



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DR, CNR, MNDC, ERP, RP, PSF, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant disputing an additional rent increase; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord provide services or facilities required by law; and to recover the filing fee from the landlord for the cost of this application.

The landlord and the tenant attended the conference call hearing on the first scheduled date, and the matter was adjourned for one day to provide the parties with an opportunity to settle this dispute. The parties both attended again on the second scheduled date, and the parties agreed to the following:

1. The notice to end tenancy is cancelled and the tenancy will continue;
2. The tenant will pay to the landlord rental arrears in the amount of \$500.00 on or before Friday, March 30, 2012;
3. The tenant will pay to the landlord rent for the month of April on or before April 2, 2012;
4. The tenant's application disputing an additional rent increase is dismissed, and the rent is set at \$450.00 per month payable on the 1<sup>st</sup> day of each month;
5. The parties will work with the propane company together to ensure that the tenant is provided with heat to the rental unit;
6. The landlord will attend to repairs to the back door and both porches, and will ensure that the stairs are repaired and that entry to the rental unit is safe.

The parties did not come to an agreement with respect to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The hearing continued with respect to that application alone.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on February 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$450.00 per month is payable in advance on the 1<sup>st</sup> day of each month although there is no written tenancy agreement. The landlord did not collect a security deposit or a pet damage deposit at the outset of the tenancy, nor was a move-in condition inspection report completed.

The tenant testified to buying fire wood for the fireplace in the rental unit and then discovered that the fireplace is rotted and is not useable. Further, the glass on the front is broken. The previous tenant used propane heat, but when the tenant asked the landlord for a propane tank, the landlord refused. The tenant borrowed 2 space heaters about a week after moving into the rental unit, and the hydro bill shows that the average usage is \$72.00, however the tenant had to pay \$230.00 for the bill in February. The tenant then testified that the bill was \$254.01 but an overdue charge of \$28.76 is showing on the bill from a previous account of the tenant, bringing the February bill to \$225.25. The tenant claims \$153.25 for the excess hydro usage. The tenant attempted to have a propane tank delivered to the rental property but the propane company would only do so on the landlord's instruction. The landlord refused to do so and the tenant consequently had no heat other than the space heaters. A copy of the hydro bill was not provided for this hearing. When asked what dates the bill covers, the tenant stated that the start and end dates for the bill were not indicated on the bill, but the billing date is March 6, 2012.

The landlord testified that heat is not included in the rent. During the course of the hearing, the parties agreed to contact the propane company. When the parties returned for the second day of the hearing, the landlord testified that the propane company was contacted and the tenant should now have no problem getting a tank filled with propane.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate or reduce such damage or loss.

In this case, I am satisfied that the landlord has failed to comply with the *Residential Tenancy Act* by failing to address the heating issue for the tenant. A landlord is required under the *Act* to ensure that heat is available for a rental unit. It appears in the circumstances that all that the landlord had to do was contact the propane company to approve the rental of a propane tank for the rental unit, but the landlord failed to do so. However, I am not satisfied that the tenant has satisfied element 3 of the test for damages. The tenant testified that the hydro bill for February, 2012 was \$254.01 and that \$28.76 was an overdue amount that was the tenant's prior responsibility, but the tenant did not provide a copy of the bill or any information of the dates that the bill covered. Also, the tenant testified that the bill shows an average consumption that amounts to \$72.00, however I have no evidence of whether or not that amount takes into consideration summer months, which would normally be a lower cost than winter months. This tenancy began on February 1, 2012, and the tenant has no history to establish an average amount. Therefore, I cannot be satisfied that any specific amount should be the landlord's responsibility.

### Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I order the parties to comply with the settlement agreement stated above. If the tenant fails to pay the rent as agreed above, the landlord will be at liberty to serve the tenant with a notice to end tenancy for unpaid rent. If the landlord fails to complete the repairs described above within a reasonable time, the tenant will be at liberty to reapply for a monetary order for the landlord's failure to comply with the *Act* and the settlement agreement.

Since the parties were able to settle the majority of this dispute, and the tenant's application for a monetary order is dismissed, the tenant is not entitled to recovery of the \$50.00 filing fee for the cost of this application.

This order is final and binding on the parties and may be enforced.

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 30, 2012.

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Residential Tenancy Branch