



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      RR, FF

### Introduction

This matter dealt with an application by the Tenant for an Order authorizing her to deduct the cost of repairs, services or facilities from her rent and to recover the filing fee for this proceeding.

The Tenant's application also included as Party, the building manager for the Landlord who was identified only by her given name. I find that there are insufficient particulars to warrant including this person as a Party and as a result, the Tenant's application is amended to include only the corporate Landlord.

### Issue(s) to be Decided

1. Is the Tenant entitled to a rent reduction and if so, how much?

### Background and Evidence

This tenancy started on March 1, 2007. Rent is \$900.00 per month which includes heat, water and hot water.

The Tenant said that on November 17, 2010, the Landlord posted a notice in the elevator of the rental property advising the residents of that building that the water would be turned off on November 18 and 19, 2010 between 9:00 a.m. and 5:00 p.m. as a result of repairs or upgrades being made to the boiler and hot water tank. The Tenant said she was without heat, water and hot water for much longer.

The Tenant claimed that the repair people left the building on Friday, November 19, 2010 without restoring her heat and water. The Tenant said she was unable to contact an agent of the Landlord until Saturday, November 20, 2010 around 12 p.m. when she spoke to the building manager, G.A. The Tenant said G.A. told her that there was a break in the pipes which could not be repaired until Monday, November 22, 2010 and as a result, she would have to deal with the problem until then. The Tenant also claimed that she noticed at this time that the emergency sprinkler control panel did not appear to be working because it was beeping and as a result, she contacted the Vancouver Police Department. The Tenant claimed that she was advised that the building had been put on "24 hour fire watch" by the Fire Department and members of the fire department attended the rental property and served the Landlord's agent with documents that day.

The Tenant also claimed that a maintenance person, A.A., came to her unit on Saturday to look at her radiators and told her they were working. The Tenant disagreed and said that while the heaters were warm to the touch, the heat they emitted was insufficient to warm the rental unit given that the temperatures outside had dropped dramatically. The Tenant said she spoke to an area representative for the Landlord on Monday, November 22, 2010 about the lack of heat and water but this person referred to another area representative. The Tenant said the water was restored by 4:00 p.m. on Monday but the heat was still not working. The Tenant said A.A. returned to her unit to bleed the radiator lines on the 22<sup>nd</sup> and 23<sup>rd</sup> but this did not fix the problem. The Tenant said the water was turned off again on the 25<sup>th</sup> at 9:00 a.m. but turned back on at 5:00 p.m. and the heat was restored at 7:00 p.m. that day.

The Tenant's daughter, C.D., gave evidence that she resided in the rental unit at the time in question although she admitted that she also stayed at her boyfriend's residence from time to time. C.D. said she recalled that the heat was off for 3 or 4 days and that it was very cold in the rental unit. C.D. also claimed that she recalled that there was no running water for a long time, then there was only cold water and then only hot water. C.D. said that although she could not recall the events in great detail, she could recall being without hot or cold water over a week end.

The Landlord's agent, G.A., admitted that a pipe broke between floors on Friday, November 19, 2010 in the rental property that affected tenants in that area and as a result, the cold water had to be turned off to the Tenant's bathroom until the following Monday when a part could be located. The Landlord's agent claimed that during upgrades, valves had been placed in each unit so that the Tenant could still get hot water and would have been able to get cold water from her kitchen. The Landlord's agent said she heard no complaints from the Tenant or any other occupants in the same area of the building after Saturday about not having any heat or water (which the Tenant denied). G.A. also claimed that A.A. told her that the heaters in the rental unit were "warm" to touch and that the boiler was on maximum so that there was nothing more to be done until someone looked at the boiler on Monday.

The Landlord's maintenance person, A.A., said that when he inspected the Tenant's heaters on November 20, 2010 the heaters were "warm" but sufficient to keep the rental unit heated. A.A. claimed that the problem was that the Tenant's sofa and a bed were blocking air flow to and from the radiators. A.A. admitted that he bled the radiators on two occasions but claimed that this was a standard procedure conducted each fall to remove air from the lines and would not have affected the Tenant's heat. A.A. claimed that both hot and cold water must have been working over the weekend otherwise a plumber would have been contacted. A.A. also claimed that the fire sprinkler system was working and that it was on a separate water supply.

The Landlord's agent argued that the Tenant was only without heat and hot water on November 18 and 19, 2010 during the day and was without cold water in the bathroom only on November 20 and 21, 2010. The Landlord's agent argued that pursuant to a term of the Parties' tenancy agreement, the Landlord was not responsible for compensating the Tenant for a loss of heat or water while repairs were being made to the rental property.

