



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Triville Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, OLC, ERP, RP, PSF, RR

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs/emergency repairs to the rental unit; for an Order requiring the Landlord to comply with the tenancy agreement and/or *Residential Tenancy Act (Act)*; for an Order requiring the Landlord to provide services or facilities required by law; and for authority to reduce the rent.

The Tenant submits that on December 11, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents by mail.

On January 18, 2016 the Tenant submitted 46 pages of evidence and one CD to the Residential Tenancy Branch. The Tenant submits that this evidence was personally served to the Agent for the Landlord #2 on January 15, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 19, 2016 the Tenant submitted nine pages of evidence to the Residential Tenancy Branch. The Tenant submits that this evidence was personally served to the front desk of the residential complex on January 19, 2016. The Agent for the Landlord stated that this evidence had not been received by the Landlord at the time of the first hearing.

Prior to the hearing being adjourned on February 01, 2016 and in my interim decision of February 05, 2016, the Tenant was advised that he had the right to re-serve these nine pages of evidence to the Landlord. The Tenant submits that this evidence was delivered to the Landlord's business on February 01, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 20, 2016 the Landlord submitted 49 pages of evidence to the Residential Tenancy Branch. The Landlord submits that this evidence was personally served to the Tenant on January 20, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on February 01, 2016 so the hearing was adjourned. The hearing was reconvened on March 30, 2016 and was concluded on that date.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being without heat and/or hot water during this tenancy?

Is there a need to issue an Order requiring the Landlord to repair the heat and/or hot water in the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on September 01, 2014;
- the parties did not sign a written tenancy agreement;
- the Tenant agreed to pay rent of \$450.00 by the first day of each month;
- the Tenant is still occupying the rental unit; and
- the residential complex uses a hot water radiant heating system.

The Tenant is seeking compensation of \$75.00 per month for the duration of the tenancy because he has not had adequate heat.

The Tenant contends that he has been without heat in his rental unit since his tenancy began. The Tenant contends that:

- there is a hole in the top of the radiator in his rental unit;
- because of the hole in the radiator it would not provide any heat even if the heating system in the residential complex was functioning properly;
- he verbally reported the lack of heat to the front desk shortly after he moved into the rental unit;

- he verbally reported the lack of heat to the front desk on several other occasions during the first few months of his tenancy;
- he was told that the problem would be noted in the “log book”, but he never observed anything being entered into the “log book”;
- his radiator has never been repaired;
- he eventually stopped reporting the problem with the heat as he believed it would not be repaired;
- he understands repairs to the heating system were made during late 2015 or early 2016;
- he understands that as a result of the repairs to the heating system, heat was restored to some of the rental units in the residential complex;
- these repairs did not impact the heat in his unit because the hole in his radiator was not repaired;
- the Agent for the Landlord did not inspect his rental unit on January 20, 2016; and
- the heat was not working in his rental unit on January 20, 2016.

In response to the claim for compensation for the absence of heat, the Agent for the Landlord stated that:

- reported deficiencies with the rental unit are entered into a “log book” located at the front desk;
- the “log book” is checked on a daily basis and repairs are assigned depending on their urgency;
- the Landlord did not submit any records from the “log book”;
- the Landlord was not made aware of a problem with the heating system in the residential complex until late November of 2015;
- the Landlord has made various repairs to the rental unit since becoming aware of the problem with the heating system;
- the Landlord has received no further reports of a problem with the heating system since January 14, 2016;
- he personally inspected the Tenant’s rental unit on January 20, 2016, at which time he determined that the room was heated;
- the Landlord does not know if there is a hole in the Tenant’s radiator;
- he has never personally inspected the Tenant’s radiator to determine if it is functioning properly;
- he believes the radiator would have been inspected in one of the frequent room inspections conducted on behalf of the Landlord;
- the Landlord did not submit records of the room inspections as evidence for these proceedings;
- the Landlord has now lost confidence in the boiler and intends to replace it in the very near future;
- the Landlord has obtained quotes for replacing the boiler;
- it will take approximately one week to replace the boiler so the Landlord has delayed the replacement until the weather improves; and

- he presumes any faulty radiators would be replaced when the boiler is replaced.

The Tenant submitted a photograph of a thermometer that the Advocate for the Tenant stated was left overnight in the rental unit on January 13, 2016. This thermometer shows the temperature of the room was 64 degrees Fahrenheit. The Tenant contends the “legal temperature” is 72 degrees Fahrenheit.

