



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, PSF, LRE, RR

### Introduction

This hearing was convened in response to an application filed by the tenants seeking:

1. A monetary Order for compensation for damage or loss in the amount of;
2. An Order that the landlord provide services or facilities required by law;
3. An Order suspending or setting conditions on the landlord's right to enter the rental unit;
4. An order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Have the tenants met the burden of proving their claims?

### Background and Evidence

One tenant spoke for both of the tenants at the hearing. The tenant testified that this tenancy began on August 1, 2011. Rent is \$850.00 per month plus 40% of the utilities. The tenants paid a security deposit of \$425.00 at the start of the tenancy. The tenant testified that they each pay \$425.00 towards the rent.

The tenant testified that the toilet broke down about a month before the stove broke down. The tenant says that the handle no longer worked to flush the toilet so they had to remove the tank lid and operate the flushing mechanism by hand. They eventually just left the tank lid off. The tenant says the landlord did buy a new toilet and it is now in good working order. However, the tenant says that the landlord left the old toilet just outside their entry door under the stairs at eye level. The tenants say they are both

receiving benefits for mental disabilities and having a toilet at their doorstep at eye level for months affected them.

The tenant testified that 2 burners on their stove stopped working. In January a second stove was installed and it's in the same condition as the old one, first 2 burners stopped working then the third burner stopped working.

The tenant says the biggest issue is the furnace which blows black debris and fibers. The tenant says the carpet has been covered with these black fibers since they moved into the rental unit. The tenant submits that this is a health hazard but he has not consulted with his doctor. The tenant says that on April 16, 2013 the gas man came and he heard the furnace and there were 2 loud booms from the furnace. The tenant says the gas man shut the furnace down and put the danger sign on it. The tenant says the gas man said the filter hadn't been cleaned in years.

The tenant says that on April 20, 2013 the landlord had a new furnace installed. The tenant says as far as he knows it has not been inspected. The tenant says that when the landlord installed the new furnace he had to rip out a wall which has still not been repaired. The tenant says the gas man says the heat is now going out into the laundry room and out the back door.

The tenant submits that another main problem is that they spent one week without heat and had six days in which the furnace installer's tools and equipment blocked their entrance to their suite. The tenant says the workmen didn't take their tools or the old furnace away for six days. The tenant says they could manage to come and go through their entry door but it was blocked.

The tenant says that when the furnace was installed the tenants upstairs were notified to turn the heat on but they didn't. The tenant says the landlord should have told them to turn it on.

The tenant complained further that he has had to change the battery in the smoke detector.

While in their application the tenants seek \$1,000.00, in the monetary order claim worksheet the tenants claimed \$2,350.00. The tenants seek the following sums:

Toilet out of service for 2 months	\$200.00
Stove out of service	200.00
Gas furnace shut down due to hazard, no heat	450.00
Cleaning up after furnace repair person	40.00
Furnace vents not hooked up creating health concerns from breathing in hazardous materials	300.00
Stove and toilet replaced	100.00
Sleeping in unhealthy [rental unit]	300.00
Safety concerns breathing in residue and dust from vents not connected	300.00
Vents not connected	100.00
Failure to remove old furnace and refuse	200.00
Total	\$2190.00

Although these sums total \$2190.00 the tenants' application seeks \$2,350.00.

*Landlord's Response:*

With respect to the tenancy, the landlord says the two tenants reside under a single tenancy agreement and the rent is \$850.00. The landlord says he has no idea how the tenants divide the rent between themselves but he does not accept partial payments of rent from the individual tenants. The landlord produced the tenancy agreement in evidence.

The landlord testified that in March 2013 Fortis BC called to advise they were coming around to change the gas meter. They made an appointment for April 11, 2013. In the process of changing the gas meter they shut off the furnace and were unable to reignite the pilot lights afterwards. The landlord provided a photograph which he says shows the "danger notice" that was placed on the furnace which he says indicates only that the furnace was not responding. Instead of having a gas fitter come in to reignite the furnace the landlord decided that given that the furnace was 50-60 years old it should be replaced.

On Thursday April 12, 2013 a new high efficiency furnace was delivered and by Monday April 16, 2013 the new furnace was completely installed. During the days that the heat was off, which the landlord says was 3 days, the landlord provided the tenants with a portable heater. The landlord submitted photograph #5 which he says shows the room in which the furnace is now located behind the perforated wall. The landlord noted the

corner where the old furnace was kept for 3-4 days before it was removed and there was at least a foot to get in and out the door. The landlord says the entrance to suite was not blocked at all.

