



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, OLC, PSF, RR, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$1,030.00, for the loss of heat and hot water, for the cost of hydro and for the filing fee. The tenant also claimed a rent reduction until the landlord provides adequate heat and hot water. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Was the landlord negligent in providing heat and hot water? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started in 2003. The monthly rent is \$950.00 and includes the cost of heat and hot water.

The tenant stated that the problem with the heating started in October and he made calls to the rental office on October 11, 14 and November 16. Each time the landlord sent out a maintenance person to fix the problem. In his application the tenant states that he has had “*no heat since November 01 and no hot water sporadically for Nov.*” The tenant stated that despite his complaints, the problem still exists.

The landlord testified that the rental complex consists of three buildings that house 183 rental apartments. A single boiler which is extremely large in size services all the rental units. During some maintenance work in summer, the landlord recognised that the boiler did not have a lot of useful life left.

In early October, some repairs were carried out and the landlord ordered a new boiler to replace the existing one. Due to the specificity of the boiler, it was not held in stock and had to be shipped in and would take about four weeks to arrive. On October 28, 2011, a maintenance staff member noticed that the boiler was leaking and plumbers were called in to fix the problem. In the mean time, the landlord stated that the water temperature was maintained at 45 degrees which is hot but not as hot as some tenants would like it to be. Room temperatures were maintained at 22 to 23 degrees. To supplement heat for comfort, the landlord purchased 200 heaters and offered them to the tenants of the complex along with an offer to cover the added cost of hydro.

The tenant stated that he was not aware of the offer of heaters until end November at which time he took advantage of the landlord's offer.

The landlord also testified that other problems contributed to the delay. A leak in an underground pipe was discovered and when the boiler arrived, it was of a different size and alterations had to be made to accommodate the boiler. During the hearing, the landlord stated that the boiler would be finally installed prior to December 25.

### **Analysis**

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In this case, I find that the landlord carried out preventative maintenance and acted proactively by ordering a new boiler, prior to the leak on October 28, 2011.

Even though the tenant stated that he was without hot water and heat for the month of November, he also testified that he contacted the landlord just once on November 16 and that the water is hot at certain times of the day. While the temperature may not be as high as the tenant would like it to be, the landlord also provided heaters and has offered to pay the added cost of hydro. I find that the landlord was not negligent with regard to its duties as a landlord.

I find that the tenant may have been inconvenienced while the heat and hot water temperatures are not as high as he would like them to be, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven his case for compensation and his application is dismissed.

In the event that the problem is not resolved by December 25, 2011, the tenant is at liberty to apply for a rent reduction. Since the problem does exist which caused the tenant to apply for arbitration, I find that the landlord must cover the cost of the filing fee. The tenant may make a onetime deduction of \$50.00 off the next rent.

### **Conclusion**

The tenant's application is dismissed in its entirety. The tenant may make a onetime deduction of \$50.00 off the next rent.

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 14, 2011.

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Residential Tenancy Branch