The Landlord submitted documents (at Tab 2 of Landlord’s evidence package) from a repair service that shows that repairs to the boiler were made on November 17, 2015. This report indicates that:

- the technician was able to restart the boiler;
- approximately four hours later an agent for the Landlord confirmed the system was providing heat;
- that the boiler should be able to “provide reliability”; and
- “individual parts throughout the building may wear and corrode and need individual replacement”.

The Landlord submitted documents (at Tab 4 of Landlord’s evidence package) from a repair service that shows that repairs to the boiler were made on December 22, 2015. This report indicates that the heating system was not working and that the boiler was repaired.

The Landlord submitted a document (at Tab R of Landlord’s evidence package) from a repair service that shows that repairs to the boiler were made on January 11, 2016, January 12, 2016, January 13, 2016, and January 14, 2016. This report indicates that the heating system was not working and that the boiler was repaired.

The Advocate for the Tenant argued that there is no evidence that the repair service inspected any of the rental units to determine if the individual radiators were functioning properly. The Landlord submitted no evidence to show the Tenant’s radiator was inspected by a qualified technician.

The Landlord submitted a notice dated December 17, 2015 (at Tab 5 of Landlord’s evidence package) which the Agent for the Landlord stated was posted in various locations in the residential complex and is still posted near the front office door. The Notice advises tenants that the boiler is “in the process of being replaced” and that space heaters are available for loan.

The Landlord submitted a notice dated December 22, 2015 (at Tab 6 of Landlord’s evidence package) which the Agent for the Landlord stated was posted in various locations in the residential complex and is still posted near the front office door. The Notice advises tenants that the Landlord will relocate tenants who are impacted by the loss of heat.

The Tenant stated that he has never seen the aforementioned notices anywhere in the residential complex.

The Tenant stated that:

- he was provided with a space heater on December 01, 2015;
- when he first used the space heater it tripped the circuit breaker;
- he then plugged the space heater into a power bar and subsequently noticed that the electrical cord became very hot;
- a fire inspector told him that to safely use the space heater he should unplug his refrigerator and hot plate;
- he opted to use his refrigerator and hot plate rather than the heater;
- he advised the front desk that he could not use his space heater;
- the Landlord has never offered to relocate him as a result of inadequate heat; and
- the Landlord has never offered to reduce his rent as a result of inadequate heat.

The Agent for the Landlord stated that the reason the circuit breaker is tripping in the rental unit is because the Tenant is using a refrigerator and a hot plate, which are not authorized. The Tenant stated that he is allowed to have a refrigerator and a hot plate. No evidence was submitted to corroborate the testimony that the Tenant cannot have a refrigerator and a hot plate in the unit.

The Agent for the Landlord stated that the Landlord has not discussed the option of relocating with the Tenant.

At the reconvened hearing on March 30, 2016 the Agent for the Landlord stated that:

- the boiler has been rebuilt since the previous hearing;
- work on the boiler was completed on February 12, 2016 or February 13, 2016;
- the boiler is now functioning properly with the exception of minor issues that are consistent with a "new" system;
- after the last hearing the manager of a company who installs hot water systems advised him that the hole on the hot water tank the Tenant is reporting is likely the nipple that is opened for the purposes of bleeding the system;
- the pipes running through the ceiling of the rental unit should be adequate to provide sufficient heat to the rental unit even if the radiator was not working; and
- the radiator is designed to provide supplemental heat when the pipes running through the ceiling do not provide adequate heat.

At the reconvened hearing on March 30, 2016 the Tenant stated that:

- his radiator has not been inspected by anyone representing the Landlord since the previous hearing;
- his rental unit was inspected by a building inspector since the previous hearing;
- when the building inspector was in his room he showed him the hole in his radiator and the inspector told him the hole could be repaired;

- he knows what a nipple on a radiator looks like and he was not referring to the nipple when he reported a hole in the radiator; and
- his radiator still provides no heat to the rental unit.

The Tenant is seeking compensation of \$75.00 per month for the duration of the tenancy because he has not had hot water. This claim relates, in part, to being unable to use the sink in the room because it was leaking.

The Tenant stated that:

- there have been periodic problems with hot water in the common shower area;
- he has never had hot or warm water in the sink in his rental unit;
- he verbally reported the lack of hot water in his unit to the front desk on several occasions during the first few months of his tenancy;
- he eventually stopped reporting the problem with the hot water as he believed it would not be repaired;
- he reported the lack of hot water in his rental unit to the Advocate for the Tenant in May of 2015;
- the common shower area has been without hot water for three weeks prior to the hearing on March 30, 2016;
- he currently has no hot or warm water in his rental unit;
- the sink in his rental unit was leaking at the start of the tenancy; and
- the leaking sink was repaired approximately two months prior to the hearing on March 30, 2016.

