



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

By application of December 3, 2010, the tenant seeks a Monetary Order for \$25,000 for damage or loss under the legislation or rental agreement.

As a matter of note, this tenancy was the subject of two previous hearings.

As a result of the first hearing on May 17, 2011 on applications by both parties, the Dispute Resolution Officer granted the landlord an Order of Possession on a Notice to End Tenancy for unpaid rent and a Monetary Order for \$2,180 for the unpaid rent. The tenant's application was dismissed as premature with leave to reapply.

Subsequently, the tenant made application for the damages. The hearing was set for January 26, 2011 but neither party appeared and the application was dismissed with leave to reapply.

### **Issues to be Decided**

This application requires a decision on whether the tenant is entitled to the monetary compensation claimed taking into account whether the damages are proven, whether they were attributable to the landlord, whether the amount claim is proven and/or reasonable and whether the claimant acted reasonably to minimize the loss or damage.

### **Background and Evidence**

This tenancy began on May 20, 2009 and ended in the first week of June of 2010 under the Order of Possession. Rent was \$1,000 per month.

In the present application, the tenant seeks compensation on the claim that an improperly maintained gas furnace resulted in elevation carbon monoxide levels in the rental unit and consequent respiratory difficulties for the tenant.

The tenant stated that she had advised the landlord at the beginning of the tenancy that she was concerned with the air quality in the rental unit but that he did nothing to address her concerns.

The landlord denied that the tenant had brought the matter to his attention until after he had returned from a three-month trip to India in March of 2010.

The tenant submitted into evidence a copy of a Notice of Hazardous Condition from Terasen Gas dated April 5, 2010. She stated that a company representative had attended at the rental unit on that date and that he had shut the furnace down and ordered repairs after neighbours had reported the odour of gas.

She also submitted a copy of a report from a furnace cleaner dated April 13, 2010 which included the comment that the "cleaning had never been done..very dusty...excessive corrosion....new one is recommended."

The tenant also submitted a copy of a medical laboratory report showing that her blood carboxyhemoglobin level was .05 which is above normal. However, the report also notes that the level may be as high as .10 in smokers.

A physician's report on May 6, 2010 recorded the tenant's complaint of shortness of breath and concern over the ventilation in the home and notes the carbon monoxide test result showed a higher level than in a healthy person but noted that the tenant's smoking "may effect this level somewhat."

A second report of May 13, 2010 reiterates the first and notes that, "A blood test for CO showed elevated levels which may be due to the gas."

The tenant further submitted a copy of a report from a Fire Inspector who attended the rental unit on April 27, 2010 and ordered that the hot water tank not be used until repaired by a qualified technician. According to the tenant, she had called the fire officials after she reported a leak to the landlord who delayed his response.

## **Analysis**

Section 32 (1) of the *Act* states that “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..”

There is no question that the landlord had failed in this duty by permitting the furnace to deteriorate to a point that the gas supplier shut it down and a service provider strongly recommended its replacement.

As the tenant was a smoker, I find it impossible to know for certain the extent to which whether her elevated blood levels were a result of the furnace and smoking.

I must further consider that the tenant did not act until she was under notice for unpaid rent, that she did not act to minimize her losses as required under section 7(b) of the *Act*, either by moving of the rental unit, or by invoking her right under section 33 of the *Act* to treat the problem as an emergency repair.

I initially advised the parties that I had found the landlord negligent and that the tenant was entitled to an award of \$100 per month. However, on reflection on the extreme potential consequences of a badly worn gas furnace that was not maintained, I find that the tenant is entitled to an award of \$400 for each of the six months of the tenancy for a total of \$2,400.

## **Conclusion**

The tenant’s copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$2,400 for service on the landlord.

April 1, 2011