute the testimony of the tenant with respect to the lack of heat in the rental unit for four days during December 2014. The landlord testified that gas is included in the tenant's rent and that the landlord was aware of the order of the original arbitrator that the fireplace must be repaired.

Analysis

The tenant applied to reduce her rent as a result of the lack of provision of the use of her fireplace in her rental unit and as a result of the landlord's failure to abide by the terms of an order issued by an Arbitrator appointed under the *Act*. Section 27(1)(b) of the *Act* states that a landlord must not terminate or restrict a facility or service if providing that facility is a material term of the tenancy agreement. If provision of the facility is not a material term of the tenancy agreement or essential to the rental unit's use as living accommodation, a landlord may restrict a facility. However, if the landlord does restrict a facility, they must do so by providing 30 days' written notice, in an approved form and they must reduce the rent in an amount that is

equivalent to the reduction of value of the tenancy agreement resulting from the restriction of that facility or service.

In this case, the tenant's fireplace is a facility or service that was a term within the tenancy agreement. Even if this was not a material term that impacted the living accommodation of the tenant, it added value to the tenancy. In the tenant's case, she also claimed that this facility provides back-up heat if other sources of heat are not working.

The landlord provided no written notice that this facility would be terminated or restricted. In fact, the landlord failed to acknowledge previous requests from the tenant for repair to this facility. In December 2014, the landlord was provided with an arbitrator's order to repair the fireplace. The landlord has not repaired the fireplace.

I **order** that the tenant's rent be reduced by an amount that reflects the lack of use of her fireplace as well as the fact that her rental amount is intended to include the payment of gas for that fireplace the inclusion of gas and the use of the fireplace in her rent as provided in the tenancy agreement. If the fireplace cannot be repaired, then a reduction in the value of the tenancy has occurred and should continue for the remainder of the tenancy.

I am satisfied that by March 1, 2015, the landlord will have had ample time to implement the previous Arbitrator's final and binding order. In the event that the landlord has not repaired the fireplace so as to enable the tenant to use this feature of her tenancy agreement by March 1, 2015, I order the tenant to reduce her monthly rental amount by \$50.00. In the event that the fireplace for this tenancy has not been repaired so as to enable the tenant to use this feature of her tenancy agreement by August 1, 2015, I order the tenant to reduce her monthly rental amount by a further \$50.00. I further order that the monthly rent reverts to the amount legally set for this tenancy on the month after the repairs have been completed so as to enable the tenant to use this feature of her tenancy. However, if the fireplace is unable to be repaired, I order that the tenant's rent remain at the reduced amount, \$100.00 less than the current legal rental amount, for the remainder of her tenancy.

With respect to past rental payments made by the tenant to the landlord without a fireplace available to the tenant, I order that there has been a \$25.00 monthly diminishment in the value of this tenancy since some point in 2013. For this reason, I order the landlord to reimburse the tenant in the amount of \$450.00 for 18 months loss of use of the fireplace.

Further, I order the landlord provide compensation in the amount of \$50.00 to the tenant for the period from December 27, 2014 to December 31, 2014 in that there was no provision of heat for 4 days over the course of December 2014.

As the tenant was successful in her application, I award the recovery of her \$50.00 filing fee for this application.

I issue a monetary award in the tenant's favour under the following terms

Item	Amount
Past Rent reduction 2013 - 2015	\$450.00
Compensation for lack of heat – 4 days	\$50.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$550.00

Conclusion

I issue a monetary award of \$550.00 in favour of the tenant. To give effect to this monetary award, I order that the tenant reduce one future monthly rental payment by a total of \$550.00, in addition to the monthly rent reductions outlined below.

In the event that the fireplace is not repaired before March 1, 2015, I order the tenant to reduce her monthly rent by \$50.00, as of March 1, 2015 until July 31, 2015, until such time as the fireplace is repaired. In the event that the fireplace is not repaired before August 1, 2015, I order the tenant to reduce her monthly rent by a further \$50.00 (i.e., a total monthly reduction of \$100.00), until the fireplace is repaired or until the end of this tenancy.

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: February 05, 2015

Residential Tenancy Branch