The Agent for the Landlord stated that:

- there is currently hot water throughout the residential complex;
- when the sink was inspected on December 01, 2015 there was no evidence of a leak;
- a leak under the sink was repaired within three days of receiving a report of the leak; and
- the pipe under the sink appears to have been kicked so he speculates the leak was the result of external force.

The Tenant submitted a video of the sink in the rental unit, which shows a significant amount of water leaking from the sink drain when the tap is running.

The Tenant submitted a letter, dated January 14, 2015, in which the Tenant declares that the Landlord “fixed my hot water” but the “pipe under the sink is broken and water leaks directly onto the floor”.

The Tenant submitted an email to the City, dated November 27, 2015, in which he reported being without heat and hot water.

In the Tenant's written submission the Tenant declared that the hot water was repaired on January 08, 2015 but the pipes under the sink leak so badly he could not use the sink.

The Landlord and the Tenant agree that hot water is heated by a boiler. The Agent for the Landlord stated that this is a different boiler than the one used to provide heat to the residential complex. The Tenant does not know if there are two boilers in the residential complex.

In the Landlord's written submission the Landlord acknowledges receiving a report of a problem with the hot water in the residential complex on August 09, 2015. The Agent for the Landlord stated the problem was reported to a repair company and that it was repaired on September 08, 2015, which the Landlord contends is corroborated by the invoice at Tab 1 of the Landlord's evidence package.

The Landlord contends that the Landlord has been diligent with repairs. The Agent for the Landlord stated that the delay in repairing the hot water reported on August 09, 2015 was due to the busy schedule of the repair company.

The invoice at Tab 1 of the Landlord's evidence package indicates that the repair request was made on September 08, 2015 and the repairs were scheduled for the same date. The Advocate for the Tenant argued that this is not a diligent response to a problem that was reported on August 09, 2015.

I note that the invoice at Tab 1 simply specifies there was a problem with the boiler. As the Agent for the Landlord has testified there are two boilers in the residential complex, the invoice does not clearly establish which boiler was repaired on August 09, 2015.

In the Landlord's written submission the Landlord acknowledges receiving a report of a problem with the hot water in the residential complex on October 12, 2015 and that the repair invoice at Tab 2 of the Landlord's evidence package shows the issue was corrected. The invoice at Tab 2 relates to a problem with the heat that was reported on November 11, 2015.

In the Landlord's written submission the Landlord acknowledges receiving a report of a problem with hot water on November 17, 2015 and that the repair invoice at Tab 3 of

the Landlord's evidence package shows the issue was corrected. The invoice at Tab 3 indicates a problem with hot water was reported on December 10, 2015 and repairs were completed on that date.

The Agent for the Landlord stated that parts of the residential complex were without hot water on September 08, 2015, November 17, 2015, and December 10, 2015, for one day on each occasion.

The Tenant submitted an Order from the local building authority, dated December 17, 2015. This Order declares that the building is "still" in contravention of a City bylaw and that the heat and hot water must be repaired by February 15, 2016 or the City will complete the repairs at the expense of the Landlord. The Advocate for the Tenant submits that this strong wording of this report is indicative of the Landlord's lack of response to reported deficiencies with the residential complex.

The Landlord stated that when the residential complex was inspected by the local building authority in September and November of 2015 there was no indication of a problem with heat or hot water in the residential complex. The Landlord did not submit copies of the inspection reports from September or November of 2015.

The Agent for the Landlord refers to a CBC investigative report that was submitted in evidence by the Tenant. At page 30 of the Tenant's evidence package the CBC report indicates that the local building authority inspected the residential complex in September and November of 2015 and did not discover a problem with heat or hot water in the residential complex.

In the CBC investigative report which was posted on December 01, 2015 the report declares that he wrote that the Tenant turned on the hot water tap to show that he did not have hot water, although there is no indication that the reporter confirmed that information. The reporter also wrote that there is a hole on the top of the steam radiator and that it was "stone cold".

The Agent for the Landlord noted that the CBC investigative report makes no mention of the sink leaking.

The Advocate for the Tenant speculated that the local building authority simply overlooked the problem with heat or hot water during the September and November inspections. She notes that those deficiencies are referred to in the Order from that local building authority, dated December 17, 2015.

