



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenants' Application made August 18, 2016: MNR; RR; FF

Amended August 25, 2016: OLC; ERP; RP; RR; FF

Amended August 30, 2016: CNL; OLC; ERP; RP; RR; FF

### **Introduction**

This teleconference was adjourned from October 5, 2016. An Interim Decision was issued on November 1, 2016, which should be read in conjunction with this Decision.

At the October 5, 2016, Hearing, I cancelled all of the Notices to End Tenancy that were issued prior to October 5, 2016, and advised the Landlord's agent that the Landlords would have to issue a new Notice to End Tenancy if they chose to apply again for an Order of Possession. Therefore, this Hearing dealt with the Tenants' application for an Order that the Landlords comply with the Act, regulation or tenancy agreement; and an Order for regular and emergency repairs; a rent reduction; and to recover the cost of the filing fee from the Landlords.

The Landlords were affirmed and the other participants were reminded that they remain under solemn affirmation to tell the truth.

It is important to note that a large amount of documentary evidence was provided to the Residential Tenancy Branch after the Hearing had been adjourned. These documents were not considered because the Hearing had begun and no permission was granted for further evidence to be provided. I invited the parties to provide oral testimony with respect to this late documentary evidence.

### **Issue(s) to be Decided**

- Is there a primary heat source in the rental unit?
- Did the Landlords agree to install a working furnace?
- Should the Landlords be ordered to make regular repairs?
- Are the Tenants entitled to compensation for loss or to rent abatement?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on November 1, 2015. Monthly rent is \$1,000.00, due on the first day of each month. The Tenants also pay \$400.00 per month for the use of a “shop” in the rental property. The Tenants paid a security deposit in the amount of \$700.00.

The Tenants and their witness gave the following testimony:

The Tenants testified that the furnace at the rental unit is not functioning. They stated that the Landlords advised them that the electric heaters in the rental unit worked well and that the rental unit was well insulated, but that if the Tenants wanted the furnace then the Landlords would provide it. The Tenants stated that after they moved into the rental unit, they asked the Landlords to provide the furnace because the heaters were inadequate but the Landlords “said no”.

The Tenants stated that all the windows are single pane and that condensation overflows and causes puddles on the floor. They stated that the main room is warm, but that the bedrooms are cold. The Tenants testified that their electricity bills are very high in the winter months. The Tenants stated that the following repairs are required:

- Leaky faucets in the work shop.
- The compressor in the work shop does not work.
- There is no vapour barrier in the crawl space, and there is water pooling in the crawl space.
- The bedroom door has a lock but no key. The Tenants had to dismantle the lock to get into their bedroom.
- The bedroom window is cracked.
- The dryer door latch doesn't work.
- The track on the dishwasher is “dysfunctional”.
- The latch on the kitchen window is “busted”.
- The light in the refrigerator doesn't work.

The Tenants stated that they told the Landlords about the needed repairs.

The Tenants' witness testified that she was with the Tenants when they first viewed the rental unit. She stated that the Landlords told the Tenants that if anything broke they would fix it right away. The Tenants' witness testified that the Tenants told the Landlords that they were concerned because the furnace wasn't working, and the Landlords said that if the Tenants wanted the furnace hooked up they would “be more than happy to do that. The Tenants' witness said that she was also at the rental unit when the Landlords replaced the refrigerator with another old fridge, which “worked, but was loud”.

The Landlords gave the following testimony:

The Landlords denied having any discussions with the Tenants about hooking up the furnace. They testified that the furnace has not been working for 13 years and that the Tenants were aware that the primary heat source is the electric heaters. The Landlords testified that the heaters are designed to heat up to 1200 square feet of space and that the rental unit is 930 square feet. The Landlords testified that previous tenants have not complained about lack of heat.

The Landlords stated that the Tenants told them the heaters were insufficient, so they purchased a new large portable cabinet heater with remote control one month after the Tenants moved in. They testified that they took the temperature in the crawl space and it was 63 degrees Fahrenheit, which they submitted is sufficient for a crawl space.

The Landlords testified that the rental unit is "up to code", including the insulation. They submitted that the Tenants blocked off some vents which limited air flow in the rental unit. The Landlords stated that the bedroom window was not cracked when the Tenants moved in. They testified that the Tenants do not use the ceiling fans to circulate the warm air down from the ceiling to the floor.

The Landlords testified that they had not heard about the Tenant's request for repairs until the Tenants brought it up at the Hearing.

The Landlords stated that the lease on the rental property "runs out at the end of November".

The Tenants gave the following reply:

The Tenants testified that the heater heats the main room, but the bedrooms are always cold. They stated that the window was cracked when they moved in.

The Tenants stated that they tried using the ceiling fans, but they cooled the house down considerably. The Tenants testified that they bought a ceramic heater for the bedroom, but they have to keep the bedroom door open or it is too cool.

**Analysis**

This is the Tenants' Application and therefore the onus is on the Tenants to provide sufficient evidence on the balance of probabilities, that they are entitled to the relief they have claimed.

Based on the parties' testimony, I find that the primary heat source in the rental unit is electric heat and that there is insufficient evidence that there are any required emergency repairs.

The written tenancy agreement provides that: the Tenants have "examined the House, including the grounds and all buildings and improvements, and that they are, at the time of this Lease, in good order, good repair, safe, clean, and tenantable condition"; "Tenant agrees to promptly

notify Landlord in the event of any damage, defect or destruction of the House”; and “any notice required or otherwise given pursuant to the Lease shall be in writing”.

In this case, the Tenants did not provide the Landlord with any notice in writing before making their Application. The Tenants made their Application in August, 2016, which is 10 months after the beginning of the tenancy, and well after the first winter was over.

The parties disagreed with respect to whether or not the Landlords agreed to install a furnace at the rental property. In the absence of any written agreement between the parties and the absence of any written notice from the Tenants with respect to installing a furnace, I find that the Tenants have not proven this portion of their claim and it is dismissed. Likewise, their claim for compensation or rent abatement is dismissed.

The Landlords are now aware of the regular repairs identified by the Tenants. If the Landlords do not make regular repairs within a reasonable amount of time, the Tenants are at liberty to re-apply for an Order for repairs.

I make no finding with respect to whether or not the tenancy ends on November 30, 2016.

The Tenants have not been successful in their Application and I find that they are not entitled to recover the cost of the filing fee from the Landlords.

### **Conclusion**

The Tenants’ Application for a regular repair Order is **dismissed with leave to reapply**.

The remainder of the Tenants’ Application is **dismissed**.

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 15, 2016

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Residential Tenancy Branch