



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, PSF, RR

### Introduction

On February 27, 2017, the Tenant applied for dispute resolution seeking an order that the Landlord comply with the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement; for the Landlord to provide services and facilities required by law; and to deduct the cost of repairs, services or facilities from the rent.

Both parties attended the initial hearing. At the initial hearing, the evidence was reviewed and confirmed received by each party. The Tenant appeared at the reconvened hearing; however, the Landlord did not. At the start of the hearing I introduced myself. The hearing process was explained. The Tenant was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The initial hearing on March 27, 2017, was adjourned by mutual consent between the parties. The parties were informed that a Notice of Hearing would be sent to them providing the date and time of the reconvened hearing. The Parties were informed they must attend the hearing.

On March 29, 2017, the Residential Tenancy Branch sent a Notice of Adjourned hearing to the Landlord.

The Landlord failed to appear at the reconvened hearing.

### Issues to be Decided

- Is the Tenant entitled to compensation for a loss of service or facility under the Act, regulation or tenancy agreement?

### Background and Evidence

At the initial hearing, the Landlord and Tenant testified that the tenancy began in 2012, as a month to month tenancy. Rent in the amount of \$900.00 is due on the first day of each month. The Tenant paid a security deposit of \$450.00 to the Landlord.

The Tenant is seeking the amount of \$3,800.00 due to the restriction of heat to the rental unit between November 2016, and February 2017.

The Tenant testified that she is still living in the rental unit; however, the Landlord sold the rental property in late January or February 2017. The Tenant testified that the Landlord collected February 2017, rent from her. The Tenant testified that the new owner of the property has collected the rent since March 1, 2017.

The Tenant testified that the rental property is a half-duplex with an upper and lower suite. The Tenant lives in the lower unit. The control for the furnace to heat the lower unit is located in the upper unit. The rent is all inclusive of utilities and includes heat.

The Tenant testified that the occupant in the upper unit occasionally turns off the heat, and has on occasion travelled out of town making it impossible for the Tenant to turn up the heat.

The Tenant testified that there were occasions when she complained about noise coming from the occupant upstairs, and the occupant would intentionally turn off the heat. The Tenant also testified that the upstairs occupant would turn off the heat because the temperature upstairs was too hot.

The Tenant testified that there was a restriction to her heat for the months of November 2016, December 2016, January 2017, and February 2017.

The Tenant testified that she made several phone calls to the Landlord over the four month period, and the Landlord would often attend the property to turn the heat on. The Tenant testified that on occasion she was unable to make contact with the Landlord.

The Tenant testified that she has baseboard heating in the unit, but when she used all of the heaters the electrical breaker would trip. The Tenant testified that she was able to use two baseboards, but using more than two tripped the breaker. The Tenant testified that she would sometimes use the oven to help heat the rental unit.

The Tenant testified that she reported the electrical issue to the Landlord, and he offered additional heaters, but took no action to investigate or fix the electrical breakers.

The Tenant is seeking \$3,600.00 which amounts to the full amount of monthly rent for four months. The Tenant testified that she was left in the cold and the Landlord did not do anything to help.

The Tenants advocate submitted that the north region where the Tenant resides gets very cold in the winter months.

The Landlord failed to attend the second hearing.

### Analysis

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 27 of the Act states 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.

Based on the above, the testimony and evidence of the Tenant, and on a balance of probabilities, I find as follows:

The tenancy agreement requires the Landlord to provide heat to the rental unit. I find the service of heat is essential to the Tenant's use of the rental unit.

The rental unit is set up to be heated by the furnace and by electric baseboard heaters. The rental unit does not have its own thermostat control for the furnace. By the nature

of this setup, the Tenant would have to call the occupant upstairs or the Landlord if she wanted the furnace heat adjusted.

I accept the Tenant's submission that the electrical breakers would trip if she used more than two baseboard heaters. I also accept the Tenant's testimony that there were frequent occasions over a four-month period where she asked the Landlord to attend the property to turn up the heat.

There was no testimony or evidence provided regarding the level or amount of heating to be provided. I find that the Tenant did have sources of heat during the four month period of time for which she is requesting compensation. The furnace was on intermittently and the Tenant had use of two baseboard heaters and used of the oven.

I do not accept the Tenants submission that the Landlord did nothing to help the situation. I find that the Landlord did respond to some of the Tenant's calls by attending the property to turn up the heat.

Based on the above, I find that there was a breach of section 27 of the Act regarding a restriction of heat to the rental unit. I find that the Tenant suffered a loss of heat which affected her use of the rental unit.

Pursuant to section 7 of the Act, I find that the Landlord must compensate the Tenant for the breach of section 27 of the Act. I find the Tenant's request for compensation in the amount of \$3,600.00 to be high. The Tenants monetary claim amounts to the full amount of rent paid the entire four months. The Tenant had use of the rental unit during the four-month period. The Tenant had intermittent heat and the use of two electric baseboards. I have also considered that the Tenant lives in a northern region and the restriction of heat was during the winter.

After considering the evidence before me, I award the Tenant \$135.00 per month which amounts to 15% of the monthly rent for the restriction of heat to the rental unit.

I grant the Tenant a monetary order in the amount of \$540.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The tenancy agreement between the parties included the service of heat included in the rent. The Tenant suffered a restriction of heat to the rental unit.

Pursuant to section 7 of the Act, I find that the Landlord must compensate the Tenant for the breach of section 27 of the Act.

I grant the Tenant a monetary order in the amount of \$540.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: May 08, 2017

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Residential Tenancy Branch