At page 7 of the Tenant's written submission the Tenant declared that section 18.1(1) of the Standards Maintenance Bylaw stipulates, in part, that heating systems shall be maintained in safe and good working order and must be capable of maintaining every room at a temperature of 72 degrees Fahrenheit/22 degrees Celsius. The Advocate for the Tenant stated that she has reproduced the bylaw as it is written. The Landlord does not dispute the content of the bylaw.

The Advocate for the Tenant stated that in May of 2015 the Tenant told her that he did not have heat or hot water. She stated that she recorded those concerns reports and the reports were submitted as evidence for these proceedings (Exhibit 2 of Tenant's evidence package).

The Agent for the Landlord argued that the email the Tenant submitted in evidence, dated November 27, 2015, contradicts the Tenant's submission that he has not had heat or hot water since the start of the tenancy. (Exhibit 7 of Tenant's evidence package) In this email the Advocate for the Tenant declared that the "lack of hot water and heat has been going on for weeks".

The Advocate for the Tenant stated that her email of November 27, 2015 was meant only to refer to issues with heat and hot water in the common shower area.

The Tenant submitted a letter, dated November 09, 2015, in which the Tenant provided the Landlord with written notice of the problems with the heat and hot water. (Exhibit 4 of Tenant's evidence package) The Advocate for the Tenant stated that this letter was sent to the Landlord, via registered mail, on November 13, 2015. Canada Post documentation was submitted in evidence that corroborates this submission.

The Agent for the Landlord stated that he did not see this letter until it was served as evidence for these proceedings, although he does not dispute that it was mailed to the Landlord.

The Witness for the Tenant #1 stated that he lives in the rental unit and that he moved in approximately 16 months prior to the hearing. The Agent for the Landlord asked the Witness if he actually moved into the rental unit on October 01, 2015 and the Tenant stated that he may have moved into the rental unit on that date.

The Witness for the Tenant #1 stated that:

- the heat has never worked in his rental unit;
- he heats his unit with a space heater;
- until approximately two weeks prior to the hearing on February 01, 2016 he only had hot water in his rental unit three or four times per week;
- he now has hot water at all times;
- when he first moved into the rental unit he reported the problems with the hot water/heat to the front desk at least once a week;
- after five weeks he stopped reporting the problem to the front desk because they were not repaired;

- recently there have been frequent unit inspections;
- when he first moved into his rental unit inspections were rare;
- he saw a notice posted in the residential complex that offered space heaters;
- he did not see a notice posted in the residential complex that offered alternate accommodations; and
- he has abandoned an Application for Dispute Resolution he filed because of ill health.

The Advocate for the Tenant stated that the reports of deficiencies in 2015 were not submitted to the Landlord for fear of reprisal.

The Tenant stated that sometime in early November of 2015 a manager of the residential complex, whom I will refer to as Manager M, punched a window and told him he could no longer protect the Tenant or his property. The Tenant believed this interaction related to the Application for Dispute Resolution the Tenant had filed, as it was around the time he served the Landlord with notice of these proceedings. When the Agent for the Landlord pointed out that the Application for Dispute Resolution was not filed until December of 2015 the Tenant stated that he has some problems with his memory and he may have been mistaken about the month.

The Tenant submitted a letter, dated December 16, 2015, in which the incident with Manager M was reported to the Landlord. In the letter the Tenant declares that the incident happened in early November of 2015 and that it appeared to be in response to water temperature that he and an advocate had been testing earlier that date.

The Agent for the Landlord stated that he has no knowledge of the allegations that Manager M punched the window, however he speculates that any comments made may have been a reference to his understanding that many people living in the residential complex do not like the Tenant.

The Advocate for the Tenant stated that in June or July of 2015 she was assisting a group of people living in this residential complex; that members of this group told her they had been intimidated by Manager M; and that none of those group members were willing to take action against the Landlord as a result of the intimidation, with the exception of the Tenant.

The Advocate for the Tenant stated that one group member was walking past Manager M when Manager M asked a third party who he needed to pay to “punch out” the group member. She stated that the group member believed this comment was directed at him because of his involvement with the group and the Advocate for the Tenant.

The Advocate for the Tenant stated that she has not observed Manager M act in an intimidating manner towards any tenant of the residential complex. She stated that on one occasion when she was in the presence of Manager M he loudly stated that he was

getting “pissed off” about all the reports of problems in the building. She stated that she believed Manager M was attempting to intimidate her when he made the comment.

