



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, RP

### Introduction

This hearing was originally set for November 18, 2010 and reconvened to this date to allow both parties the opportunity to gather additional evidence and witness statements.

This hearing dealt with an application by the tenant for a monetary order for compensation for damage or loss and to order the landlord to make repairs. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started in July 2010 with monthly rent of \$385.00, the tenant paid a \$192.50 security deposit.

The tenant testified that the hot water tank in the building stopped working in early September and was broken until October 13, 2010. As a result the tenant had no hot water and could not shower and that he had to go to local community centers to shower. The tenant stated that he did advise the on-site manager of the problem and often asked the on-site manager when the hot water tank would be fixed and hot water available. The tenant was without hot water for 27 days and is seeking a monetary order for compensation for damage or loss of facilities in the amount of \$170.00. The tenant is also seeking an order for the landlord to make repairs to the building as required by the Act.

The tenant's witness testified that from July 2010 through October 14, 2010 the building had no hot water on the second and third floors that are occupied residential units.

The landlord's agent originally testified that the hot water tank broke in late September but could not verify that information as the on-site manager from that time is no longer associated with the building. The landlord's agent stated in this hearing that the head office was notified of the problem with the hot water tank on September 13 and that hot water was available that same day. The landlord's agent stated that there are 2 boilers

in the building providing hot water and that if the primary boiler breaks down the secondary boiler still supplies hot water to the building.

## Analysis

### **Residential Tenancy Act Section 32 Landlord and tenant obligations to repair and maintain**

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

### **Residential Tenancy Act Section 33 Emergency repairs**

(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

Residential Tenancy Act Section 32 outlines both the tenant's and landlord's obligation to maintain a residential property and that it must comply with the health, safety and housing standards required by law. Section 33 refers to emergency repairs and that 'urgent repairs' are necessary for the health or safety of anyone or for the preservation or use of residential property. The issue of residents not having access to hot water for an extended period of time would reasonably fall under Section 33 of the Act.

Based on the documentary evidence and undisputed testimony of the tenant and tenant witness's, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for compensation for damage or loss of facilities under the Act.

### **Residential Tenancy Act Policy Guideline 22 Termination or Restriction of a Service or Facility**

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

The tenant pays rent of \$385.00 which includes utilities IE: hot water, and the tenant was without hot water for 27 days. As this loss is very difficult to quantify, I find it reasonable to award the tenant \$100 for the loss of facilities that he incurred.



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I find that the tenant has established a monetary claim for \$100.00.

As the landlord has repaired the boiler and is currently in compliance with the Act, the portion of the tenant's application to order the landlord to make repairs is hereby dismissed.

## Conclusion

The tenant may deduct \$100.00 from future rent owed to the landlord for recovery of the monetary order for compensation.

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 10, 2010

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Dispute Resolution Officer