



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, RR, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order, a repair, order, and an order allowing the tenant to reduce the rent for repairs, services and facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard. The tenant was accompanied by a constituency assistant from the local MLS's Office.

The tenant had only filed one document as evidence for the hearing – an invoice for fuel oil. She said she had additional evidence but was not able to file it before the deadline for doing so had passed. I offered her an adjournment so that she would have time to file her evidence. The tenant said she preferred to go ahead with the hearing and was prepared to rely on the evidence that was before me.

The landlord had filed 37 pages of evidence. The tenant said she had received this evidence package. The records of the Residential Tenancy Branch showed that the evidence was filed on January 2 but it was not on the file. I asked the landlords to file another copy of the same evidence package served on the tenant as soon as possible. I indicated to the parties that I would hear their oral evidence but I would reserve my decision until I was able to review the landlords' written evidence.

The landlord did fix the 37 page evidence package to the Residential Tenancy Branch within a half hour of the conclusion of the hearing. It did not make its way from the evidence queue to me until late in the day on Wednesday, January 14.

In a separate filing the landlords had served and filed an e-mail from the pest control technician. The tenant acknowledged receipt of the e-mail. This document was on the file.

During the hearing the parties agreed that the tenancy would end by mutual consent at 1:00 pm, on January 31, 2015 and that the landlords would be granted an order of

possession for that date. The parties also agreed that the landlords waived any claim they may have for the February rent based upon short notice to end tenancy.

The agreement rendered the application for further repairs irrelevant.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, which would include reduction of rent already paid, and if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced October 1, 2014. The monthly rent of \$950.00, which did not include utilities, is due on the first day of the month. The tenant paid a security deposit of \$475.00. The tenant says she paid a pet damage deposit of \$300.00; the tenant says it was \$200.00. On the tenancy agreement the deposit is shown to be \$200.00.

The rental unit is a 970 square foot, frame construction character home. It is one story built over an unfinished crawl space. It has a living room, kitchen, two bedrooms, bathroom, walk-in closet, and laundry room. According to the tenant the interior of the home is very nicely decorated. It is approximately 70 years old.

There is a garage on the property which is specifically excluded from the tenancy agreement.

The home was equipped with an oil burning furnace and two electric heaters. One heater was in the former fireplace and the other was a 2000 watt wall unit between the bedroom and bathroom doors. The evidence is clear that the furnace is an older model.

The landlords lived in this house for six years, until 2011. Since then they have had two other tenants in the home. The landlords testified that the electric heaters worked well and they were comfortable when they lived in this house. They also testified that they had never received any complaints about heat from their previous tenants.

The landlord said the wall insulation is unknown and that whatever is in there is probably depleted. The attic has fiberglass insulation and the landlord testified that the insulation is adequate for a ceiling.

On November 22 the landlord installed three new energy efficient windows in the living room and a new energy efficient window in the front bedroom. Prior to the start of this tenancy they had replaced the window in the kitchen. The window in the dining area is

two single pane windows. There are still single pane windows in the back bedroom, bathroom, walk-in closet, and laundry room (X 2).

On October 24, 2015, the tenant bought \$299.88 of heating fuel. The fuel delivery man started the furnace. The furnace only worked intermittently. The tenant testified that between October 25 and November 15 she called the landlord about the heat about six times. On each occasion the landlord had a qualified serviceman attend at the rental unit. The tenant said the when the furnace was running the house was nice and warm.

The tenant says that the technician told her he had to fix this furnace often and he had told the landlords they should replace it.

The landlords testified that the first call they received about the heat was on or about Saturday, November 15. When the tenant called them she said she had been without heat for two days. The landlord was able to have the technician attend at the rental unit on Sunday, November 16. The technician replaced some jammed nozzles and the fuel filter. The technician also told the landlord it was time to look at other options.

After doing some research the landlords concluded that oil is a "dirty" heat and many tenants do not want it; installation of a natural gas furnace would be a minimum of \$5000.00, which was more than they could afford, and a major construction project; so the most cost-effective option was the installation of electric heaters.

When the landlord told the tenant they were going to install electric heat she told them not to bother; she could not afford the electricity.

On November 22 an electrician installed two electric heaters; one in the living room and one in the front bedroom. In December the electrician installed two more heaters; one in the bathroom and the other in the back bedroom.

