Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ER

Introduction:

On June 03, 2022 a hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring the Landlord to make emergency repairs.

The hearing on June 03, 2022 was adjourned for reasons outlined in my interim decision of June 03, 2022. The hearing was reconvened on July 18, 2022 and was concluded on that date.

As outlined in my interim decision, the Landlord acknowledged receipt of Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Tenant on May 05, 2022. As such, that evidence was accepted as evidence for these proceedings.

As outlined in my interim decision, I was unable to locate the evidence package the Landlord allegedly submitted to the Residential Tenancy Branch on May 19, 2022; the Tenant denied being served with this evidence package; and the hearing was adjourned to provide the Landlord with the opportunity to resubmit/reserve this evidence package.

The Landlord stated that his evidence package was submitted to the Residential Tenancy Branch again on June 08, 2022. Residential Tenancy Branch records show it was received on June 14, 2022.

The Landlord stated that he can't recall how he served his evidence package to the Tenant, but he thinks it was left on the Tenant's door. He stated it was served to the Tenant on June 08, 2022. The Tenant stated that it was personally served to him on

June 24, 2022. As the Tenant acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

As outlined in my interim decision, the Tenant was given authority to submit a recently received email from the local municipality. This email was submitted to the Residential Tenancy Branch on June 24, 2022. Other documents were also submitted to the Residential Tenancy Branch on June 24, 2022; however, those documents were not accepted as evidence for these proceedings as the Tenant was not given authority to submit any evidence other than the email.

The Advocate for the Tenant stated that this email, in addition to other documents, were served to the Landlord by registered mail on June 24, 2022. The Tenant submitted documentation from Canada Post that corroborates this statement.

The Landlord acknowledged receiving documents from the Tenant after the initial hearing, but he stated that the email from the local municipality was not included in the documents received.

The Advocate for the Tenant stated that in an email, dated June 02, 2022, a representative of the local municipality declared that the municipality was taking “no position” on the issue of restoring service/utilities to the unit. The Advocate for the Tenant was advised that this email is not likely to be impact my decision in this matter and she agreed that the hearing could be concluded without the need for me physically view the email. This email was not, therefore, considered as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to restore hydro service to the rental unit?

Background and Evidence Provided at the Hearing on July 18, 2022:

The Landlord reiterated much of the information submitted at the hearing on June 03, 2022 and that information will not be repeated here.

The Landlord initially stated that Technical Safety BC terminated the hydro service at the rental unit. He then acknowledged that he hired an electrician to terminate the hydro service at the rental unit because he was ordered to do so by Technical Safety BC, as demonstrated by the letters he submitted in evidence.

The Landlord and the Tenant agree that:

- no steps have been taken to restore hydro service to the rental unit;
- the Landlord has not provided the Tenant with a generator;
- the Tenant still has access to power via an extension chord;
- a third party previously loaned a generator to the Tenant;
- the borrowed generator broke and has not been repaired;
- prior to the hydro being disconnected, the Tenant paid for the cost of his own hydro consumption;
- the Tenant has not been paying for hydro consumption since he has been using the extension chord;
- rent has been paid in full.

The Landlord stated that rent is $826.00 “or so”. The Tenant stated that rent is $816.14.

The Landlord stated that he has not provided the Tenant with a generator, a directed, because power is being provided via an extension chord and the Tenant has the option of repairing the generator that was loaned to him by a third party.

The Landlord stated that he does not think that he should have to pay for the cost of fueling the generator, as the Tenant previously paid for hydro costs. The Tenant stated that he should not have to pay for gas for the generator, as he would not have incurred those costs if the hydro service had not been terminated.

The Landlord stated that he has been told the Tenant incurred average hydro costs of $100.00 per month. The Tenant stated that before the hydro service was terminated, he paid between $80.00 and $100.00 every two months.

Analysis:

As outlined in my interim decision, section 27(1) of the *Residential Tenancy Act (Act*) stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. I specifically note that the *Act* does not permit a landlord to terminate an essential service even if a government authority has ordered the service to be terminated.

As outlined in my interim decision, I concluded that hydro is a service that is essential to using a rental unit for living accommodations and, as such, a landlord does not have the right to terminate that service. No evidence was presented at the reconvened hearing that would cause me to conclude otherwise.

My interim decision provided the parties with information regarding how the Landlord could end the tenancy if he has a government order requiring him to end a tenancy because the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. (Section 47(1)(k) of the *Act*)

My interim decision provided the parties with information regarding how the Landlord could end the tenancy if he is legally required to repair/upgrade the electrical system in the rental unit and the unit must be vacant in order to complete those repairs. (Section 49.2(1) of the *Act)*

As no evidence has been submitted that would cause me to conclude that the Landlord had a right to terminate hydro service to the rental unit, my Order that requires the Landlord to take immediate steps to have hydro service to the rental unit restored and to restore that service as soon as is reasonably possible remains in full force or effect.

As hydro service has not been restored to the rental unit, I hereby Order the Landlord to immediately provide the Tenant with access to a functioning generator that has at least 10,000 watts.

Section 62(3) of the *Act* authorizes me to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

As the Landlord did not comply with the Orders issued in my interim decision of June 03, 2022 and he made comments during the hearing on July 18, 2022 which cause me to believe the Landlord does not understand he is legally required to comply with my Orders, I am concerned that the Landlord will not comply with the Orders outlined in this decision. As such, I rely on the authority granted to me by section 62(3) of the *Act* to grant the Tenant authority to reduce his monthly rent payment by $400.00, effective August 01, 2022, if the Landlord has not taken reasonable steps to restore hydro service by July 31, 2022 and the Landlord has not provided the Tenant with a generator as directed by July 31, 2022.

I further grant the Tenant authority to reduce each subsequent monthly rent payment by $400.00 until the Landlord takes reasonable steps to restore hydro service and provides the Tenant with a generator.

Once the Landlord has provided the Tenant with a generator, as directed, I grant the Tenant authority to reduce each subsequent monthly rent payment by $300.00 until such time as hydro service is restored or the tenancy has ended.

As the Tenant is being granted a rent reduction, my Order that the Landlord pay for the cost of fuel for the generator is hereby rescinded. In my view the rent reduction is adequate compensation for any fuel required to operate the generator.

Conclusion:

The Landlord is obligated to comply with the orders issued above.

The Tenant is granted a rent reduction as outlined 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*.

Dated: July 18, 2022

Residential Tenancy Branch