



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      RP, RR

### Introduction

This matter dealt with an application by the Tenants for an order requiring the Landlord to make repairs and for an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided. At the beginning of the hearing the parties confirmed that the tenancy has ended and as a result, the Tenants' application for a repair order is dismissed.

### Issues(s) to be Decided

1. Are the Tenants entitled to compensation for loss of a service or facility or the Landlord's failure to make repairs?

### Background and Evidence

This tenancy started on October 1, 2006 and ended on or about April 3, 2009. Rent was \$665.00 per month which included heat. The Tenants claim that in December, 2008 and January, 2009 they were without heat because the pipes (for the water based heat) froze. The Tenants said the Landlord brought 3 space heaters to the rental unit and plugged them in to thaw the frozen pipes without success. The Tenants claim that a plumber removed the frozen pipe at the end of January and at that time their heat was restored. The Tenants sought compensation for a loss of heat as well as for their increased hydro bills which they claimed were approximately \$57.00 per month higher due to the space heaters.

The Tenants claim that in December, 2008, the Landlord removed some insulation from a wall in the bathroom. The Tenants said they noticed the insulation was black and were told by other residents of the rental property that it was probably black mould. Consequently, the Tenants argued that the bathroom walls probably contained mould and contributed to their respiratory problems. The Tenants admitted that they could not smell any mould or mildew and did not see it but were relying solely on what others had told them. The Tenants also claim that on one occasion, the Landlord came to the rental unit and walked into the Tenants' bedroom uninvited to speak to one of them who was just getting out of bed.

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The Landlord claimed that the Tenants were only without heat for 10 days in December, 2008. He said that he tried installing a new thermostat first, then replacing a valve and when that did not work, he plugged in the heaters and asked the Tenants to leave them on. The Landlord said that the Tenants moved one of them which caused the pipe to freeze. The Landlord said that he contacted a plumber who fixed the problem on December 26, 2008. The Landlord claims that the Tenants did not say anything about not having heat for January, 2009. The Landlord argued that the rental unit would not have been that cold in any event because it would have retained residual heat. The Landlord also claimed that the Tenants' rent was reduced by \$50.00 to compensate them for their increased heating bill for December, 2008.

The Landlord denied that there was mould in the rental unit. He claimed that the insulation had black backing but that there was no evidence of mould when he removed it from the section of the wall where the water pipes were located. The Landlord also claimed that he had the Tenant's permission to enter the rental unit and that they didn't tell him he couldn't go into the bedroom to speak to one of the Tenants

The Tenants said that the water pipe may have been repaired in January, 2009 but that there was a problem and they still had to use the space heaters for heat. The Tenants claim that it was not until February, 2009 that they got heat and then they could not regulate it and had to open the windows.

## Analysis

Section 32 of the Act says that a Landlord is responsible for repairing and maintaining a rental unit in accordance with health and building standards established by law. Section 33 of the Act says that a loss of heat constitutes an emergency repair.

I find that the Tenants were without heat for at least 10 days in December, 2008. Given that a loss of heat is considered an emergency repair under the Act, I find that it would have been reasonable for the Landlord to repair the heating system within 48 hours. Instead, I find that the Landlord took inadequate steps to try to resolve the problem and is liable to compensate the Tenants for a loss of an amenity that was included in their rent. As a result, I find that the Tenants are entitled to compensation of \$150.00 for a loss of heat for this period of time.

There is no evidence, however that the Tenants brought to the Landlord's attention continuing problems with the heat in January, 2009. Fairness requires that the problem be brought to the Landlord's attention so that he could try to rectify the problem. Consequently, the Tenant's claim for loss of an amenity for January, 2009 is dismissed.

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The Landlord claimed that the Tenants were compensated \$50.00 for incurring a higher hydro bill in December, 2008. The Tenants thought it was \$20.00. The Tenants did not provide a copy of their utility bills as evidence at the hearing and as a result, I find there is insufficient evidence of the hydro increase alleged by the Tenants. Furthermore, I find that the Tenants have received compensation for December, 2008 and there is insufficient evidence that the heaters were required in January, 2009. Consequently, the Tenants' application to recover increased heating expenses is dismissed.

I also find that there is insufficient evidence of mould in the rental unit. The Tenants admitted that they did not have a good look at the insulation to determine if the black that they saw was the backing alleged by the Landlord. The Tenants also admitted that they did not smell mould or mildew which they reasonably would have if there was mould. Consequently, this part of the Tenant's application is dismissed.

Section 28 of the Act says that a Tenant is entitled to quiet enjoyment including but not limited to reasonable privacy. Section 29(1)(a) of the Act says a Landlord may enter a rental unit if the tenant gives permission at the time of entry. I find that the Tenants gave the Landlord permission to enter the rental unit however, I also find that their permission did not extend to allowing the Landlord to walk into their bedroom uninvited. I find that this was a significant breach of the Tenants' right to privacy for which I order the Landlord to pay compensation of \$100.00.

In summary, I find that the Tenants have made out a claim for \$250.00. As the tenancy has ended, a monetary order for that amount will be issued to the Tenants.

## Conclusion

A monetary order in the amount of **\$250.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: April 30, 2009.

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Dispute Resolution Officer