Witness for the Tenant #2, who is a personal friend of the Tenant, stated that:

- he was in the residential complex in the first week of November of 2015;
- he was there for the purposes of testing the temperature of the hot water and the Tenant’s rental unit;
- he tested the temperature of the water in the rental unit;
- that there was no hot or warm water in the rental unit when he tested it;
- the sink was not leaking when he tested the hot water in the rental unit;
- he cannot now specifically recall the temperature of the hot water in the unit but he believes it was in the “low seventies” (Fahrenheit);
- when he and the Tenant were headed to the second floor two unknown males confronted him and demanded that he give them his camera and thermometer;
- he interpreted their body language and their use of profanity to be threatening; and
- he left the residential complex as a result of the interaction with the two unknown males.

The Tenant stated that he was with Witness #2 when the two males confronted them and demanded that they be given the camera/thermometer. He described one of the males and stated that he believes he was an employee of the residential complex and that he believes the second male was Manager M.

The Agent for the Landlord stated that based on the description of one of the males involved in this confrontation, he believes that male is a person who frequents the area but is neither an resident residential complex or an employee of the Landlord.

The Advocate for the Tenant stated that as a result of the intimidation and the lack of response to previous reports of problems with the rental unit, problems with the residential complex were reported directly to the city in June and July of 2015, rather than to management.

In the Landlord’s written submission the Landlord argued, in part, that the tenancy agreement has been frustrated “in that part concerning the boiler/heat/hot water”.

Analysis

When making a claim for compensation under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(1) of the *Act* requires that a landlord to 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.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Residential Tenancy Policy Guideline 16, with which I concur, suggests that a tenant is expected to pay rent and a landlord is expected to provide the premises as agreed to. The guideline further suggests that if a 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 is no negligence on the part of the landlord. It would be logical to conclude that this guideline also applies when a tenant is deprived of a service that was to be provided with the tenancy.

Although neither party submitted a copy of the relevant municipal bylaws, I am satisfied that there is a relevant municipal bylaw that requires residential property to have a safe and functional heating system that is capable of maintaining every room at a temperature of 72F (22C). This decision is based on the written submission of the Tenant, which the Advocate for the Tenant stated is accurate and which the Landlord does not dispute.

The CBC investigative report that was submitted in evidence declares that there is a municipal bylaw that requires "lodging houses" to maintain temperature at no lower than 20C between 8:00 a.m. and midnight. I note that the report refers to a "lodging house", where occupants may not have direct control of the temperature. I find it reasonable to conclude that there are two separate bylaws and that the bylaw relating to a "lodging house" does not apply to the rental unit.

The CBC investigative report also declares that there is a municipal bylaw that requires "lodging houses" to provide hot water at a temperature range of 49C to 60C at all times. The Tenant does not refer to a relevant bylaw for hot water in his written submission, although it is reasonable to conclude that one exists.

I find that there has been a hole in the top of the radiator in the Tenant's rental unit since the start of this tenancy. This conclusion is based on:

- the Tenant's testimony that there has been a hole in the top of his radiator since the start of the tenancy;
- the CBC investigative report in which the reporter declares that there is a hole on the top of the steam radiator and that the radiator was "stone cold";
- the fact that the Agent for the Landlord has not personally inspected the radiator and cannot dispute the Tenant's testimony;

- the absence of any records that show the Landlord has inspected the radiator in the rental unit; and
- the absence of documentary evidence that shows the Tenant's radiator was inspected by a qualified technician.

The conclusion that there was a hole in the radiator was also based on the undisputed evidence that in May of 2015 the Tenant told the Advocate for the Tenant that he did not have heat. This report supports my conclusion that the absence of heat in the rental unit was related to a malfunctioning radiator, given that the Agent for the Landlord contends the heating system was functioning properly in May of 2015.

In adjudicating this matter I have placed no weight on the Agent for the Landlord's speculation that the hole in the radiator the Tenant refers to is actually the nipple used to bleed the system. Given that there is no evidence that the radiator has been inspected by a qualified technician, I find that this is mere speculation on the part of the Agent for the Landlord.

As I have concluded that there has been a hole in the Tenant's radiator since the start of the tenancy and there is no evidence the hole has been repaired, I find that the Tenant has been unable to heat his rental unit since the start of the tenancy and that he is still currently unable to heat his rental unit. I find that his inability to heat his unit is entirely separate from the functioning of the boiler system, as the damaged radiator would have prevented him from heating his unit even when the boiler system was working. I therefore find that I do not need to consider any of the evidence regarding repairs to the boiler system.

In determining that the Tenant is still without heat in his rental unit I placed no weight on the Agent for the Landlord's testimony that he personally inspected the Tenant's rental unit on January 20, 2016, at which time he determined that the heat was functioning properly. I discounted this testimony because there the Tenant disputes the testimony; there is no evidence to corroborate the testimony; and there is no evidence that the radiator was repaired so I do not know how the rental unit could have been adequately heated.

