

## **DECISION and SETTLEMENT**

### **Dispute Codes:**

MNDC, ERP

### **Introduction**

This hearing was convened in response to an application by the tenant.

The tenant sought;

- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement: loss of quiet enjoyment due to insufficient heat.
- Make emergency repairs to the rental unit's heating system

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still residing in the rental unit.

### **Issue(s) to be Decided**

Should the landlord be ordered to make emergency repairs?

Is the tenant entitled to the monetary amount claimed for loss of quiet enjoyment?

### **Background and Evidence**

The testimony of the landlord and the tenant is that the tenancy began October 15, 2009. Rent (inclusive of all utilities) in the amount of \$3150 per month is payable in advance on the first day of each month. Under the tenancy agreement heat, electricity and hot water are the responsibility of the landlord.

The tenant's relevant testimony is that the main heating system of the rental unit – a boiler unit with hot water radiant system – failed on March 16, 2010, and the tenant was not able to re-light the system. The system had undergone repairs previously in November 2009 and since then the tenant claims they were without heat for 16 days up to and including March 19, 2010. The landlord and tenant agreed in testimony that the heating system has not been functioning since March 19, 2010 and the tenant has been using 3 electric space heaters which the tenant purports have only been partially successful in heating the house. The tenant and landlord agree that the house cannot safely accommodate a greater number of space heaters due to the electrical load

system of the house. The tenant testified that despite the use of 3 space heaters, temperatures in the house, on average, have been 10 degrees cooler (Celsius) than typical room temperature of 21 degrees. The tenant does not describe the situation as dire, but certainly lacking sufficient heat for comfort.

The landlord acknowledges that he has known about the lack of heat since a letter from the tenant given March 19, 2010. The landlord testified that he is absorbing the additional electrical costs for the use of space heaters, and cannot afford to repair or replace the heating system, but is prepared to continue paying for the additional electrical utility.

The tenant further advised that he is vacating the rental unit and will be giving legal notice of his move before May 01, 2010. The landlord wants assurance the tenant will vacate by May 31, 2010. As result, the parties came to mutual agreement that the landlord will receive an Order of Possession of the rental unit effective May 31, 2010.

The tenant is further seeking compensation for loss of quiet enjoyment of the rental unit as it has not been sufficiently warm since March 16, 2010. The hearing has not been provided with any supporting evidence in this regard; but, the landlord agreed to compensation in the form of some rent abatement

### **Analysis**

Based on the testimony of the landlord and the tenant and on preponderance of all the evidence **I find** that as the tenant and landlord agreed the landlord is to receive an Order of Possession effective May 31, 2010, I will so Order.

and, on the basis the tenancy will be ending, I find that an order for the landlord to make repairs will, on the balance of probabilities, result in financial compensation for the tenant for a devalued tenancy and an abatement in rent. Therefore, I concede to the tenant's argument for compensation for loss of quiet enjoyment as full and final resolve to the tenant's application.

**I find** the tenant is entitled to compensation for loss of quiet enjoyment for the period since March 19 to April 23, 2010 in the amount of **\$400**. **I order** the tenant may deduct this amount from future rent.

On reflection, as the landlord has testified that they will not be repairing or replacing the heating system for lack of financial resources, **I order** the tenant may secure a qualified contractor by no later than **April 26, 2010** *to repair the heating system up to and including reasonable repairs to render the heating system functioning adequately*. The tenant may not replace the heating system. **I order** the tenant may deduct reasonable

costs of such repairs from future rent, provided the tenant submits an invoice marked PAID along with the future rent.

### **Conclusion**

**I order** the tenant may secure repairs to the heating system and deduct the cost of such repairs from future rent only in accordance with this decision.

**I order** the tenant may deduct **\$400** from future rent.

**I grant** an **Order of Possession** to the landlord **effective May 31, 2010**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme 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*.