The landlord says that when they started to have the furnace installed one of the tenants asked his father for \$20.00 for the inconvenience. The landlord says the tenant then approached him for beer money but he advised the tenants that he was not negligent and did not owe them any money. The landlord testified that he told the tenants they were having a new high efficiency furnace installed and this would likely reduce their heating bills. The landlord says the tenant responded that he had been combing through everything that had happened in the last 2 years e.g. the stove repairs and the toilet. The landlord says the issue with the stove happened 2 years ago and the stove was replaced. The landlord says that if any burners are no longer working he has not been informed of this.

The landlord produced a photograph of the toilet. Initially the handle was broken so the landlord tightened it. The landlord testified that the toilet was replaced last year. He later installed a new toilet at a cost of over \$200.00.

The landlord produced a photograph of the stove and says it is new. The landlord testified that if the stove is not working the tenants have not advised him of this.

With respect to the heat issue, the landlord says that the whole house is heated there have been no heat issues or reports of heating from problems from these tenants or any of the other tenants in the past 20 years even with the old 50-60 year old furnace that used to be there. The landlord commented that these tenants are saying the vents are not hooked up but the vents are fine. Further, no one has complained soot, debris etc. In fact, the landlord says no tenant has complained about anything. The landlord commented that until today he knew nothing about the smoke detector.

The landlord says this tenant attempted to recruit the upstairs tenant into this matter and the upstairs tenants refused saying they are happy.

The landlord submits that the tenants' health issues, if any, might come from the fact that they are smoking marihuana which is not allowed in the house. The landlord says the tenants claim they have a medical marihuana usage certificate but one has never been provided to the landlord despite repeated requests. In any event, the landlord says the tenants would have to smoke outdoors as there is to be no smoking in the house. The landlord says the tenants should consider the little girl living upstairs when they smoke marihuana.

Finally the landlord says the tenants dropped off their evidence just this past Friday and while they have had lots of time to prepare their case he has had very little time and he objects to their evidence being considered.

### Analysis

The tenants have brought these claims; the landlord denies the tenants' claims and the tenants bear the burden of bringing sufficient evidence to prove their claims.

With respect to their claim for an Order that the landlord be compelled to provide services or facilities required by law, I find that the tenants have failed to show which services or facilities are/were not being provided. While there has been some issues regarding repairs to the stove, toilet and furnace, the evidence of both the tenants and the landlord shows that these items have been repaired. If there are new problems the landlord has testified that he has not been informed of them and the tenants have failed to bring sufficient evidence to show that they have advised the landlord of any new problems. This claim is therefore dismissed.

Likewise with respect to the tenants' claim for an Order allowing them to reduce their rent for repairs, services or facilities agreed upon but not provided, I find that they have failed to show which repairs have not been done or which services or facilities have not been provided. Further, they have failed to bring sufficient evidence to show that they were without these services or facilities for any period of time which might warrant a rental reduction. The evidence of both parties has shown that the landlord has replaced the toilet, the stove and the furnace. The landlord testified that if there is anything else wrong he is not aware of the matters and the tenants have failed to bring sufficient evidence to show what outstanding issues exist and/or that they have informed the landlord of them. This claim is therefore dismissed.

With respect to their claim for an Order suspending or setting conditions on the landlord's right to enter the rental unit, I find that the tenants failed to address this claim in any way at all to show why the landlord's right of entry should be suspended or otherwise curtailed. This claim is therefore dismissed.

With respect to the tenant's claim for a monetary Order for compensation for damage or loss I prefer the evidence of the landlord. I make this preference because the landlord's evidence is well documented and in many respects mirrors the testimony the tenants have given at this hearing: Both parties agree a new furnace was installed, the toilet was repaired and then replaced and the stove was replaced. I find that the tenants

have failed to show that they were without any of these services for any length of time that might suggest some compensation should be paid. With respect to their claims respecting health issues, I find that they have failed to supply evidence to show that health hazards may exist in the rental unit or to bring medical or other documentation to prove that they have suffered health issues from any of the concerns they have raised in this hearing. The claim for a monetary award for compensation for damage or loss is dismissed.

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: May 16, 2013

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Residential Tenancy Branch

