



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNDC, OLC, RP, RR, FF

### 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 compensation for damage or loss; that the Landlord comply with the Act and make repairs to the rental unit; that Tenant be allowed to reduce rent paid for services not provided and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make affirmed submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$100.00 for the loss of hot water and quiet enjoyment?

Must the Landlord make repairs to the rental unit?

Is the Tenant entitled to a rent reduction for the loss of services?

Is the Tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on May 2, 2009. The tenant pays \$575.00 rent on the first day of each month. The tenant's rental unit is one of 11 suites in the building.

The Tenant has raised two issues in her application for dispute resolution: first; that she has been without hot water since she moved into the rental unit and, second; that from June 13 to November 29, 2009 a neighbouring occupant caused disturbances which resulted in a loss of quiet enjoyment. The Tenant has requested compensation in the sum of \$100.00 combined.

During the hearing the Tenant stated she has not had any hot water since the tenancy commenced; the Landlord testified that the Tenant has had access to lukewarm water and that at times of high demand within the building she will need to wait up to ten minutes for the water to heat.

The Tenant stated that she must use a kettle to heat water for bathing. The Landlord stated that a new boiler system has been recently installed and that she has asked her employee to check the water temperature.

During the hearing the parties agreed that the Landlord and her employee are to be allowed access to the rental unit in order to determine the temperature of the hot water supply. The Landlord stated that the Tenant has denied her access to the rental unit in the past; but during the hearing the Tenant acknowledged that she would either provide mutual agreement for access or respect the Landlord's right to enter the rental unit with 24 hours written notice as required by the Act. The parties agreed that they would attempt to meet with the Landlord's employee on December 11, 2009 in order to begin an assessment of the hot water supply.

The Tenant testified that from June 2009 until November she made repeated verbal requests to the Landlord that she address disturbance caused by the Tenant's neighbour. The Tenant stated that this individual would awaken her throughout the night by playing loud music, sometimes until 5:00 am. The Landlord testified that she did attempt to address these concerns, that she repeatedly spoke with the occupant and that on two occasions the other occupant was issued notices to end tenancy for unpaid rent. The occupant has now moved out of the rental unit.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of

the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The parties have agreed to commence working together in order to solve the Tenant's complaint regarding the loss of hot water. Hot water is an essential service to a tenancy and a tenant is entitled to a supply of water that meets at least a commonly accepted temperature level. The Landlord has confirmed that the Tenant has had access to only lukewarm water which I find fails to meet the standard set out in section 32 of the Act which obliges the Landlord to maintain the rental unit in a state of repair that complies with housing standards required by law.

I find that the parties must investigate the expected average temperature of residential hot water supplies and that, at the least, the BC Building Code minimum temperature standard be the point of reference in establishing the required level of operation. I find that the Landlord is to be provided until December 31, 2009 in which to make the necessary adjustments and/or repairs so that the Tenant has constant access to a hot water supply, to at least the minimum temperature contained in the BC Building Code. It is not reasonable that a Tenant should have to wait 10 minutes for hot water; access must be on demand, allowing the normal time for hot water to travel to the faucet.

As the Landlord was aware of the Tenant's concerns and has indicated that lukewarm water was sufficient I find that the Tenant is entitled to damages in the sum of \$75.00 for the loss of hot water from May 2, 2009 to December 8, 2009.

I find that failure of the Landlord to ensure continuous access to hot water by December 31, 2009 will entitle the Tenant to rent abatement in the sum of \$75.00 per month until such time as the hot water supply is remedied. Once the Landlord has repaired the hot water to at least the levels required by the BC Building Code minimum temperature, the rent abatement to the Tenant is to cease. For any partial month the abatement will be pro-rated in the sum of \$2.46 per day.

If the parties cannot agree on the effective repair date the landlord is at liberty to submit an application for dispute resolution requesting an order terminating the rent abatement. If the hot water is repaired by December 31, 2009 the tenant is not entitled to any abatement.

In relation to the Tenant's claim for loss of quiet enjoyment due to the disturbances caused by the neighbouring occupant, I find that the Landlord was aware of this concern and attempted to rectify the problem. The Tenant has not provided any evidence of attempts to mitigate her claimed loss; she did not place her concerns in writing to the Landlord and then waited six months to claim a loss. Therefore; I dismiss without leave to reapply the balance of the Tenant's claim for damages.

I find that the Tenant's application has merit, and I find that the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$125.00, which is comprised of \$75.00 for damages and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a one-time rent abatement in the sum of \$125.00 which may be deducted from the next month's rent due.

If the hot water temperature is not repaired so that the Tenant has access to water which is at least set to the minimal level contained in the BC Building Code, the Tenant is entitled to rent abatement in the sum of \$75.00 which may be deducted from rent owed each month, commencing January 1, 2010. If the hot water is repaired by December 31, 2009, the Tenant is not entitled to rent abatement.

Once the hot water is repaired, if the parties are unable to come to agreement on a repair date, the Landlord is at liberty to submit an application for dispute resolution requesting the rent abatement be cancelled.

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: December 09, 2009.

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Dispute Resolution Officer