



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC ERP RP RR FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make regular repairs to the unit, site or property, for a rent reduction for repairs, services or facilities agreed upon but not provided, and for the recovery of the cost of the filing fee.

The tenants appeared at teleconference hearing and gave affirmed testimony. During the hearing the tenants were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not appear at the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenants testified that they served the landlord via registered mail with the Notice of Hearing, Application and documentary evidence on November 6, 2015. A registered mail tracking number customer receipt was submitted as evidence. The tenants testified under oath that the registered mail package was refused by the landlord on November 16, 2015, and was returned to the tenants on November 27, 2015, which is supported by the online registered mail tracking website information. Given the above, I find the landlord was sufficiently served as of November 16, 2015, the day the landlord refused the registered mail package. I note that refusal to accept service is not grounds for a Review Consideration.

### Issues to be Decided

- Should the landlord be directed to make emergency repairs for health or safety reasons and/or regular repairs to the unit, site or property under the *Act*?
- Are the tenants entitled to a rent reduction under the *Act*?
- Are the tenants entitled to the recovery of the cost of their filing fee under the *Act*?

### Background and Evidence

The tenants submitted a copy of pages two through six of the tenancy agreement. The tenants testified that a fixed term tenancy began on August 15, 2015 and expires on February 15, 2016. Monthly rent of \$1,450 is due on the 15<sup>th</sup> day of each month. The tenants paid a security deposit of \$725 at the start of the tenancy.

The tenants are claiming for an order directing the landlord to repair the broken gas furnace for health reasons as there is no heat in the rental unit, with the exception of a gas fireplace that only heats the living room area. The tenants are also claiming for an order directing the landlord to repair the electrical outlets throughout the rental unit which are approximately 65% non-functional according to the tenants. The tenants are also seeking a rent reduction for the remainder of the tenancy in the amount of 40% of the monthly rent, plus the return of 40% of their previous rent paid due to the above-noted concerns related to the rental unit. The tenants are also seeking an order that the landlord remove her personal belongings from the outside yard of the rental unit.

The tenants submitted 60 pages of documentary evidence to support their application such as copies of texts, e-mails, photographs, condition inspection report, tenancy agreement and other documents.

The tenants testified that since they moved into the rental unit, the gas furnace has never worked and that while the gas fireplace does work, it only heats the living room of the home. The tenants confirmed that there is no baseboard heating in the home and that they are very cold as a result, which is a health concern. The tenants also stated that most of the electrical outlets do not work and they want them to be repaired, which was promised by the landlord by noting that on the incoming condition inspection report which was submitted in evidence.

The tenants stated that they texted the landlord in August that the gas furnace was not working, which the tenants confirmed was not submitted in evidence as they could not

locate the texts in their documentary evidence. The tenants did submit a copy of a text dated October 26, 2015 where several items were described as non-functional including the furnace and applied for dispute resolution nine days late on November 4, 2015.

The tenants submitted several pages of photos which the tenants described as the landlord's personal items on the rental unit property including a propane tank, ladder, two tires, hoses, a gas container, white shelving units, golf bag, weights, cement bags, and a box of hoses and fittings. The tenants testified that they would like these items removed as they create an eyesore.

### Analysis

Based on the tenants' undisputed documentary evidence and their undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Gas furnace** – I find the landlord has breached section 32(1)(a) of the *Act* by failing to ensure the gas furnace, which is the primary heating system for the home, was fully functional at the start of the tenancy and since the tenants have advised the landlord of the non-functional gas furnace. I note that the primary heating system is considered an emergency repair pursuant to section 33 of the *Act*. As a result, I make the following orders:

1. **I ORDER** the landlord to have the gas furnace repaired by a qualified and licensed gas furnace technician, at the landlord's expense, **no later than December 11, 2015 by 5:00 p.m.**
2. **I ORDER** that if the landlord fails to comply with #1 above, then the tenants are granted a 100% rent reduction until such time that the furnace is repaired at the landlord's expense and the landlord makes an application to the Residential Tenancy Branch requesting to reinstate the rent to the original amount with sufficient evidence to support that the gas furnace is fully functional and has been fully repaired by a qualified and licensed gas furnace technician.

**Electrical outlets** – I note that the condition inspection report indicates that the electrical plugs will be replaced. I accept the tenants' undisputed testimony and I find the landlord has breached section 32(1)(a) of the *Act* by failing to ensure that the majority of the electrical outlets in the home are functional. As a result, I make the following orders:

3. **I ORDER** the landlord to have a qualified and licensed electrician attend the rental unit and repair all non-functional electrical outlets at the landlord's expense **no later than December 14, 2015 by 5:00 p.m.**

4. **I ORDER** that if the electrical outlets are not repaired by December 14, 2015 by 5:00 p.m. as per #3 above, the tenants are granted a 40% rent reduction until such time that the electrical outlets are repaired at the landlord's expense and the landlord makes an application to the Residential Tenancy Branch requesting to reinstate the rent to the original amount with sufficient evidence to support that the electrical outlets are fully functional and have been fully repaired by a qualified and licensed electrician.

Further to the above, I note that the maximum rent reduction is 100% of the monthly rent and that #2 and #4 above cannot be combined for more than a 100% reduction of the monthly rent.

**Landlord's personal property on the rental property** – I accept the tenants' undisputed testimony that the landlord continues to have her personal property on the rental unit property and that the items create an eyesore. As a result, I make the following order:

5. **I ORDER** the landlord to remove her personal belongings from the rental unit property including the propane tank, ladder, two tires, hoses, a gas container, white shelving units, golf bag, weights, cement bags, and a box of hoses and fittings **no later than December 14, 2015.**

**Tenants' claim for recovery of 40% of rent paid since start of tenancy** – This portion of the tenants' claim is dismissed without leave to reapply, as I find the tenants failed to comply with section 7 of the *Act* by minimizing their loss. There was no evidence before me that the tenants wrote to the landlord before October 26, 2015 to repair the non-functioning gas furnace and as a result, I find the tenants have failed to prove this portion of their claim.

As the tenants' application had merit, I grant the tenants the recovery of the filing fee in the amount of **\$50**. **I authorize** a one-time rent reduction in the amount of **\$50** from the tenants' December 2015 rent due on December 15, 2015, in full satisfaction of the tenants' recovery of the cost of the filing fee.

Conclusion

The tenants' application has merit.

The landlord must comply with my five orders described in detail above.

The tenants' rent for December 2015 is reduced by \$50 on a one-time basis in full satisfaction of the recovery of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2015

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Residential Tenancy Branch

