



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on November 5, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for repairs?
- b. Whether the tenant is entitled to a monetary order?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on September 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$1600 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$800 at the start of the tenancy.

The tenant seeks compensation in the sum of \$1600 for the reduced value of the tenancy on the basis that the primary source of heat for the rental unit was not functioning for the period October 11, 2014 to November 6, 2014. The tenant testified as follows:

- On October 11, 2014 the tenant became aware the furnace was not working and texted the landlord
- On October 15, 2014 a technician from Big Valley Heating & Sheet Metal Ltd. made a service call. The technician inspected the furnace and did not find anything wrong. He checked the thermostat and changed the battery.
- The furnace still did not work. The tenant contacted the landlord and advised the landlord of the problem. The landlord contacted Big Valley who suggested there might be a problem with the thermostat. He suggested it would be better if she hired a handyman to change the thermostat rather than pay the cost of him attending. The landlord proposed to the tenant that the tenant's husband change the thermostat. The tenant refused.
- The tenant testified she and her husband were out of town from October 26 to October 29. However, her 15 and 19 year children remain in the rental unit during that period.
- In late October the landlord was able to locate a handyman who attended and changed the thermostat. Problems persisted with the furnace.
- The tenant refused to pay the rent at the start of November and the relationship between the parties deteriorated.
- The landlord was in the process of selling the rental unit. The tenant is a real estate agent. Her colleague was the agent for the buyer. He advised the parties that he would ensure the furnace was properly working. On November 6, 2014 the third party real estate agent hired a technician who repaired the furnace at a cost of \$325.
- The tenant testified the landlord failed to repair the primary source of heat and she found the lack of heat very uncomfortable for the period.

The landlord disputes the tenants' claim based on the following:

- She testified that she did as responded appropriately and did as much as reasonably possible to resolve the problem. She was advised on the problem on the long weekend and the technician for Big Valley attended on Wednesday, October 15, 2014. She attempted to find a handyman to install the thermostat but was delayed because the handyman she would normally use was not available.
- In late October the tenant complained to the landlord when the handyman attended about the failure of the handyman to give proper notice.
- The rental unit has a gas fireplace which the tenant could have been used. The tenant disputed this. She testified that it is difficult to turn on the gas fireplace. She did not want her 15 year old and 19 year old turning on the fireplace when she was not present. The tenant testified the fireplace does not sufficiently heat the rental unit.
- The landlord testified she did not turn on the furnace at her home in the same community until after the furnace was fixed. The tenant responded by testifying she felt uncomfortably cold and prefers a warm house.

Policy Guideline #16 includes the following provision:

**“Claims for Breach of Contract**

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for dispute resolution for an order that the other party comply with the tenancy agreement or the Act<sup>5</sup> that governs the agreement. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

### Analysis

The tenancy agreement and Residential Tenancy Act impose an obligation on the landlord to provide a functioning furnace. The landlord was advised of the problem on October 11, 2014. The problem was not resolved until November 6, 2014. It is not necessary to determine whether the landlord made all reasonable efforts to fix the problem in a timely way. The fact remains that the enjoyment of the rental unit was reduced because of the lack of a primary heat source. The tenant is entitled to compensation.

However, in my view the amount claimed by the tenant is unreasonable. The tenant had access to an alternative heat source through the gas fireplace. While it may not have been as effective and more difficult to turn on compared with the furnace I determined that this is not a situation where there was no heat at all. I also accept the evidence of the landlord that an electrical space heater was available for use by the landlord. Even if there was no space heater in my view the tenants' statutory obligation to act reasonably to lessen the loss would include an obligation to purchase an appropriate number of space heaters and then claim against the landlord for this cost (and any additional electrical costs) rather than claim \$1600 for the reduced value of the tenancy. In the circumstances I determined the tenant is entitled to compensation in the sum of \$250 for the lack of a primary source of heat for the period October 11, 2014 to November 6, 2014.

I dismissed the tenant's request that the landlord pay the Big Valley account for fixing the furnace that was paid by her work colleague. If he wishes to be reimbursed he will have to deal with the landlord directly.

Conclusion

**I ordered the landlord(s) to pay to the tenant the sum of \$250 plus the sum of \$50 in respect of the filing fee for a total of \$300.** I dismissed the claim for a repair order as the repairs have been completed.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 09, 2014

---

Residential Tenancy Branch

