



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction:**

Both parties attended the hearing and gave sworn evidence. They agreed the Application for Dispute Resolution was served by the tenant by registered mail. The tenant contended she did not get the landlord's evidence. The landlord testified they mailed it by registered mail on January 11, 2017 with expected delivery on January 12, 2017 but the tenant failed to pick it up. The local manager tried to deliver it to her last evening on January 18, 2016 but she refused to take it. The tenant said she was asleep at about 9 p.m. when the local manager tried to give it to her. The tenant contends she has not had time to consider and respond to it. The tenant applies pursuant to the *Residential Tenancy Act* for orders as follows:

- a) To order a refund of rent pursuant to sections 27 and 65 because of lack of the essential provision of heat and hot water contrary to section 27 and lack of maintenance contrary to section 32; and
- b) To recover the filing fee for this application.

### **Issue**

Has the tenant proved on the balance of probabilities that the landlord neglected to provide heat and hot water contrary to sections 7, 27 and 32 of the Act?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to make submissions and provide evidence. The tenant said the system was repaired on January 6, 2017 but for about two months prior, she had no heat and only intermittent lukewarm water. She has been a tenant for almost 20 years, her current rent is \$883 plus parking and storage and she paid a security deposit of \$332.50 on February 21, 1997.

The landlord does not agree with her statements. They provided evidence of a Notice of Boiler Update dated December 16, 2016 which the tenant said she saw. The notice states that some tenants experience inconsistent heat and/or hot water and a part has been ordered to improve the performance of the boiler. They expected the repair to occur within 12-14 days. A second Notice dated January 3, 2017 said the repair would occur on January 5, 2017 and during this time, the boiler would be shut off and the building would be without heat and hot water. A Notice of Entry dated December 31, 2016 for entry into the tenant's unit on January 3, 2017 by a plumber to check the heat

and hot water was given to the tenant. She said she got it on January 1, 2017 but refused entry. She said she refused for she had no heat or hot water so there was nothing to test.

The landlord provided a statement from the professional repair company which said they checked the baseboard heater on a unit on the third floor on January 5, 2017 prior to the repair being started. They found a reading of 107 degrees fahrenheit which was within manufacturer's parameters. The landlord explained that this hot water system draws heat and hot water throughout the building. They had one of the farthest units tested before the repair because it would have the hardest pull on the system. They deny that the tenant was without heat during the two months she claims and submit that she has provided no evidence to support her allegations. They acknowledge that the supply of hot water may have been limited but contend there was a supply except for that one day the notice said it would be shut off for repair. Even then, they say, they limited it to the time after tenants would have left the building for work or other pursuits. They explained that each December they have the system checked and in December 2016, the professionals recommended some repairs. Since they had had some complaints, they decided to move forward and do the repairs at great expense. It took time to obtain the necessary parts but they moved along as quickly as possible.

The tenant contended the landlord was lying. She said many people were unable to take showers and she could have called many witnesses. She said she could not get the grease off her dishes because there was no hot water and the local manager suggested she boil some water. She invited me to watch some media as a disgruntled tenant had gone to the media. She said she had to buy a space heater. She asks for \$900 rent rebate for the withdrawal of the necessary services of heat and hot water.

In evidence is a tenancy agreement, Notices to tenants posted by the landlord, the Professional Repair Company reports, a Notice of Entry to the tenant and a report of the test by the Professional Company on January 5, 2017 on a third floor unit which states it was done prior to the repair.

### **Analysis:**

In respect to the submission of the tenant regarding receipt of the landlord's evidence, I find the landlord served it in accordance with section 89 of the Act. This was the tenant's application and she filed no documentary evidence but I find the landlord filed respondent's evidence and sent it within 7 days of the hearing in compliance with the Rules. While the mail room may have had problems in the tenant's building, I find the landlord served it according to the Act and the tenant did not provide sufficient evidence as to why she did not pick it up. I further find that when the landlord tried to deliver it prior to the hearing, the tenant refused it. I find 9 p.m. at night is not an unreasonable time for the manager to deliver it. I note in the hearing when I tried to list the evidence for the tenant as she had seen most of it, e.g. Notices posted by the landlord, she did not want to hear it. I find she was legally served with the evidence of the landlord for

the purposes of the hearing and she had considerable opportunity to object to it as the hearing lasted 40 minutes with her making many submissions.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find insufficient evidence that the landlord caused the tenant's problems through act or neglect. I find the weight of the evidence is that the landlord inspected the boiler regularly and acted promptly when repair was recommended. Unfortunately the part was hard to obtain but I find the delay was due to no neglect of the landlord. Therefore, I find the tenant not entitled to a rent rebate pursuant to sections 7, 32, 33 or 67 as I find insufficient evidence of neglect of the landlord to repair and maintain the boiler system. I declined to look up and watch some media program of some other tenant as evidence must be provided in the hearing and be concerning this tenant and her situation.

With respect to terminating heat and hot water services, I find that section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

In this instance, I find that the deprivation of heat or hot water is not permitted under the Act. I accept the tenant's testimony that there was restriction of hot water. The landlord's evidence is also that there was some restriction, although he contended tenants should have had sufficient supply for showers. The Notice of Repair for January 5, 2017 also states that hot water and heat would be off for one day.

I find insufficient evidence of lack of heat for two months. I find the tenant provided no supporting evidence although she said she could have done so. I note her refusal of entry to the professional to have this checked on January 3, 2017 contributed to her lack of any supporting evidence. However, I find the evidence is that she was without heat for one day while the repair was performed.

For the limited restriction of heat and hot water services as noted above, I find it reasonable to award the tenant 10% rent rebate for two months or \$176.60 total.

**Conclusion:**

I find the tenant has had limited success in the application and is awarded her \$100 filing fee plus \$176.60 rent rebate.

**I HEREBY ORDER that the tenant may deduct \$186.60 from her rent to recover her rent rebate and filing fee.**

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 19, 2017

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Residential Tenancy Branch