The tenant says she contacted B C Hydro and was told that once the heaters were turned on, even if they were dormant, the cost would be \$20.00 per month per heater. As a consequence, she has not turned on any of the heaters. The landlords disputed the tenant's claim about the anticipated cost of operating the new heaters.

The landlords testified that they told the tenant that if she would use the programmable thermostats that were installed with the heaters, the heat could be managed much more efficiently.

The tenant testified that she was using the electric heater in the living room but felt sick. She testified that a bad smell coming from that area was what made her ill and that the pest control technician told her that the source of the odor was rat urine, which is highly toxic. The landlords testified that the area around this heater is completely sealed and there is no way a rat could get in there.

The tenant has her own portable electric heater that she moves around the home with her.

The tenant testified that she has severe arthritis; the house is cold; and she has been very uncomfortable.

The tenant says she first raised the possible presence of rats in the garage on or about October 3 but the male landlord and his father-in-law did not respond to her. She testified that she raised the issue with them many times orally but never complained in writing.

She testified that she could hear animals in the attic and she kept telling the landlord that. She only saw a rat in the house on one occasion. Her dog is always agitated because of the presence of the rats.

The landlords testified that the first time the issue of rats was raised with them was when they were served with the tenant's application for dispute resolution on December 23. Because it was the holidays it was difficult to arrange a service call by a pest control company.

The landlord went to the rental unit on December 27 and set two traps in the attic. When he returned the next day he found that he had caught one. He returned on the next two days. While some bait was missing he did not catch anything else.

The male landlord went back to the rental unit on December 29 to check the traps and to take pictures to be used as evidence in this hearing. The tenant became very upset. She told him to get out and that if he did not, she would press charges. In a telephone call later on the same day the tenant told the landlords that she did not want to talk to them until the hearing. The tenant refused access to the rental unit by the landlord on December 31 and January 1. The tenant did not deny the landlords' version of events.

A pest control technician did attend the rental unit on January 1. The tenant expressed unhappiness with the date because it meant she had to cancel a New Year's Dinner that she planned to host.

On January 1 the pest control technician set poison in the attic. According to the landlord poison the poison causes the animals to dehydrate from the inside out and they die within four days.

On January 6 the pest control technician returned. The tenant testified that he spent two hours cleaning the attic. The landlord testified that the technician vacuumed and bleached everything thoroughly. The landlord paid \$250.00 for the pest control and the invoice says the work is guaranteed for 90 days.

The parties gave conflicting evidence about what the pest control technician told them. The tenant said she was told there were fifteen nests; the amount of feces and urine is upsetting; and the garage was full of rat feces. The landlord and their witness, the property manager, said they were told he had not found nests only places where the insulation were bunched up and that there was no evidence of rats in the garage. Both sides testified that the technician complained about being pressured by the other side to include particular statements for findings in his written statement.

The statement provided by the pest control technician says the attic had active rats and the treatment he did in the attic and crawl space will kill off the rats that were living there at the time of the treatment.

The technician expressed some opinions about the food sources that are attracting the rats. The tenant disputed these statements. Both parties expressed their opinions about what may have attracted the rats; each blamed the other.

The tenant complained to the health inspector. On January 6 the health inspector, the pest control technician, the landlords, the female landlord's father, their newly appointed property manager, the tenant and the constituency assistant were all there. The health inspector looked everything over, spoke to the technician, gave the tenant an information sheet about rodents, and left. There is no evidence of any formal order being made.

The property manager testified that she manages 110 properties and this was the worst year she has ever experienced for complaints about rats. Because of this history she spoke to the health inspector particularly about landlords' responsibilities in this situation. She testified that the inspector told her the situation in this property was not an infestation; that he was satisfied with the steps that had been taken; and made some suggestions about steps the tenant and the landlords could take to prevent a reoccurrence of the situation.

The property manager also testified that the tenant allowed her into the rental unit on January 2. When she asked the tenant to show her evidence of rats inside the house the tenant said she could not do that. The tenant told her there was water under the kitchen sink so the property manager called the landlords, who arranged to have a plumber there on Tuesday.

The tenant testified that she has posted a hand written notice on the front door of the house warning everyone of the presence of rats. She also advised that she has had a local reporter to the rental unit on three occasions. The landlords say they are getting calls from the neighbours reporting the tenant is calling to them when they are outside saying the house is infested with rats.