## Analysis

Section 27(1) of the Act says that "a landlord must not restrict a service or facility if the service or facility is essential to the Tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement." Section 27(2) of the Act says (in part) that if a landlord restricts any other service or facility, the landlord must give 30 days' written notice and reduce the Tenant's rent by an amount that is equivalent to the reduction in the value of the tenancy agreement due to the termination or restriction of the service or facility.

Consequently, in this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that her water and heat were terminated by the Landlord for a period of about a week. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find that there is insufficient evidence to conclude that the sprinkler or fire suppression system in the rental property was inoperative from November 20 to 22, 2010 as the Parties gave contradictory evidence on this point and there was no corroborating evidence to resolve the contradiction.

The Parties agree that the water and heat were turned off from 9:00 a.m. to 5:00 p.m. on November 18 and 19, 2010 while repairs were being made to the rental property. The Tenant claims that she continued to have no heat for a further 5 full days, no water (hot or cold) for a further 2 and ½ days. The Landlord denied that the Tenant had no heat or water other than while repairs were being made on November 18 and 19, 2010 (and possibly for a few hours on Monday, November 22, 2010).

I find on a balance of probabilities that the heat in the Tenant's rental unit was compromised by the repairs to the boiler after 5:00 p.m. on November 19, 2010. Although A.A. claimed that any lack of heat in the rental unit was due to the Tenant placing a sofa and bed near the heaters, he admitted that the Tenant's radiators were only warm or giving off only a small amount of heat when he inspected them on November 20, 22 and 23, 2010. Furthermore, I found A.A.'s evidence to be unreliable

given that it was contradicted by the Landlord's agent G.A. on at least 2 material points. For example, G.A. claimed that A.A. advised her (after inspecting the Tenant's heaters) that there was nothing that could be done to address her heat until someone came to look at the boiler the following Monday because the boiler was "at maximum."

However, I find that there is insufficient evidence to conclude that there was a problem with the Tenant's heat after Monday, November 22, 2010. In particular, the Tenant's daughter gave evidence that she recalled the rental unit was cold for only 3 or 4 days which corroborates the Landlord's evidence that any outstanding repairs were completed by Monday, November 22, 2010.

Similarly, I find on a balance of probabilities that the Tenant continued to be without water after 5:00 p.m. on November 19, 2010 until Monday, November 22, 2010 at 4:00 p.m. Although A.A. claimed that the Landlord would have contacted a plumber to repair these kinds of problems during a weekend, this was contradicted by G.A. who claimed the repair had to wait until a part could be purchased on Monday. Although the Landlord's agent (G.A.) claimed that the Tenant did not complain about a lack of heat and water, I find that the Tenant did tell her about the problem on Saturday, November 20, 2010 and that G.A. likely advised the Tenant that nothing could be done to restore the heat or water to the rental unit until Monday when the repairs would be done.

In summary, I find that the Tenant did not have heat or any water on November 18 and 19, 2010 from 9:00 a.m. until 5:00 p.m. while scheduled repairs were being made. I further find that the Tenant did not have heat or water from 5:00 p.m. on November 19, 2010 until approximately 4:00 p.m. on November 22, 2010. The Landlord relied on a term of the Parties' tenancy agreement (clause #11) as follows:

"Repairs – Landlord. The Landlord shall not unreasonably delay in causing unnecessary alterations or repairs to be done with due diligence and shall supply premises and services according to statutory standards, except that during repairs to the heating facilities, the Landlord shall not be bound to furnish any heat; and the Landlord shall not be liable for indirect or consequential damages, or damages for personal discomfort or illness arising from the want of heat, or hot and cold water, or electricity or air conditioning, or from alterations or repairs to the premises or services."

Section 5 of the Act says that any attempt to avoid or contract out of the act or the regulations is of no force and effect. I find that to the extent the above-noted clause attempts to prohibit a Tenant from claiming compensation for a loss of a service or facility included in the rent, it is contrary to s. 27 of the Act and is unenforceable.

I find that heat and water were included in the Tenant's rent. I find that it was reasonable for the Landlord to restrict the heat and water during the day time hours of



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November 18 and 19, 2010, however I find that it was unreasonable for the Landlord to fail or refuse to return those services to the Tenant (without any notice) for a further 3 days until repairs were resumed. Consequently, I find that the Tenant is entitled to a rent rebate which I assess at \$30.00 per day for a total of \$90.00.

As the Tenant has been successful in this matter, I also find that she is entitled to recover the \$50.00 filing fee for this proceeding. The Parties stated during the hearing that the tenancy would be ending at the end of January 2011. Consequently, I find pursuant to s. 62(3) of the Act that the Tenant is instead entitled to compensation of \$140.00.

## Conclusion

A Monetary Order in the amount of **\$140.00** has been issued to the Tenant 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: January 10, 2011.

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Residential Tenancy Branch