



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on November 14, 2011 and that the tenants are obligated to pay \$1,400.00 per month in rent.

The tenants testified that when they moved into the rental unit, they turned on the heat and found that it was blowing cold air. They contacted the landlord's agent, A.L., who advised them to contact the owner. The owner attended the unit with another party and was able to fix the problem. The tenants were told that the air conditioning had been hooked up rather than the heat. The heating system worked for several days and then stopped functioning. The tenants contacted A.L. and were again told to contact the owner, which they did. The owner sent a third party to inspect and the third party advised that the heating board required replacement as did the thermostat. The third party replaced the thermostat, after which the heat began to work again. Within a few days, the heating system again stopped functioning and the tenants again reported the issue. The landlord arranged for a different technician to attend at the unit who advised that the heating board needed to be replaced. The technician advised that the part had to be ordered and that it wouldn't arrive until after the weekend. The landlord provided small space heaters which the tenants claimed were inadequate as they only heated the immediate area in which they were placed. The heating board was replaced after the weekend and the heat has functioned well since.

The tenants seek to recoup \$700.00 of the rent they paid for the rental unit as they claim they were without heat for approximately 15 days. They testified that the children of one tenant

were unable to visit him because of the extreme cold and that they had difficulty sleeping because of the extreme cold.

The landlord did not dispute the tenants' account but argued that they acted diligently to correct the problem each time they were informed. They stated that they may have hired incompetent workers but argued that they should not be held responsible when they were unaware that the workers could not repair the problem.

The tenants testified that on January 2 they turned on the gas oven and noticed a strong smell of gas. They telephoned A.L. who advised them to air out the house and stated that they could hire a professional to perform repairs if required. The tenants continued to be concerned and sent an email to A.L. on February 9. On February 15 the tenants contacted Fortis BC who sent a technician to inspect the oven. The technician advised that the problem was probably due to a faulty ignitor and directed them to have the oven repaired. The tenants again contacted A.L. to advise him what the technician had said and A.L. again told the tenants that they could hire a technician to perform repairs and promised to reimburse them for the cost. On February 28 the tenants arranged for a technician to inspect and diagnose the problem with the oven and they paid him \$89.00 for the diagnosis. Although he could have performed the repair at that time, the tenants chose not to have the oven repaired but instead forwarded the diagnosis to the landlord. The oven was repaired by the landlord on March 5.

A.L. argued that the owner had not left him with a fund with which to do repairs, which rendered him powerless, and stated that he forwarded all complaints to the owner. A.L. further stated that because he had authorized the tenants to have the oven repaired and promised to reimburse them for the cost of those repairs, the tenants could have had the oven repaired much earlier.

The tenants testified that they did not repair the oven because they had tried to negotiate a settlement with the landlord over the loss of heat in the unit and because the landlord was not willing to give them as much compensation for that loss as they felt they were entitled to, they believed the landlord would not reimburse them for the full amount of repairs. The tenants seek \$500.00 for the loss of use of the oven.

The parties agreed that the rental unit was in the midst of renovation at the time the tenancy began and that there were approximately 5 non-functional electrical sockets which were open and not covered by a faceplate and a telephone jack which was open with protruding wires, the latter having been repaired when the tenants' internet service was installed at the outset of the tenancy. The tenants believe the foundation of the residence to be unsafe, the laundry room was unfinished, the breaker box did not have a cover and there were a number of other

cosmetic repairs required such as securing mouldings and painting walls. They testified that the bedroom was cold because of the open electrical socket.

A.L. testified that at the beginning of the tenancy he cautioned them that renovations were still ongoing and that while he was prepared to do repairs, he was concerned that he would disturb the tenants because they did shift work. The owner testified that A.L. did not pass on the tenants' complaints to him and argued that the tenants should have known that A.L. did not communicate their complaints to the owner.

The tenants called a witness, S.S., who testified that at the beginning of the tenancy she observed the tenants walk through the rental unit with the owner, pointing out the problems and that the owner promised to address the issues.

The owner argued that any agreement to repair problems was verbal and suggested that a verbal agreement was not binding.

The tenants seek an award of \$350.00 for having to live with the unfinished renovations.

The tenants further seek compensation for the ongoing inconvenience of all of the aforementioned as well as recovery of the \$50.00 filing fee paid to bring their application.

### Analysis

It is clear that the tenants were without heat for 15 days of the tenancy and it is equally clear that under the terms of the tenancy agreement, they were paying for a heated residence. Although the landlord made some attempts to repair the problems, those attempts were initially unsuccessful and the tenants were paying for a service that they didn't receive. While a minor inconvenience does not attract compensation, I find that the lack of heat for 15 days was a significant loss and I find that the tenants were contractually entitled to a rental unit which was adequately heated. I accept that the small heaters were insufficient to heat the entire unit. The tenants seek to recover all of the rent paid for that 15 day period. I find this claim to be excessive as the tenants received most of what they had contracted for during that period. I find that an award of \$280.00, which is 20% of their monthly rent, will adequately compensate the tenants and I award them that sum.

I find that the landlord's agent knew about the problem with the oven on January 2 and authorize the tenants to perform the repairs on that date. Although repairs are the responsibility of the landlord, when tenants are authorized by the landlord to perform repairs and promised reimbursement, the tenants have an obligation to minimize their losses by ensuring that repairs are completed. Under normal circumstances I would dismiss this claim as the tenants could have repaired the oven and sought reimbursement. However, A.L.

testified that he was aware at the beginning of January that the tenants were having financial problems and were having difficulty paying their rent. I find that it was unreasonable of A.L. to expect them to pay for repairs when he was aware that they were in financial difficulty. For this reason, I find it appropriate to give the tenants an award for loss of use of the oven in January and I award them \$100.00. The tenants clearly had money to perform repairs in February as they brought in a technician to diagnose the problem and I find that because they did not perform repairs at that time although authorized to do so, they must bear the cost of that diagnosis.

I find it more likely than not that the owner promised to perform repairs at the outset of the tenancy and did not do so in a timely fashion. Although the promise was verbal, I find that the landlord was bound by the promise. The issues raised by the tenants are for the most part fairly minor and the tenants were able to live in the unit with only minor discomfort. I find that \$150.00 will adequately compensate the tenants and I award them that sum.

I dismiss the claim for loss of quiet enjoyment. The tenants have sought to recover rent paid for services they did not receive and have been successful in that claim. To award them both rent and loss of quiet enjoyment would amount to double recovery and I find that the recovery of rent paid for services not received encompasses their loss of quiet enjoyment.

I find that the tenants should recover the \$50.00 filing fee paid to bring their application and I award them that sum.

### Conclusion

The tenants are awarded \$580.00 which represents \$280.00 for loss of heat, \$100.00 for loss of the oven, \$150.00 for repairs which were not performed as promised and \$50.00 for their filing fee. The tenants may deduct \$580.00 from future rent owed to the landlord.

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: March 09, 2012

---

Residential Tenancy Branch