In adjudicating this matter I have placed no weight on the Agent for the Landlord's testimony that the rental unit should be kept sufficiently warm by the pipes running in the ceiling of the rental unit and that the radiator is simply designed to provide supplemental heat. Even if a radiator is designed to simply provide supplemental heat, I have concluded that it was not working for the purposes for which it was designed and that the Tenant did not, therefore, have the ability to sufficiently heat the unit.

In adjudicating this matter I have placed limited weight on the email of November 27, 2015 in which the Advocate for the Tenant declared that the "lack of hot water and heat has been going on for weeks". As this declaration clearly conflicts with the information she received in May of 2015, I find it reasonable to conclude that the declaration is a

misstatement. I note that the Advocate for the Tenant is a member of an advocacy group and is not directly impacted by these issues, which may explain this misstatement.

I find that the Tenant attempted to mitigate the impact of a malfunctioning radiator by using an electric space heater that was provided on December 01, 2015. I find that he was unable to use the heater without tripping a circuit breaker. I find his decision to use his refrigerator and hot plate instead of the heater was reasonable, considering the need to eat is more compelling than the need to stay warm.

In adjudicating the claim for heat I placed no weight on the Agent for the Landlord's testimony that the Tenant was not allowed to have a refrigerator and/or hot plate in this rental unit, as the Tenant disputed that testimony and no evidence was submitted to corroborate the testimony.

In adjudicating the claim for heat I have placed no weight on the evidence that the residential complex was inspected by the local building authority in September and November of 2015 at which time there was no indication of a problem with heat in the residential complex. I find it entirely possible that an inspection of the complex would not have identified a problem with one radiator even if the heating system was functioning properly at the time of the inspection or that the inspection

I find that the absence of heat in the rental unit reduced the value of this tenancy by \$75.00 per month for the period between September 01, 2014 and March 30, 2016, which is 19 months. I therefore find that the Tenant is entitled to compensation of \$1,425.00 for these 19 months.

After considering all of the evidence I find, on the balance of probabilities, that the Tenant did not have hot water in his rental unit when this tenancy began and that the problem persisted for a period of time.

In concluding that the Tenant did not have hot water in his unit at the beginning of his tenancy and for a period thereafter I was influenced, in part, by the Tenant's testimony that he did not have hot or warm water in his sink when the tenancy began and by the absence of any documentary evidence to show that an agent for the Landlord investigated the Tenant's reports of being without hot water.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the Advocate for the Tenant's testimony that he reported the problem to her in May of 2015. I can find no logical reason for the Tenant to report an absence of hot water to an advocacy group if he actually had hot water.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the email, dated November 27, 2015, in which the Tenant informed the city he was without hot water. I can find no logical reason for the Tenant to report an absence of hot water to the City if he actually had hot water.

In adjudicating the claim for water I have considered the Landlord's submission that when the residential complex was inspected by the local building authority in September and November of 2015 there was no indication of a problem with hot water in the residential complex. I find it entirely possible, as the Advocate for the Tenant suggested, that the city simply did not inspect the complex for hot water on those occasions. I find it equally possible that there was hot water when the building was inspected on those dates and that the problem with hot water was sporadic.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the Order from the local building authority, dated December 17, 2015. This Order declares that the building is "still" in contravention of a City bylaw and that the heat and hot water must be repaired by February 15, 2016 or the City will complete the repairs at the expense of the Landlord. I find that the use of the word "still" corroborates the Tenant's testimony that there was a problem with the hot water in his unit; that the problem was not fleeting or temporary; and that the Landlord was not complying with request for repairs.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the CBC investigative report which was posted on December 01, 2015. Although the reporter did not specifically declare that he tested the hot water in the rental unit, I find it is reasonable to conclude that the investigative reporter was satisfied there was no hot water when he inspected the room.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the letter, dated November 09, 2015, in which the Tenant provided the Landlord with written notice of the problems with the heat and hot water. I can find no logical reason for the Tenant to report an absence of hot water if he actually had hot water.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the testimony of Witness for the Tenant #1, who stated that he only had hot water in his unit three or four times per week between the start of his tenancy and two weeks prior to the hearing on February 01, 2016. I find that this testimony corroborates the Tenant's submission that there was a prolonged problem with hot water in the individual units for an extended period of time.

