



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

MNR FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on January 26, 2018, as amended by an Amendment to an Application for Dispute Resolution, dated August 7, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for the cost of emergency repairs made during the tenancy; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing at the appointed date and time, and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified that the Application package was served on the Landlord by registered mail on February 1, 2018, and that the Amendment to an Application for Dispute Resolution was served on the Landlord by registered mail on August 7, 2018. According to the Tenant, tracking information confirmed these documents were received by the Landlord on February 5 and August 14, 2018, respectively. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for the cost of emergency repairs?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant testified the tenancy began on January 1, 2015, and ended on January 31, 2018. At the end of the tenancy, rent was due in the amount of \$530.00 per month. The Tenant did not pay a security deposit.

The Tenant claimed \$8,893.07 for costs incurred to replace a broken furnace in the rental property. The Tenant testified the furnace stopped working on or about February 20, 2017. Although the Landlord was notified, the furnace was not repaired or replaced. Subsequently, on October 2, 2017, the Tenant asked the upstairs occupant, who had previously acted as agent for the Landlord, about the status of her request that the furnace be repaired or replaced. A copy of the text message to the upstairs occupant was submitted with the Tenant's documentary evidence.

The Tenant followed up with correspondence directly to the Landlord on October 12, 2017. In it, the Tenant reminded the Landlord that the furnace had not functioned for a number of months, and that an inspection by a local gas fitter had resulted in a recommendation that the furnace be replaced. The Landlord responded the same day to advise that despite multiple appointment requests, "the repair man has not followed through." He suggested that the Tenant use a wood burning stove.

Subsequently, in an email to the Tenant dated October 19, 2017, the Landlord suggested that the Tenant should get someone to fix the furnace and also suggested the Tenant should find alternative accommodation. In reply, the Tenant sent an email to the Landlord, dated October 21, 2017, in which the Tenant presented the Landlord with options for repair or replacement. The Landlord then issued a Notice of Rent Increase, dated October 23, 2017.

According to the Tenant, no further steps were taken by the Landlord. Accordingly, the Tenant contacted a company to replace the furnace. The company provided the Landlord with an email dated November 8, 2017. It confirmed the furnace was “old and unrepairable”, and quoted a price of \$7,742.00 plus GST to “Re&Re the gas furnace with a Continental High efficient gas furnace complete with ductwork transition, electrical and gas line alterations and gas permit...LOA, accommodations and ferry travel.”

The Landlord did not respond further. Accordingly, the Tenant proceeded and the furnace was replaced between November 20 and 24, 2017. The cost to the Tenant was \$8,129.10, which was paid using a credit card and a line of credit. However, in an email to the Tenant dated November 25, 2017, the Landlord advised that he intended to renovate the rental unit and install baseboard heaters, and that the Tenant should remove the new furnace. The Landlord then issued a 2 Month Notice to End Tenancy for Landlord’s Use of Property, dated November 29, 2017 (the “Two Month Notice”). The Tenant disputed the Two Month Notice and sought an order that the Landlord provide services or facilities required by the tenancy agreement or law, and make repairs to the rental unit. However, in a decision dated January 24, 2018, an arbitrator dismissed the Tenant’s application to cancel the Two Month Notice and issued an order of possession in favour of the Landlord, to be effective January 31, 2018. As noted above, the Tenant vacated the rental unit on that date. The file number of the related decision is referenced above for convenience.

The Tenant testified that the old furnace was transported to the dump at a cost of \$10.00.

The Tenant testified the new furnace did not initially work properly, suggesting it was perhaps due to a broken thermostat in the upstairs tenant’s unit. In any event, the company returned and installed a thermostat in the Tenant’s rental unit at a cost to the Tenant of \$321.51.

The Tenant claimed the furnace replacement had to be financed. The Tenant claimed she has incurred credit card interest charges of \$306.86, and line of credit interest charges of \$125.60. Copies of statements were submitted into evidence in support.

The Landlord did not attend the hearing to dispute the Tenant’s evidence.

## Analysis

Based on the unchallenged documentary evidence and affirmed testimony provided during the hearing, and on a balance of probabilities, I find:

Section 33 of the *Act* sets out the procedure for obtaining reimbursement for emergency repairs made during a tenancy. It states:

- (1) *In this section, "**emergency repairs**" means repairs that are*
  - (a) *urgent,*
  - (b) *necessary for the health or safety of anyone or for the preservation or use of residential property, and*
  - (c) *made for the purpose of repairing*
    - (i) *major leaks in pipes or the roof,*
    - (ii) *damaged or blocked water or sewer pipes or plumbing fixtures,*
    - (iii) *the primary heating system,*
    - (iv) *damaged or defective locks that give access to a rental unit,*
    - (v) *the electrical systems, or*
    - (vi) *in prescribed circumstances, a rental unit or residential property.*
- (2) *The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.*
- (3) *A tenant may have emergency repairs made only when all of the following conditions are met:*
  - (a) *emergency repairs are needed;*
  - (b) *the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*
  - (c) *following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

- (4) A landlord may take over completion of an emergency repair at any time.*
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant*
  - (a) claims reimbursement for those amounts from the landlord, and*
  - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.*
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:*
  - (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;*
  - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);*
  - (c) the amounts represent more than a reasonable cost for the repairs;*
  - (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.*

[Reproduced as written.]

In this case, I find that the furnace repair or replacement was an emergency repair that involved the primary heating system, as contemplated in section 33(1) of the Act. As it involved the primary heating system, I also find it was necessary. Further, I am satisfied that the Tenant contacted the Landlord or the Landlord's agent on several occasions with her concerns and to make arrangements for the repair or replacement of the furnace. Although the Landlord appears to have favoured repair, the furnace company advised the furnace was old and could not be repaired. In addition, I find the Landlord was given adequate time to repair or replace the furnace but did not do so.

Section 33(5) of the *Act* states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement and gives the landlord a written account of the emergency repairs accompanied by a receipt. I find the Landlord has been made aware of the repairs and has received receipts or statements in support of the amounts claimed. Further, in the absence of evidence from the Landlord, I am unable to determine if there are factors, contained in section 33(6), that would lead to the conclusion that section 33(5) does not apply to the amounts claimed.

The Tenant's claims for a dump fee, thermostat replacement, and interest on financing flow from the Landlord's failure to take steps to repair or replace the furnace in a timely manner. The Tenant is awarded the amounts claimed.

The Landlord is in possession of a furnace that was paid for by the Tenant. To permit the Landlord to retain this benefit would be an unjust enrichment to the Landlord. Accordingly, after careful consideration of the evidence and submissions of the Tenant, and pursuant to sections 33 and 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$8,993.07, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Furnace replacement:	\$8,129.10
Dump fee:	\$10.00
Thermostat installation:	\$321.51
Interest charges:	\$432.46
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$8,993.07</b>

### Conclusion

The Tenant is granted a monetary order in the amount of \$8,993.07. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 7, 2018

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Residential Tenancy Branch