



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Entre Nous Femmes Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC and OLC

### Introduction

This hearing was convened on an application made by the tenant on May 31, 2013 seeking a Monetary Order for \$1,534.24 for damage or loss under the legislation or rental agreement after a leak in the hot water tank of the rental unit caused an increase in her equalized gas billing by approximately five times. Satisfaction of the claim would also meet the tenant's request for an order that the landlord comply with the rental agreement and legislation.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order and in what amount?

### Background and Evidence

This tenancy began on February 1, 2012 with market rent of \$1,536 subsidized to a percentage of the tenant's income.

During the hearing, the tenant gave evidence – supported by invoices and summaries from Fortis, BC – showing that her equalized gas billings had grown from approximately \$64 per month to approximately \$300 per month as a result of a huge increase in gas consumption beginning in November 2012.

The tenant took note of the increase and contacted Fortis BC and the company sent a representative to inspect the gas appliances in the rental unit in early December 2012.

The inspection resulted in the discovery that the hot water tank, housed in a shed attached to the rental unit, had a substantial water leak.

When the tenant noted that her equalized monthly billing had been increased nearly fivefold, she advised the landlord on March 16, 2013 of the leak in the hot water tank and agreed that the landlord had it replaced that day.

The tenant wrote a letter to the landlord dated March 18, 2013 explaining that the gas company had demanded an adjustment payment of \$1,000 due April 1, 2013 and had adjusted the her equalized billing. At the time of the hearing, the gas company had extended the deadline to July 31, 2013 for a payment of the amount sought by the tenant. The tenant's letter to the landlord expressed hope that the landlord would remedy the matter.

The landlord issued the tenant with a cheque for \$150 on April 30, 2013 as a goodwill gesture and to assist with the added costs of gas usage for March 2013.

However, the landlord declined any further assistance on the grounds that the landlord had replaced the hot water tank immediately on receiving the tenant's advice that it was leaking and would have done so immediately in November 2012 if they had been advised of the problem at that time.

### Analysis

Section 7 of the Act provides that if one party to a rental agreement suffers a loss due to the other's breach of the agreement or the legislation, then the non-compliant party must compensate the other for that loss. However, section 7 of the *Act* imposes a duty on the claimant to "do whatever is reasonable to minimize the damage or loss."

The landlord submits that the tenant failed in that duty by not advising the landlord immediately when she received the November 2012 gas bill.

While I do not have the November 2012 bill before me, I note that all of the subsequent bills submitted into evidence include a bar graph representing gas consumption for the current and previous 12 months which make it alarmingly obvious that something had gone wrong in November 2012, continuing through to March 2013.

As noted at *Residential Tenancy Police Guideline 5*:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.... If further damages are likely to occur, .... the tenant should notify the landlord immediately.

In brief, while the state of the hot water tank constitutes a breach of the landlord's duty to maintain the rental unit under section 32 of the *Act*, the substantial increase in the tenant's losses are a result of the tenant's delay in reporting the problem to the landlord.

Therefore, I find that the landlord's obligation in this matter has been satisfied by the \$150 payment already made to the tenant and the tenant's claim for additional damages is dismissed without leave to reapply.

### Conclusion

The application is dismissed without leave to reapply on a finding that payment of \$150 has fulfilled the landlord's obligation in this matter.

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: June 26, 2013

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Residential Tenancy Branch