



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, PSF, OLC, MNDC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss, an order to have the Landlord make emergency repairs, to comply with the Residential Tenancy Act (the "Act"), and to provide services or facilities required by law.

The parties appeared, provided affirmed testimony and written evidence, and were given an opportunity to make submissions to me and respond each to the other.

Although only the female tenant was listed on the application, the male tenant also attended and provided testimony on behalf of the tenants.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss and to an order to have the Landlord complete emergency repairs, comply with the Act and to provide services to the tenant?

### Background and Evidence

This one year, fixed term tenancy began on February 15, 2011, monthly rent is \$1,295.00 and a security deposit of \$647.50 was paid by the tenant on February 15, 2011.

I heard testimony that the rental unit is one of four in the residential building.

The tenant's monetary claim is in the amount of \$1,495.00, which includes compensation for a retroactive rent reduction since February 15, 2011, in the amount of \$200.00 per month, rent reduction of \$200.00 until the tenant's complaint is resolved, and \$30.00 per month, since February 15, 2011, for increased gas bills.

The tenant's relevant evidence included a copy of the tenancy agreement, his first written notice to the landlord, dated March 12, 2011, about the lack of heat, the landlord's response of March 17, 2011, which partially states that they will correct the faults, a letter of March 21, 2011, from the tenant to the landlord, stating that the visits by the plumbers and electricians had not resolved the lack of heat problem and requesting a time frame for the correction, a letter of April 1, 2011, from the tenant to the

landlord, asking that the landlord address the lack of heat, and a letter of June 8, 2011, from the tenant to the landlord, informing the landlord that the heat in the living room stopped working after some work by a plumber.

The tenant testified that as soon as he and his family moved into the rental unit, he immediately noticed that there was a lack of adequate heating. The tenant stated that he notified the landlord immediately of the problem with heating, and when that was not successful, he began putting his complaints into writing, on March 12, 2011.

The tenant stated that he was very concerned that the lack of adequate heat, particularly in the main bedroom, would impact the health of his pregnant partner, the listed tenant.

The tenant submitted that the landlord's response to resolving the lack of heating was to tell the tenants to move, which the tenant believes is not the proper way to solve the problem of lack of heating.

The tenant submitted that the landlord did have some tradespersons, such as plumbers and electricians, attend the rental unit, but still the problem persisted.

The tenant submitted after the last visit by a tradesperson, the heat began working somewhat in the main bedroom, but stopped working in the living room. However, despite this, the heating in the main bedroom makes a loud banging sound every 10-15 minutes, disturbing the tenant's sleep.

The tenant stated that he attempted to use the heating system through June 2011, due to the lingering cold weather. Upon query, the tenant stated that it was probably not necessary to use the heat as much in July and August.

The landlord, in response, stated that they have not been negligent in attending to the tenant's complaints, but that the plumbing company attended the rental unit several times and was not able to fix the problem.

The landlord submitted that when she called the plumbing company in September, 2011, it was explained to her that a resolution of the problem would cost approximately \$10,000.00. The landlord submitted that the building was too old to justify the necessary repairs as the walls have to be opened and sheetrock replaced.

The landlord stated that they had receipts to prove that repair persons were called to the rental unit, but the landlord did not submit any evidence.

I note that the landlord testified several times that the tenants were offered compensation, but upon query, then stated that no compensation was ever offered, as verified in a letter from the landlord to the tenant.

The landlord did not dispute that the tenants' heating system was not functioning properly.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Section 33 of the Act **requires** the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are required for the primary heating system.

In the absence of contradiction from the landlord I find the tenant has established through testimony and evidence that he has been without a properly functioning primary heat source since the beginning of the tenancy.

I find the landlord took some measures to repair the primary heat source, but that this action was not sufficient to repair the primary heat source. However, I find the landlord's primary response to the complaints of the tenant was an offer to allow the tenant to move.

I find this insufficient response by the landlord has caused the tenant to suffer a loss of use and enjoyment of the rental unit. I accept that the lack of adequate heating during the coldest of the winter months diminished the value of the tenancy by \$200.00 per month.

I therefore **award** the tenant monetary compensation of **\$200.00** per month as retroactive rent reduction for loss of use and enjoyment of the rental unit starting February 15, 2011, through June 30, 2011, when the tenant stopped using the heat for the summer, in the amount of \$900.00, (\$100.00 for one half of February and \$200.00 per month for March through June 2011).

I find the tenant did not require heating for the months of July, August and September.

The landlord has acknowledged that there is no intention to repair the heating due to high costs. I therefore further order that the monthly rent for the rental unit be reduced by \$200.00 per month beginning in October 2011, in recognition of the tenant's continued lack of adequate heat in the rental unit, until such time as the landlord completes repairs to the furnace/heating system and receives an order from a Dispute Resolution Officer that the rent can be increased to its original amount due to completed repairs.

As a point of clarification, the tenant's new monthly rent will be \$1,095.00 until such time as the landlord completes repairs to the furnace/heating system, files an application for dispute resolution, and receives an order from a Dispute Resolution Officer that the rent can be increased to its original amount due to the sufficient repairs to the heating system.

I **direct** the tenant satisfy the monetary claim of **\$900.00**, in accordance with Section 72(2)(a), by withholding that amount from the next monthly or a future month's payment of rent. As a point of clarification, the tenant may also deduct an additional \$200.00 from the next monthly rent payment in the event he pays the full amount of rent for October 2011. For example, if the tenant pays rent in full in October 2011, the tenant's rent payment for November 2011 will be \$195.00 (\$900.00 monetary compensation, plus \$200.00 rent reduction for October deducted from the rent obligation of \$1,295.00)

As to the tenant's claim for a gas bill reimbursement, proving a claim in damages under sections 7 and 67 of the Act requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenant submitted insufficient evidence to substantiate that she suffered an increase in gas bills due to the inadequate heating. I therefore **dismiss** her claim for reimbursement for increased gas bills.

### Conclusion

The tenant is entitled to monetary compensation in the amount of **\$900.00**.

The tenant's monthly rent is reduced by \$200.00 per month, to \$1,095.00 per month, until the landlord files an application for dispute resolution, and receives an order from a Dispute Resolution Officer that the rent can be increased to its original amount due to sufficient repairs to the heating system.

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: September 29, 2011.

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Residential Tenancy Branch