

## **INTERIM DECISION**

### **Dispute Codes:**

MNDC, OLC, ERP, RP, PSF, FF

### **Introduction**

This is the Tenants' application for a monetary order for compensation for damage or loss; for orders that the Landlords comply with the Act, make emergency and regular repairs to the rental unit, and provide services or facilities required by law; and to recover the cost of the filing fee from the Landlords.

The Tenants gave affirmed testimony and the Hearing proceeded on its merits.

### **Preliminary Matter**

The Tenants testified that they mailed the Notice of Hearing documents, by registered mail, to the Landlords on December 15, 2009, to the address provided by the Landlords on the Tenancy Agreement, pursuant to the provisions of Section 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenants provided tracking numbers for the registered mail documents and testified that a search of the Canada Post website confirmed that the documents were re-directed to the Landlord's new address on December 16, 2009.

The Landlords provided documentary evidence to the Residential Tenancy Branch and therefore I am satisfied that the Landlords were served with the Notice of Hearing documents. Despite being served, the Landlords did not attend the teleconference and the Hearing proceeded in their absence.

### **Issues to be Decided**

- Are the Tenants entitled to a monetary order for compensation for loss under the Act, regulation or tenancy agreement, pursuant to Section 67 of the Act?
- Are the Tenants entitled to the following orders:
  - That the Landlords comply with Section 32 of the Act;
  - That the Landlords make emergency repairs pursuant to Section 62(3) of the Act;

- That the Landlords make regular repairs pursuant to Section 32 of the Act; and
- That the Landlords provide facilities or services required by law pursuant to Section 62(3) of the Act?

### **Background and Evidence**

This tenancy started on July 31, 2001. Current monthly rent is \$1,237.60, due the first day of each month. The Tenants were served with a Notice of Rent Increase, effective March 1, 2010, increasing the monthly rent to \$1,277.20. The rental unit is a two-storey apartment on the top floor of an older building.

#### **The Tenants gave the following testimony and evidence:**

When the Tenants moved into the rental unit, the heating system was working satisfactorily. The Landlords installed a new boiler in the building in 2005.

Gradually, over the past few years, the lack of heat in the rental unit has become more and more pronounced. The Tenants first notified the Landlords' agent (the building manager) in writing about the lack of heat on October 18, 2006. Numerous phone calls, e-mails and letters followed.

In the winter, for the past couple of years, the temperature inside the apartment has been the same as the outside temperature. For example, on December 17, 2008, the overnight temperature dropped to -13.6 degrees Celsius, and the Tenants had to check into a hotel that night, as the temperature was too low to be safe for them and their infant.

Initially, the Landlords' remedy was to bleed the lines of air (air in the lines will block the flow of water to the radiators), which worked temporarily. On January 6, 2007, when bleeding the lines no longer brought sufficient heat to the Tenants' home, the Tenants advised the building manager. The Landlords suggested electric baseboard heaters would be the answer, but admitted they would also trip the circuit breakers. The

building manager told the Tenants that the Landlord would be assessing the cost of updating the circuit breakers, however no one has inspected the breaker boxes. The Landlords have done nothing to fix the heating system in the Tenants' home.

In the absence of a properly working heating system, the Tenants attempted to heat their home with their stove; using an electric blanket at night; and purchasing electric oil heaters, smaller space heaters and an electric fire place. The heaters did not solve the problem because the extra drain on the electricity kept tripping the circuit breakers. The Tenants provided extensive documentary evidence of letters and e-mails to and from the Tenants and the building manager, between October, 2006 and November, 2009.

The Tenants are requesting a monetary order for compensation, as follows:

Description	Amount claimed
BC Hydro charges beyond the mean-average monthly costs prior to November, 2006	\$795.50
Costs of electric blanket, plastic window coverings; area heater	\$267.89
The equivalent of one month's rent for loss of quiet enjoyment	\$1,237.60
Amount claimed by the Tenants	\$2,300.99

The Tenants provided the following documents in evidence:

- a BC Hydro Consumption and Compensation Analysis;
- a statement from BC Hydro indicating the consumption rate for the rental unit from May 9, 2005 to December 7, 2009;
- invoices and comparables with respect to the cost of the electric blanket, window coverings and area heater; and
- a copy of a portion of the City of Vancouver Standards of Maintenance Bylaw 5462.

### **Analysis**

Section 32 of the Act provides that the Landlords must provide and maintain residential property in a state of repair that complies with the health, safety and housing standards

required by law. Section 18.1(1) of the City of Vancouver Standards of Maintenance Bylaw 5462 states:

Heating systems shall be maintained in a safe and good working condition so as to be capable of safely attaining and maintaining every room at a temperature of 72 Fahrenheit (22 Celsius) measured at a point 5 feet (1.52 m) from the floor.

I accept the undisputed testimony and evidence of the Tenants and find that the Landlords have not complied with Section 32 of the Act.

Section 33(1) of the Act states:

**Emergency repairs**

**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.

Section 62(3) of the Act states:

**Director's authority respecting dispute resolution proceedings**

**62** (3) The director may 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.

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlords have not complied with Section 32 of the Act. I find that the Landlords have not attended to emergency repairs in a timely manner, or at all. The Tenants have attempted to provide their own heat sources by purchasing heaters and other devices to keep themselves warm in the winter months. I order the Landlords to provide facilities required by law and make repairs to the heating system in the Tenants' home within 2 months of receipt of this Interim Decision. I allow the Tenants a rent reduction in the amount of 20% for the months of February and March, 2010, for a total of \$502.96, calculated as follows:

(February rent reduction) \$1,237.60 x 20%	= \$247.52
(March rent reduction) \$1,277.20 x 20%	= <u>\$255.44</u>
Total	\$502.96

The Tenants provided the Landlords with ample notice of, and opportunity to remedy, the heating system. I find that the Tenants have had to pay extra Hydro charges, and incurred the costs of a heater, plastic window coverings and an electric blanket in an attempt to stay warm.

I find that the Tenants are entitled to be compensated for their loss of quiet enjoyment of their home.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlords.

The Tenants have established a monetary claim in the amount of \$2,853.95, calculated as follows:

Rent reduction for February and March, 2010	\$502.96
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Compensation as claimed	\$2,300.99
Recovery of filing fee	<u>\$50.00</u>
TOTAL	\$2,853.95

Pursuant to Section 72(2)(a) of the Act, the Tenants may deduct the amount of \$2,853.95 from rent due to the Landlords.

This Hearing is adjourned to a date and time provided on the enclosed Notice of Reconvened Hearing document. The purpose of the Reconvened Hearing is to hear testimony from the Tenants and the Landlords with respect to the state of repairs to the heating system. At that time, a further rent reduction may be granted to the Tenants if the Landlords fail to comply with these Orders.

### **Conclusion**

I hereby order the Landlords to Comply with Section 32 of the Act and repair the heating system in the rental unit in a manner that complies with City of Vancouver Standards of Maintenance Bylaw 5462, within 2 months of this Decision.

The Tenants are entitled to a monetary award in the amount of \$2,853.95, which may be deducted from rent due to the Landlord.

Notices of Reconvened Hearing accompany this Interim Decision. The Tenants must serve the Landlords with the Notice of Reconvened Hearing, in accordance with the provisions of Section 89(1) of the Act, within 3 days of receipt of this Interim Decision.

This Interim 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 3, 2010.

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