### Analysis

On any application for dispute resolution the applicant must prove their claim on a balance of probabilities. Where the only evidence is the conflicting oral testimony of the parties the applicant must have some additional evidence to tip the balance of probabilities in their favour, unless the arbitrator specifically finds that the other party has been untruthful in their testimony.

Subsection 7(2) of the *Residential Tenancy Act* provides that a landlord or tenant who claims compensation for damage or loss that has resulted from the other's non-compliance with the act, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As a general principle, tenants who make written requests for repairs and then apply for a repair order or monetary compensation for the landlord's failure to make required repairs within a timely manner are usually more successful than tenants who do not make written requests.

With regard to the tenant's claims relating to a lack of heat, although the parties' evidence differed as to when and how often the tenant complained both parties testified that the landlords had a qualified technician to the rental unit very quickly after each complaint. It is also the tenant's evidence that the furnace was working part of the time until the electric heaters were installed on November 22.

Even when the furnace quit working there were still two electric heaters in the home. As to whether the presence of rat poison made using the heater in the living room unhealthy, there is only the contradictory oral testimony of the two parties. There is nothing to tip the balance of probabilities on this point in the tenant's favour. Further, the tenant did not say there was any problem with the other wall heater.

The landlords installed alternate sources of heat - four more electric heaters - within a short time of the problem being identified. The tenant refused to use the heaters because of her belief that they would be too expensive. She did not file any information from B C Hydro to verify her statements about the cost. Further, by not using the heaters she did not allow any data to be collected on the actual cost of operating these heaters. Finally, the tenant did not provide any evidence on the cost of operating her own electric heater.

The tenant could have mitigated her damages by trying out the new heaters and keeping herself and the rental unit warm. If the actual cost was substantially more than the cost of running the fuel oil furnace, the tenant may have been able to apply for compensation for the difference between the estimated cost of operating the oil furnace and operating the electric heaters.

The tenant's claim for compensation for lack of heat is dismissed. There was heat available. It was the tenant's choice not to use it.

When pests of any kind appear in a rental unit, the landlord is responsible for the cost of pest control unless it can be established that the presence of the pest was caused by the conduct or neglect of the tenant. A tenant is only entitled to compensation if it can be established that the landlord did not respond quickly or appropriately to a complaint.

The evidence is clear that the first time the tenant raised the issue of rats at the rental unit in writing was when she served her application for dispute resolution. As to whether the tenant ever raised the issue with the landlords before that there is only the conflicting oral testimony of the parties.

Once a complaint was received in writing the landlords took the appropriate steps promptly. If there had been more that the landlords should have done the health inspector would have given them written direction or a formal order.

Rats are very common on Vancouver Island and all residents must be careful that their practises do not attract them. Like all pests, they look for warm places in the fall and winter. The property manager's evidence about the prevalence of this complaint in the past year was very illuminating.

The evidence before me discloses that there were one or more rats in the attic, nothing more. There is nothing in the evidence that convinces me that neglect by the landlords or the tenant was responsible for the presence of the rat or rats in the attic or yard of

this house. Accordingly, compensation for their presence, or the cost of eradicating them, will not be granted to either the tenant or the landlords.

The tenant's responsibility is to leave the oil tank in the same condition as it was at the start of the hearing. There is no evidence as to how much fuel was in the tank when the delivery was made in October. The tenant did use some fuel oil before the electric heaters were installed on November 22. However, the tenant bought the oil on the expectation that she would be using it over the next few months. The replacement of the furnace – which was ultimately the decision of the landlords – means that she will not have the benefit of the investment she had made in fuel oil. The tenant is entitled to reimbursement for the cost of unused fuel oil. The fuel company may have measurements of the amount of oil in the tank when the last delivery was made and can provide a reading of the amount of oil remaining at the end of the tenancy. The parties should be able to calculate the refund to be paid to the tenant from those readings. If not, the tenant is given leave to re-apply to the Residential Tenancy Branch on this issue.

As the tenant has only achieved partial success on her application no order with respect to the filing fee will be made.

#### Conclusion

- a. The parties agreed that this tenancy will end 1:00 pm, January 31, 2015 and an order of possession will be granted to the landlords for that date and time.
- b. The tenant's application for compensation for lack of heat and the presence of rodents is dismissed.
- c. The tenant's application for reimbursement for unused fuel oil is dismissed, with leave to re-apply.

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: January 16, 2015

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Residential Tenancy Branch



