



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RR, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) and the tenants' agent (the tenant) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package was left with an agent of the landlord on January 09, 2018. The landlord confirmed receipt of the Application and an evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with these documents.

The landlord testified that they served their evidentiary package by leaving it with the tenants on February 13, 2018. The tenant confirmed that they received the evidentiary package. In accordance with section 88 of the *Act*, I find the tenants were duly served with the landlord's evidence.

### Preliminary Matters

A copy of a letter requesting adjournment of the hearing was submitted to the Residential Tenancy Branch due to the tenants being out of the country, however; the tenant's agent referred to a letter of authorization submitted by the tenants giving him authority to act on behalf of the tenants and indicated that he was ready to proceed with the hearing.

#### Issue(s) to be Decided

Are the tenants entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The tenants gave written evidence that this tenancy began on June 01, 2017, with a monthly rent of \$1,300.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$650.00. The tenancy agreement indicates that electricity and heat are included as a part of the monthly rent.

In addition to the above, the tenants also provided in evidence:

- a copy of a Monetary Order Worksheet showing the tenant's monetary claim of \$1,300.00, equivalent to one month of rent for the rental unit;
- a copy of an e-mail dated October 22, 2017, in which the tenants advise the landlords that the tenants have no heat or oven due to the gas heater not being functional and requiring the gas to be turned off for the rental unit ;
- a copy of an e-mail dated November 22, 2017, in which the tenants advise the landlords that the tenants had the gas heater installed. The e-mail further states that the tenants have no hot water in the rental unit and have not had any since November 19, 2017;
- a copy of an e-mail dated November 22, 2017, in which the landlord advises the tenants that the water boiler installation for the rental unit is being completed that day;
- a copy of a letter dated December 03, 2017, from the tenants to the landlord formally requesting compensation in the form of a rent reduction in the following month's rent in the amount of \$800.00 due to a dysfunctional furnace in the rental unit for 31 days which rendered it unfit for habitation; and

- a copy of an e-mail dated December 27, 2017, requesting confirmation of whether the landlord received the tenants' formal request for compensation.

In addition to providing some of the above, the landlord also provided in evidence:

- a copy of an e-mail dated October 27, 2017, in which the tenants advise the landlord that they cannot use a second space heater since it will probably blow the fuse and that the tenants will be fine for now; and
- a copy of an invoice dated November 21, 2017, for a gas space heater to be installed for the rental unit.

The tenant confirmed that the tenants are seeking a rent reduction equal to one month's rent for a lack of heat in the rental unit for 31 days. The tenant stated that the monthly rent in the rental unit is \$1,300.00 which includes water, electricity and heat. The tenant stated that the tenants were also without the use of their stove for a period of time due to the gas being turned off as a result of the dysfunctional gas furnace. The tenant stated that they advised the landlord on October 22, 2017, of the heating issue and that it took the landlord until October 25, 2017, to investigate the problem.

The tenant stated that there was a cold snap in the weather during this period and that the rental unit has very little insulation. The tenant testified that one bedroom was heated with a space heater which left the kitchen, a bathroom, a living room and another bedroom without heat. The tenant stated that the electrical systems in the rental unit are old and that they had concerns with a fuse blowing if a second space heater was used

The landlord testified that they were notified on October 22, 2017, that the heater was not working. The landlord submitted that the gas heater for the rental unit is unique and that it took time for the landlord obtain the appropriate gas heater. The landlord stated that they offered an additional space heater to the tenants but that they refused it, as shown in the e-mail dated October 27, 2017, provided in the landlord's evidence.

The landlord maintained that the tenants did have an electrical heater in their rental unit and there is no proof of actual loss from the tenants. The landlord stated that he was not aware of any issue with the electrical systems which would prevent a second space heater from working and that electricity is included in the monthly rent so it would not have caused any loss to the tenants to have two space heaters constantly running.

The landlord stated that a reasonable time to replace the gas heater would have been two weeks and that the landlord was willing to offer a rent reduction in the amount of

\$146.20 which is equal to \$8.60 per day for 17 days with no gas heater in the rental unit.

The tenant rejected the offer from the landlord and maintained that they were seeking a rent reduction equal to one month's rent in addition to the recovery of the filing fee for this Application.

### Analysis

Section 7 (1) of the *Act* stipulates that when a party does not comply with the *Act*, the regulations or tenancy agreement, the non-complying party must compensate the other for damage or loss. Section 7 (2) of the *Act* states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act* must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenants bear the burden to prove that the loss of heat in the rental unit was due to the actions or neglect of the landlord. I further find that the tenants bear the burden to prove the actual amount required to compensate for the claimed loss, that the tenants took steps to mitigate or minimize the loss and that the tenants should be compensated with a rent reduction for their loss under the *Act*, the *Regulations* or the tenancy agreement.

I have reviewed all documentary evidence and affirmed testimony. Based on the above and a balance of probabilities I find that, although the tenants may have suffered a loss in the value of their tenancy, the tenants have not proven the actual amount of the loss

that they are claiming and have not demonstrated that they made efforts to reduce or minimize their loss.

I find that heat is defined as a service or facility under the *Act* and that heat is essential to the tenants' use of the rental unit. I find that it is undisputed that the gas heater was dysfunctional as of October 22, 2017, and was not replaced until November 22, 2017, which resulted in a loss of heat in the rental unit and a reduction in the value of the tenancy agreement. I find that the landlord is responsible for providing heat as per the tenancy agreement.

I find the tenants have failed to provide any proof of the actual amount that is required to compensate them for their loss or that their loss in the value of their tenancy is equal to one month's rent. Although the tenants state that the rental unit was uninhabitable, I find the tenants did actually inhabit the rental unit during the period of reduced heat and had access to the other services or facilities included in their tenancy agreement such as electricity, water and the limited use of the rental unit due to some of the rooms being colder than others. Although there was a loss of heat in the rental unit, I find there was not a total loss of heat as one of the bedrooms was able to be heated at no additional cost to the tenants.

I find the landlord has provided evidence that, upon being notified of the loss of heat in the rental unit, the landlord offered a remedy in the form of an additional space heater which could have heated another room or more depending on the size of the space heater. I find that the tenants failed to minimize their loss of heat by refusing the additional space heater on October 27, 2017, as they stated they had a space heater already and that a fuse would probably blow with a second space heater in the rental unit.

I find the tenants did not provide evidence that the fuse had blown before. I further find that if the tenants were suffering a severe loss of heat then it was their responsibility to advise the landlord that they wanted the second space heater to minimize their loss of heat and request the landlord to address the issue that would cause the fuse to blow. I find that the tenants indicated that they were "fine for now" and were not seeking any further remedies from the landlord to minimize their loss of heat. I find the tenants have not provided any evidence that they attempted to seek any other remedies from the landlord to minimize their loss of heat or that the landlord failed to act on their concerns until the date that the new gas heater was installed.

I find that the landlord acknowledged that the gas heater was not installed in a reasonable timeframe due to circumstances beyond their control and gave an offer of \$146.00 in compensation to the tenants during the hearing. I find that this offer is reasonable based on the calculations provided by the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I find the tenants are entitled to a rent reduction in the amount of \$146.00 for the loss of heat in the rental unit from October 22, 2017 to November 22, 2017.

As the tenants have been partially successful in their Application, I allow them to recover half of their filing fee from the landlord.

### Conclusion

Pursuant to section 72 of the *Act*, I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$196.00, for compensation for the loss of heat and to recover half of the filing fee for this application.

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: March 22, 2018

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Residential Tenancy Branch