In concluding that the Tenant did not have hot water in his unit for a period of time I was influenced, in part, by the testimony of Witness for the Tenant #2, who stated that when he tested the hot water in the rental unit in the first week of November of 2015 there was no hot or warm water.

Although the Witness for the Tenant #2 estimated that the water temperature in the rental unit was in the "low seventies", it was clear that he was relying on his memory and he was not certain of the temperature. I therefore have placed no weight on the

actual temperature and rely solely on his testimony that there was no hot or warm water.

On the basis of the written submission of the Tenant, I find that the problem with his hot water was repaired by January 08, 2015. I have significant difficulty determining the frequency and duration of the problem with hot water for the period up to January 08, 2015.

In the absence of evidence to establish that there was a specific problem with the hot water feed to the Tenant's rental unit, it is logical to conclude that the problem with hot water was related to the boiler system that supplied water to the building.

Given that it is logical to conclude that the hot water was related to the boiler system in the building, I find the Tenant has submitted insufficient evidence to establish that he was without hot water on a permanent basis.

In determining that there was insufficient evidence to conclude there was never hot water in the building I was influenced by the testimony of the Witness for the Tenant #1, who declared that until approximately two weeks prior to the hearing on February 01, 2016 he only had hot water in his rental unit three or four times per week and that he now has hot water at all times. Given that he had hot water three of four times per week, I find it difficult to conclude that the Tenant never had hot water.

In determining that there was insufficient evidence to conclude there was never hot water in the building I was influenced by the documentary evidence submitted by the Landlord that show the problem with hot water was reported to a service technician on December 10, 2015 and was, presumably repaired. This would suggest the Tenant was not permanently without hot water.

On the basis of the testimony of the Agent for the Landlord, I find that parts of the residential complex were without hot water on September 08, 2015, November 17, 2015, and December 10, 2015, for one day on each occasion. On the basis of the evidence before me, I find that the problem with hot water was significantly more frequent than the dates provided by the Landlord.

After considering all of the evidence I am satisfied that the Tenant was periodically without hot water for the periods between September 01, 2014 and January 08, 2015.

I find that the periodic absence of hot water reduced the value of this tenancy by \$50.00 per month for the period between September 01, 2014 and January 08, 2015, which is 5 months. I therefore find that the Tenant is entitled to compensation of \$250.00.00 for these 5 months.

I find that I have insufficient evidence to conclude whether or not the problem with hot water reoccurred after the Tenant acknowledged it was repaired on January 08, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that

corroborates the testimony that he did not have hot water at the time of the hearing on March 30, 2015 or that refutes the Agent for the Landlord's testimony that the entire complex currently has hot water. I therefore have not awarded compensation for the absence of hot water for any period after January of 2015.

I find that the Tenant has submitted insufficient evidence to establish that the sink in his rental unit leaked from the start of the tenancy until two months prior to the hearing on March 30, 2016, which would have been approximately February 01, 2016.

In adjudicating the claim for the leaking sink I was heavily influenced by the testimony of the Witness for the Tenant #2, who declared that the sink was not leaking when he inspected the unit in November of 2015. This refutes the Tenant's submission that the sink was leaking between September 01, 2014 and March 30, 2016.

In adjudicating the claim for the leaking sink I was heavily influenced by the CBC investigative report, which makes no mention of the sink leaking. As this report was posted on December 01, 2015, it refutes the Tenant's submission that the sink was leaking between September 01, 2014 and March 30, 2016.

On the basis of the CBC investigative report and the testimony of the Witness for the Tenant #2, I find it reasonable to conclude that the sink started to leak sometime after November of 2015.

As the Tenant cannot clearly establish when the leaking sink was reported to the Landlord and there is no evidence to refute the Agent for the Landlord's testimony that the sink was repaired shortly after it was reported to the Landlord, I find that the Tenant is not entitled to compensation for the leaking sink.

On the basis of the testimony of the Tenant, I find that the Tenant reported the problem with the heat and hot water to the front desk several times at the start of the tenancy. Given that the problem was not rectified after repeated reports, I find it reasonable that the Tenant eventually stopped reporting the problem to the front desk.

In adjudicating this matter I find that there is no evidence to refute the Tenant's claim that the problem with heat/hot water was reported to the front desk on several occasions. Specifically, I note that the Landlord did not submit a record of the reports made to the front desk during the first few months of the tenancy. Although the Agent for the Landlord declared that the Landlord was not aware of the problem there are several possible explanations for that, including the fact that reports are not being recorded by the front desk or were not being properly communicated to the Landlord.

