



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, OLC, PSF, RR, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord’s compliance – Section 62;
3. An Order for the provision of services or facilities required by law – Section 65;
4. An Order for a rent reduction – Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Tenant entitled to compensation?

Is the Landlord in compliance with the Act?

Is the Tenant entitled to the provision of heat?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started in 1992. Rent of \$869.00 is payable monthly. The tenancy agreement provides that heat is included in the rent. In May 2013 a new boiler was installed for the heating system in the building containing the unit.

The Tenant states that since May 2013 they have had no heat to their unit. The Tenant states that the Landlord attended the unit and told the Tenants that nothing could be done and that if they were cold they should dress more warmly. The Tenant states that a month or two ago when it was very cold in the unit the Landlord again came in response to their complaint of no heat and again told the Tenant, using a profanity, to put some clothes on. The Tenants indicate that they were wearing more than one layer of clothing at the time.

The Tenant states that the Landlord also told them that in exchange for the provision of the heater, the Landlord was also going to tell them to remove a portable dryer, dishwasher and washing machine. The Tenant states that they have been using these appliances in their unit since the onset of the tenancy. The Tenant states that they refused to accept the heater. The Tenant states that since making this application the Tenants have been ordered by the Landlord to remove those appliances.

The Tenant states that they are now using three heaters and the oven to keep the unit warm and have been having a family member stay overnight with them out of safety concerns in relation to the use of the heaters. The Tenant states that their electrical costs have increased by \$30.00 a month for the last two months.

The Landlord states that there is no problem with the heat to the unit and that any cold felt by the Tenants are caused by their open windows and wearing of pyjamas. The Landlord provided a photo of the Tenant's thermostat and the building thermostat. The Landlord states that the photo of the Tenant's thermostat was taken on October 9, 2014 following the Tenant's complaint. The Landlord states that the thermostat is set at 30 C and that the temperature in the unit is between 20 and 25 degrees.

The Landlord states that prior to the provision of the new boiler there had been numerous complaints about the heat in the building. The Landlord states that since the installation of the new boiler he has had no other complaints from any other tenants about lack of heat and that one tenant did have a problem with too much heat.

The Landlord states that the heat is regulated for all the units by a common system and through pipes. The Landlord states that the common piping system was not replaced at the time the new

boiler was installed. The Landlord states that the pipes to the Tenant's unit and zone control valve were inspected by the Landlord and no issues were found. The Landlord states that a qualified plumber has not inspected the pipes to the unit because the system is simple and the Landlord feels qualified to make the inspections himself as he has 35 years of building maintenance experience. The Landlord also states that the plumber cost would be a waste and gives the example of the last time he was ordered to have something inspected and the problem turned out to be caused by the Tenants. The Landlord states that if the inspection cost showed that heat was being provided to the unit then the Tenants should pay these costs.

The Tenant states that they keep one bedroom window open all of the time but that the door to this bedroom is kept closed and does not affect the heat for the remainder of the unit. The Tenant states that she has kept this window open throughout the tenancy. The Tenant states that the second bedroom is cold and no window is open. The Tenant provided witness letters in relation to the heat levels in the unit. The other Tenant states that in May 2013 the registers to the unit were ice cold and that the Landlord told her that they were working on the pipes and had shut the pipes off to the unit. The Tenant states that a witness was present at the time. The Landlord denies that any pipes were shut off and states that it is impossible to regulate the heat to just one unit.

The Tenant states that they were not present at the unit on October 9, 2014 and that the Landlord had not given any notice of entry on October 9, 2014. The Landlord states that the Tenants called that morning about the heat and he went to the unit in the afternoon, that both Tenants were in the unit and that he was given permission to enter the unit.

The Landlord states that all the units were adequately heated in October 2014 and provided photos of the exterior of the building showing open windows in some of the units. The Landlord states that the fact that the windows were open shows that the units were warm.

The Tenants state that when the Landlord did come to their unit he only looked at the thermostat and did not feel the ice cold registers. The Tenant states that they have a thermometer in the living room that read 59 degrees Fahrenheit. The Tenant states that the heating pipes behind the wall affect the thermostat reading leaving a higher reading. The

Landlord states that there are no heating pipes behind the wall holding the thermostat. The Landlord states that he did touch the registers in the unit and felt heat coming from them.

### Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Given the tenancy agreement, it is clear that the Landlord is required to provide heat to the unit. Whether or not heat is coming in to the unit from the main system is the issue. While it may be that the Tenant's practice of keeping a window open may work to reduce the heat brought into the unit, I do not find this relevant to whether or not heat is being provided to the unit. I further note that a person's choice of clothing is also not relevant to whether heat is being provided to a unit.

While I find the Landlord's evidence of heat to the unit to be plausible, I find the Tenants' evidence of no heat to the unit to be compelling and more persuasively supported by witness evidence. Given the lack of a certified technician report confirming delivery of heat to the unit and no problems with any other part of the heating system, including the thermostat which appears by the photo to be quite aged, I find that the Tenants have substantiated on a balance of probabilities that there is no heat coming to the unit.

I find that the Tenants are entitled to an order that the Landlord carry out an inspection of the heat system, including the thermostat, and the delivery of heat to the unit by a qualified technician. Considering the integral nature of heat to suitable living accommodation and the incoming colder weather, I order the Landlord carry out this inspection no later December 8, 2014 and to obtain a written inspection report from the technician. I order the Landlord to then forthwith provide a copy of the inspection report to the Tenants. Following this inspection I order the Landlord to promptly carry out any repairs recommended from the inspection.

As the Tenants have substantiated no heat to the unit, I find that the Tenants have lost value for the rent paid and have incurred electrical costs. Considering that the Tenants have reasonably mitigated their heat loss by providing their own heaters, but accepting that the use of heaters and a stove for heat are both inconvenient and cause the Tenants concern, I find that the

Tenants are entitled to the compensation claimed of **\$500.00** for their losses to date, including the increased electrical costs. Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$550.00**. The Tenant may reduce future rent payable by this amount. Should the Landlord fail to inspect and provide heat as ordered above the Tenants have leave to reapply for compensation.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$550.00**. The Tenant may reduce future rent payable by this amount in full satisfaction of the claim. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 28, 2014

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Residential Tenancy Branch

