



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *ERP, RP, O, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order directing the landlord to carry out emergency repairs, for the recovery of the filing fee and for other

The tenant testified that on January 30, 2014, she served the landlord with a notice of hearing package by placing the package in his mailbox. The tenant also spoke with the landlord on February 15, 2014 and he confirmed that he had received the package and was aware that the hearing was scheduled for this date February 18, 2014. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that she had moved out on February 13, 2014, due to the unlivable conditions in the rental unit. The tenant requested that her application be amended to include the return of rent for February 2014.

### **Issues to be decided**

Was the landlord negligent in his duty to maintain the rental unit in a condition that is suitable for occupation by the tenant? Was the tenant justified in moving out of the rental unit? Is the tenant entitled to the return of rent?

### **Background and Evidence**

The tenancy started on December 17, 2013 for a fixed term of one year. The monthly rent was \$695.00 payable on the first of each month. The rental unit is a one of eight suites and is located on the first floor of the landlord's home.

The tenant stated that she started paying rent from December 17 but moved in on December 31, 2013. The landlord had agreed to repair a leaking toilet pipe and replace the affected portion of the floor in the washroom.

The tenant testified that as soon as she moved in on December 31, 2013, she noticed that the gas stove was leaking gas and she notified the landlord by leaving three messages. The landlord replied that the tenant should leave a window open and that it was not dangerous.

The tenant contacted the local gas company, who visited the rental unit on January 13, 2014 and found that the stove was not suitable for use. The levels of carbon monoxide inside the suite were raised. The technician shut off the gas supply to the stove and placed a red sticker on the stove. The sticker was a notice of danger and the tenant was instructed not to use the stove or remove the sticker until a certified gas professional repaired it and rendered it safe for use.

The tenant stated that she did not have cooking facilities and the landlord gave her an electric hot plate for use in the interim. The landlord agreed to replace the stove, but on February 03, 2014, he removed the red sticker and informed the tenant that he had cleaned the pilot light and the stove was safe to use. The tenant stated that since the landlord was not certified to do such work, she was not convinced of the safety of using the stove.

The tenant also testified about the leaking of sewage from the toilet which was collected in a bucket in the laundry room, in the basement. The tenant stated that it splashed and she was exposed to unhygienic conditions while using the laundry. Due to the leak, the linoleum on the floor in the tenant's washroom was soft, brown and was lifting around the edges. Despite verbal and written requests the landlord did not fix the leak and did not replace the linoleum in the washroom.

The tenant also stated that her bedroom had no heat for most of January until the landlord fixed the heating in the last week of January.

The tenant had paid full rent for February a couple of days prior to the day that the landlord informed her that he would not be replacing the stove. Since the landlord is not a certified gas technician and had removed the sticker and attempted repair himself, the tenant feared for her safety. In addition, despite two written requests to have the sewage leak repaired, the landlord had not taken any action to fix it.

The tenant stated the conditions of the unit were very unhygienic and unsafe and therefore she informed the landlord that she could not live there anymore. The landlord agreed to let her out of the fixed term lease. The tenant stated that she was forced to move out due to the living conditions in the rental unit and incurred additional expenses to do so.

### **Analysis**

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Based on the undisputed testimony of the tenant, I find that the landlord did not fulfill his obligations. By attempting to fix the gas stove himself after it was deemed dangerous and hazardous by the local gas company, the landlord placed the tenant in a dangerous situation. In addition, the leakage of raw sewage also posed a serious threat to the health and safety of the occupants.

The tenant made two requests in writing on January 13 and 19 and a few verbal requests to the landlord to replace the stove and to repair the leak, both of which were not acted upon by the landlord in a timely or appropriate manner. Therefore I find that rental unit was not safe for occupation and that the tenant was forced to move out.

I order the landlord to return the rent of \$695.00 paid by the tenant for the month of February, as the rental unit was not safe or fit for occupation. Since the tenant has proven her case, I award her the recovery of the filing fee of \$50.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the total amount of \$745.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order of **\$745.00**.

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: February 18, 2014

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Residential Tenancy Branch