In determining that the Tenant reported the problem with heat/hot water to the front desk I was influenced, in part, by the testimony of the Witness for the Tenant #1, who declared that he also reported problems to the front desk when he first moved in but the Landlord did not act on those reports.

In adjudicating this matter I find that Tenant and other occupants of the residential complex felt intimidated by Manager M and, as a result, were discouraged from insisting that repairs be made. I therefore find it reasonable that the Tenant stopped reporting problems to the front desk and eventually reported deficiencies directly to the City.

In determining that Manager M acted in an intimidating manner, on occasion, I was influenced by the Tenant's testimony that Manager M punched a window and told him he could no longer protect the Tenant or his property. On the basis of the Tenant's testimony and his written submission, I find that this incident occurred in early November of 2015. Although at the hearing the Tenant testified that the interaction related to the Application for Dispute Resolution the Tenant had filed I find that to be unlikely, as the Application was not filed until December of 2015.

I find that the November incident was likely related to deficiencies being reported by the Tenant. This conclusion is based on the letter, dated December 16, 2015, in which the Tenant declared that the incident occurred after he and his advocate had been testing water temperatures earlier that date. As this letter was written a few weeks after the incident and the Tenant acknowledged that he has some problems with his memory, I find the written letter is the most reliable evidence.

In determining that Manager M acted in an intimidating manner, on occasion, I was influenced by the Advocate for the Tenant's testimony that on one occasion when she was in the presence of Manager M he loudly stated that he was getting "pissed off" about all the reports of problems in the building. As she was directly involved with the reports being made to the City, I find it reasonable for her to conclude that the comment was an attempt to intimidate her.

In determining that Manager M acted in an intimidating manner, on occasion, I was influenced by the Advocate for the Tenant's testimony that an occupant of the rental unit who was also reporting deficiencies with the building told her that he was walking past Manager M when Manager M asked a third party who he needed to pay to "punch out" the group member. Although I do not place significant weight on this hearsay evidence, I do note that it serves to corroborate the evidence of the Tenant and the Advocate for the Tenant.

In determining that Manager M acted in an intimidating manner, on occasion, I was influenced by the testimony of Witness #2, who stated that in November of 2015 he was in the residential complex when he was confronted by two unknown males who demanded his camera and thermometer in a manner that he interpreted to be threatening. Although he did not know either male I find, on the basis of the testimony of the Tenant who was present during the incident, that one of the males was likely Manager M.

A tenancy agreement is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended

is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract. When a tenancy agreement is frustrated a landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

I have not considered the Landlord's argument that the tenancy agreement is frustrated simply because it is moot. Even if I concluded that the Landlord was not unable to provide heat/hot water because the tenancy agreement was frustrated, the remedy would be the same, in that the Tenant would not be obligated to pay for the services he did not receive.

Section 62(3) of the *Act* authorizes me to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*.

As I have concluded that the radiator in the Tenant's rental unit is not working and has never been repaired, as is required by section 32(1) of the *Act*, I **Order the Landlord to repair the radiator in the Tenant's rental unit and to take all steps necessary to ensure the radiator is functioning properly and that adequate heat is being provided to the rental unit. I further Order that this repair be completed by April 30, 2015.**

In compensation for the reduced value of this tenancy as a result of the malfunctioning radiator, I hereby authorize the Tenant to reduce each monthly rent payment by \$75.00, commencing April 01, 2016. I authorize the Tenant to reduce each subsequent monthly rent payment by \$75.00 until such time as the Landlord serves the Tenant with confirmation, from a qualified service technician, that the radiator is functioning properly.

As I am unable to determine whether the Tenant currently has hot water in his rental unit, as is required by section 32(1) of the *Act*, I **Order the Landlord to have the temperature of the water in the Tenant's rental unit tested by a qualified professional to ensure it meets local building standards. I further Order that this repair be completed by April 30, 2015.**

In the event the Landlord has not provided the Tenant with evidence from a qualified professional that the hot water in his rental unit meets local building standards by April 30, 2015, I authorize the Tenant to reduce each monthly rent payment by \$50.00, effective May 01, 2016. I authorize the Tenant to reduce each subsequent monthly rent payment by \$50.00 until such time as the Landlord serves the Tenant with the evidence from this qualified professional.

As the evidence shows the leaking sink has been repaired, I find there is no need to issue an order for that repair.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,675.00, which consists of \$1,425.00 for being without a properly functioning radiator and \$250.00 for being periodically without hot water, and I grant the Tenant a monetary Order for this amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount director orders a landlord to pay to a tenant, which in these circumstances is \$1,675.00.

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: April 01, 2016

Residential Tenancy Branch