



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: ERP RP RR MNDC

### **Introduction**

Both parties attended the hearing and the landlord confirmed the tenant served their application by registered mail. I find the documents were legally served for the purposes of this hearing. The landlord is represented by a property and office manager who will be named as the landlord in this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 32;
- b) That the landlord repair and maintain the property pursuant to section 33;
- c) That the landlord provide facilities required by law pursuant to section 27 and obey the provisions of the Act and the tenancy agreement;
- d) For a rent rebate pursuant to section 65; and
- e) To recover the filing fee pursuant to section 72.

### **Preliminary Issue:**

The tenant claimed only \$1,124.42 on their application. They said this was an error as they believed they were to list only the money they spent on repairs. They pointed out that the application was accompanied by a letter which set out their claims in detail and specifically requested a rent rebate totalling 3 months (\$22,500) because of all the problems they endured. I grant the amendment to their application. I find the landlord was informed of the total claim when served with their application with their accompanying documents.

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

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act? Are they entitled to orders that the landlord do necessary repairs and to compensation for the neglect of the landlord to do repairs in a timely fashion? If so, to how much compensation are they entitled?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in March 2016 on a fixed term to March 31, 2017, rent is \$7500 a month and a security deposit of \$3750 was paid.

The house is described as located in a good and expensive neighbourhood, it was built in 1989 and has 2 floors and a basement all finished with living space of approximately 3300 sq. ft. It has radiant hot water heating emanating from the floors and this system has been a problem for the tenants. They said when they viewed the home in March, 2016, it had thermostats on each of the three floors and some in individual rooms; they thought they would be able to control the heat so bedrooms at the top of the house would be comfortable. The mother occupies the suite in the basement and that is where the one controlling thermostat is located. In addition the tenants say the hot water heater was extremely noisy and provided insufficient water for the family to have showers. They believe this may be linked to the problems with the heating system. The landlord said they switched the heat on in March and the first complaint from the tenants was July 17, 2016. It was summer so not an emergency and they got quotes from plumbers. They said it was fixed on September 15 to 20 as illustrated by the invoice. The tenant said it is still not controllable and the last company contacted the management company with recommendations but got no response or permission so the repair person (G.) has not been back.

They said they are managing with the inadequate water heater for now by alternating showers. However, it makes a very loud noise and neighbours are complaining. They said G., the repair person said it was interconnected with the heating issue and the small size is causing part of it. G. offered to rewire it and do a new hot water tank but had no permission from the landlord. The landlord said previous tenants had no problems with it and it was new in January.

The latest problem is a pipe burst in the ceiling over the lower suite. The landlord called a Restoration company. The tenants said the company told the tenants that it would take 4 to 6 weeks to repair. The landlord said there may be abatement issues (asbestos or other items) as the home was built prior to 1990. They have not had a report back from the company and said if it was deemed unliveable, there would be insurers involved. The tenants moved out to a hotel for the health of their family. They request the lease be terminated now as it is frustrated due to the water damage which is unlikely to be repaired before the end of their lease in March 31, 2017.

Another issue encountered by the tenants was a wasp nest that was located inside the wall near the bedrooms. The landlord dispatched pest control immediately to attend to

it. The tenants said the real issue here was that the pest control company required them to keep their windows closed for two weeks, it was summer and very hot. In addition it needed a second treatment. They requested an air conditioner from the landlord and were refused. The landlord offered to buy fans. The tenant said the problem was that the bedrooms were on the side of the house with the wasps and if they could not open windows, fans would be useless. The landlord said the tenants never reported they bought an air conditioner or asked for compensation for it. The cost was \$702.17 as per invoice in evidence.

The tenants also provided invoices from two companies, one on July 6, 2016 for \$200 which seems to state that some boiler valves were broken (handwriting is almost illegible) and a second for \$222.25 for clearing a drain on the deck. The tenants agreed they did not have permission to hire these companies but said they were trying in the first case to get the heating/hot water problem fixed and in the second, trying to protect the landlord's property from a flooded deck. Invoices from the landlord for heating repair issues are dated July 20, 2016, one from a separate company dated August 10, 2016 and one from the company that allegedly fixed the problem dated September 8, 2016. The August 10 Invoice notes the heating system was inspected to determine the cause of no heat and a report written of steps to correct it. The invoice on September 27, 2016 notes it installed a primary loop for the boiler, installed a new feed valve, checked wiring, and installed a new air separator. It noted that each of the headers on each floor would need 24v switches in order to control the heat floor by floor.

The tenants also had some problems with the refrigerator. A repair person was sent out the next day and according to his invoice, he resolved the problem and it tested okay. He cleaned a plugged condenser.

Included with the evidence are statements of the parties, invoices and many emails. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Section 32 of the Act requires the landlord to maintain the property in a state of decoration and repair that complies with legal health, safety and housing standards and makes it suitable for occupation by a tenant, having regard to the age, character and location of the rental unit.

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.

