



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

ERP, OLC, RP, PSF, MNDC, FF

### **Introduction**

This hearing was convened in response to an application filed by the tenant on January 03, 2017 seeking Orders under the Residential Tenancy Act (the Act) as follows:

- An Order for the landlord to make *emergency* repairs – Section 33
- An Order for the landlord to make repairs to the unit – Section 62
- An Order for the landlord to comply with the Act – (repairs) – Section 62
- A Monetary Order for compensation for damage or loss - Section 67
- An Order for the landlord to provide services or facilities required by law or the agreement – Section 65
- To recover the filing fee from the landlord for this application – Section 72

The tenant and the landlord's legal counsel and agent (the landlord) all participated in the hearing with their relevant submissions, relevant document evidence and relevant testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged exchange of document evidence, which despite its abundance; the parties were apprised that only evidence relevant to the tenant's primary claim would be addressed by the hearing.

Within 10 days of their application the tenant made amendments morphing the tenant's application to solely a monetary claim exceeding 10 times their original claim. The parties were informed that this matter received priority scheduling due to the emergency characterization of the application and that any excess claim not reasonably associated with the primary purpose of the tenant's claim would not be heard and that with any valid residual claim would be dismissed with leave to reapply.

The parties confirmed that the tenant's application for emergency repairs to the heating system of the rental unit was no longer at issue as the heating system was remedied to satisfaction soon after the tenant filed their application. As a result, there was

agreement that the sole remaining portion of the tenant's original application was their request for monetary relief for loss of use and collateral compensation for loss quiet enjoyment and re-imbursement for the purchase of supplemental heaters in relation to the heating system. The hearing proceeded on the merits of the tenant's original application remaining relevant.

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

Is the tenant entitled to the monetary amounts claimed for loss and reimbursement in the amount of \$1338.00, due to the landlord's neglect or failure to comply with the Act?

*The burden of proof, on a balance of probabilities, rests on the claimant.*

### **Background and Evidence**

This tenancy started in January 2013. The rental unit is the main floor of the residential property in Metro Vancouver. Rent is \$1338.00 per month. It is relevant to note that rent includes the electrical utility and that the rental unit is heated by a radiant hot water / boiler-fed system.

The tenant claims that, unlike the rest of the residential property, they experienced insufficient heat since the outset of the tenancy. The tenant claims that over the 4 years they have simply augmented heat by incrementally purchasing a total of 3 space heaters. The tenant testified they at no time informed the landlord they were not experiencing sufficient heat. The landlord testified they were never informed of a heating issue during the tenancy. The parties further agreed an electrical issue surfaced in early December 2016 which was brought to the attention of the landlord by the tenant and the electrical issue investigated.

It was identified that the problem was associated with the tenant's use of the 3 space heaters inordinately drawing on the electric service. On December 14, 2016 the parties agreed there was a problem with the primary heating system requiring remedy, and the landlord began addressing it. The tenant was notified to continue using the space heaters until the primary system issue was resolved. The landlord quickly attended to the problem and the parties agreed that by mid-January 2017 the heating system was made satisfactory with the installation of electric panels. The tenant claims that during the one month period of December 14, 2016 and January 14, 2017 uncommonly cold temperatures were experienced and they were unable to obtain sufficient heat utilizing their space heaters. The tenant claims that on occasion they spent time elsewhere due to insufficient heat. The landlord argued the tenant provided evidence of the temperature within their unit based on all heating turned off and that the tenant was

authorized by the landlord to continue using their space heaters. The landlord further argued that they did what was reasonable and exercised due diligence once they were notified of a problem with the electrical system and ultimately with the heating system and instructed the tenant to deal with the lack of heat by utilizing their space heaters.

The tenant claims for the purchase cost for 3 space heaters at estimate of \$75.00 each for a sum of \$225.00. The tenant also seeks compensation of \$1113.00 for loss of quiet enjoyment and their inconvenience by the electrical and heating issues.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have arrived at the following findings.

I accept the tenant's evidence that they were experiencing a lack of heat for some time and took it upon themselves to supplement the primary heating system without notifying the landlord of a problem. However, I find the landlord cannot address an issue of which they are unaware. It must be noted that the heating issue came to light in the quest of dealing with a different problem. A tenant must notify the landlord of a repairable concern if they want the landlord to be responsible for the repair. I do not accept the tenant's claim they are owed compensation for a resolvable issue if the landlord has not been notified of the issue. I am mindful that the landlord dealt with the heating system issues during an unusually cold period. I accept that the landlord addressed the concerns of the tenant appropriately during which time the landlord authorized the tenant to heat their unit with their 3 space heaters.

None the less, on a balance of probabilities, I find that the tenant was unable to sufficiently heat their entire rental unit during the unusually cold period of remediation of the heating system. In the absence of receipts I find that the tenant has not provided sufficient evidence allowing me to wholly consider their claim for re-imbursement for 3 space heaters. However, I accept the tenant obtained space heaters which they were authorized and required to heat their unit during December 14, 2016 to January 14, 2017. As a result, I grant the tenant set compensation of **\$75.00** for the 3 space heaters. I further find that the tenant is entitled to compensation for insufficient heat for the period of December 14, 2016 to January 14, 2017(32 days), which I set in the amount of \$10.00 per day in the sum of **\$320.00**. The balance of all other claims the tenant has determined they have against the landlord are **dismissed**, with leave to reapply.

As the tenant was successful in their application I grant them recovery of the filing fee in the amount of **\$100.00** for an award in the sum of **\$495.00**. The tenant can choose to either reduce a future rent in order to satisfy the amount of the award, or, through the Small Claims Court, for which I grant the tenant a Monetary Order.

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$495.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

### **Conclusion**

The tenant's application in relevant part has been granted.

**This Decision is final and binding on both parties.**

*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: February 01, 2017

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Residential Tenancy Branch