I find the weight of the evidence is that the heating system was not functioning properly from early June 2016 and was still not resolved by September 26, 2016. The evidence is largely in emails supplemented by sworn testimony at the hearing. I find the tenants emailed the management company on June 10, 2016 regarding the heating issue and on June 13, 2016, the company replied they have asked the owners to address the heating issue. An email on July 7 from the tenants notes that they hired a mechanic to check the heating system and he found the entire system needs replacing. They offered to get estimates. On July 15, 2016, the tenants forwarded another invoice from a handyman that told them they needed to call a heating company. On September 7, the landlord asked a professional G. to assess the issues with the heating. On September 12, 2016, an email from the tenants notes that 14 days have passed since they notified of the necessity of a repair to the heating system and the same day, an email from the owner said a G. from a professional company would start the work the next day. On September 26, **the tenants' professional assistant emailed them that the heat was working, set to 22 and is working throughout the house** and parts were ordered to allow temperature regulation from each floor. On October 12, 2016, the tenants' assistant emailed to the property managers to say that G. could not get the necessary approval to complete repairs. On October 19, 2016 the assistant emailed management again and noted the heating is still not working properly and can only be turned on and off and not regulated. G. could install thermostats immediately. Another email on October 26, 2016 from the assistant to the tenants said she has authorized G. to complete the work for neither she nor G. had heard any response from management or the owners. On November 4, 2016, the tenants reported the home was too hot and they could not get the heat to go off so it did not seem to be fixed.

As stated above, section 32 of the Act requires a landlord to maintain the home and make it suitable for occupation by tenants. I find the weight of the evidence is that the landlord neglected to address the heating problem in a timely manner so the tenants were occupying a house where the only control was on or off until September 26, 2016 when the assistant said by email it was working throughout the house. I find the tenants entitled to a rent rebate of 25% of rent for 4 months for this neglect for a total of \$7500. However, it appears the further delay was because the tenants wanted individual heat controls on each floor (thermostats). I find section 32 of the Act does not require the

landlord to upgrade the home to a state of repair inconsistent with the age or character of the home. Therefore, I find them not entitled to further rebate for more work on the heating system.

In respect to the water heater, apparently, G. had investigated the noise on October 6, 2016 from the water heater as the management company said neighbours were complaining about it. He found it was not hooked up properly and was too small. He would need to rewire the heating system again to hook it up properly and could do it immediately if authorized. He was never authorized and management response was that previous tenants had no issues. I note management said in the hearing this water heater was installed in January 2016 and these tenants moved in March 2016. I find the evidence is that management heard from neighbours about the noise and had their own professional's report of problems. I find the landlord neglected to do anything about it so the tenants suffered noise and inadequate water from March to the present so I find them entitled to a rent rebate of a further 10% of rent for 11 months for this neglect of the landlord for a total of \$8,250.00.

Regarding the wasp issue, I find the landlords tried to immediately address the issue but it was complicated as the nest was in the walls near the bedrooms. Part of the treatment was for the tenants to keep all windows closed for a period of time during the hottest part of the summer and there were two treatments meaning the home had to be closed up tightly for about 4 weeks. I find it reasonable that the tenants would have to purchase a window air conditioner to make the house habitable. I find the tenants entitled to reimbursement for their cost of the air conditioner in the amount of \$702.17.

Apparently there was an issue with the refrigerator. I find the communication on this was difficult as the tenants travel a lot and had someone else staying in the house. I decline to consider her complaints as she was not an authorized tenant. Management said there was an email on August 18, 2016 about the refrigerator and they had it repaired on August 19, 2016. An email from the assistant on September 2, 2016 says it was finally repaired. The landlord provided an invoice from an appliance company to show it was fixed and tested okay on August 19, 2016. I decline to award a further rebate based on neglect of refrigerator repair as I find there is insufficient evidence to support this.

I find the tenants entitled to recover their costs of \$702.17 for an air cooling unit and \$200 for their cost of a contractor to investigate the heating issue. I find them not entitled to recover the \$222.25 for unplugging a drain on the deck as this does not appear to be an emergency and the landlord gave no permission to do it.

In respect to the recent breaking of the water pipe, I find insufficient evidence to find the lease has been frustrated. I give the tenants leave to reapply for termination of their lease if necessary.

**Conclusion:**

I find the tenants entitled to a monetary order as calculated below and to recover their filing fee for this application. The security deposit remains in trust to be dealt with according to section 38 of the Act at the end of the tenancy.

Rebate heating issues 25% of \$7500 x 4 months	7500.00
Rebate hot water issues 10% of \$7500 x 11 months	8250.00
Reimbursement air conditioner cost	702.17
Reimbursement for heat investigation	200.00
Filing fee	100.00
<b>Total Monetary Order to Tenants</b>	<b>16752.17</b>

**I HEREBY ORDER that the tenants leave the air conditioner in the home at the end of the tenancy as the landlord has paid for it.**

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 12, 2017

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Residential Tenancy Branch