



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **AS ERP LRE MNDCT PSF RP RR**

### Introduction

This hearing dealt with the tenant's application under the *Residential Tenancy Act* ("the Act") for the following:

- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- An order for the landlord to permit the assigning or subletting of the unit pursuant to section 65;
- An order for the landlord to provide emergency repairs pursuant to section 31;
- An order to suspend or restrict the landlord's right to enter pursuant to section 70;
- An order for the landlord to provide services or facilities required by the tenancy agreement or Act pursuant to section 61; and
- An order for the landlord to provide repairs pursuant to section 32.

The tenant attended. The landlord's property manager JB attended as the landlord's agent as well as EZ and MM as the landlord's advocates ("the landlord").

Both parties had the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant submitted an Amendment to Application for Dispute Resolution on February 22, 2019 itemizing further details of her claim. Each party acknowledged receipt of the other party's materials. No issues of service were raised. I find each party was served by the other party in accordance with the *Act*.

### *Preliminary Issue*

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*") states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant's application for damages or compensation under section 67 or for an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65, and are therefore dismissed with leave to reapply:

- An order for the landlord to permit the assigning or subletting of the unit pursuant to section 65;
- An order to suspend or restrict the landlord's right to enter pursuant to section 70;

### Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*; and
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- An order for the landlord to provide emergency repairs pursuant to section 31;
- An order for the landlord to provide services or facilities required by the tenancy agreement or *Act* pursuant to section 61; and
- An order for the landlord to provide repairs pursuant to section 32.

### Background and Evidence

The parties agreed as follows. They entered into a one-year fixed term tenancy commencing September 1, 2018 which is ongoing. The unit was a new 2-bedroom, 2-bathroom apartment in a high rise on the 15<sup>th</sup> floor. The tenant was the first occupant of the unit. The tenant paid the landlord monthly rent of \$2,000.00 on the first of the month. At the outset of the tenancy, the tenant paid a security deposit in the amount of \$1,000.00 which the landlord holds. The tenant paid the utilities and was responsible for the costs associated with electricity and heating the unit. The tenant submitted a copy of the signed tenancy agreement.

The tenant supplied a significant evidentiary package in support of her claim, including medical reports, audio recordings, photographs, many text messages, emails and copies of utilities' bills. The tenant's claim was for \$32,000.00 representing a claim for damages/compensation and a retroactive reduction in rent. She characterized her claim as loss of quiet enjoyment. The tenant also claimed the unmet need for ongoing repairs of an emergency nature and an order requiring the landlord to provide adequate heat.

The tenant testified as follows. At the beginning of the tenancy, the tenant observed that the controls to heat the unit did not work – no matter how high she turned up the controls, the unit did not heat adequately. As the weather grew cooler in the fall of 2018, the tenant noticed that the unit was cold and uncomfortable. The tenant testified she notified the landlord on many occasions and complained frequently about the low heat in the unit. It was so uncomfortable, the tenant's adult son moved out. The landlord conducted various tests; maintenance staff attended at the unit to conduct investigations. The landlord provided the tenant with a space heater, but it was inadequate to heat the unit. After further complaining, the landlord provided another space heater which the tenant said was still inadequate to heat the unit to acceptable levels. The tenant said all measures taken by the landlord were inadequate and insufficient; the landlord dismissed the tenant's complaints without proper investigation or action.

The tenant testified the cold temperature of the unit affected her health. When she moved in to the unit, the tenant stated she was recovering from sinus surgery and the chilly unit delayed her recovery while exacerbating symptoms of coughing and sore throat. The tenant submitted medical evidence stating that her health required an

adequately heated unit. The tenant stated that the unsatisfactory temperature in her unit negatively affecting her health continued to the present day.

The tenant testified that she has been unable to pursue her career because of her poor health caused by the cold temperature in the unit. The tenant is unemployed and described how painful and miserable it was to spend her days, unwell and in a cold unit.

The landlord submitted an extensive evidence package. The landlord stated that the unit is in a high rise which is heated by a state of the art efficient hot water heating system. This system has an established history of success in the geographical region and is well regarded by experts in all aspects, including its low environmental impact. Many similar buildings in urban areas in the region adopted the system effectively and satisfactorily. The landlord described the system and stated that no occupants of units in the building in which the unit is located have ongoing complaints about the heating system.

The landlord said the tenant constantly complained during the tenancy about 'one thing or another'. For example, she wanted to rent the unit on Airbnb which the landlord does not permit; she also wanted eleven days of free rent when she moved in; she complained about noise.

The landlord testified to prompt acknowledgement of the tenant's many complaints regarding the heating of her unit and the maintenance/repairs the landlord conducted. The landlord testified the landlord responded quickly and efficiently to the tenant's complaints, conducted troubleshooting, replaced a window, and adjusted mechanical aspects of the heating system to raise the heat in the tenant's unit by increasing the hot water flow and valve size. In short, the landlord testified the landlord had done everything possible to deal with the tenant's complaints.

The landlord acknowledged that the temperature in the unit may have fluctuated early in the tenancy but that the maintenance and adjustment described had immediately stabilized the delivery of heat. The landlord testified that the landlord had addressed any such fluctuation quickly and effectively. The landlord testified to entering the unit during a scheduled inspection and noticing the tenant displayed all outward signs of comfort; for example, she appeared at ease, was lightly clothed and in bare feet.

The landlord denied that there is any problem with the delivery of heat to the unit. The landlord testified that all inspections conducted by the landlord indicated an acceptable

delivery and level of heat. The landlord testified that tests of the unit's temperature indicate the unit is at an acceptable temperature and has been throughout the tenancy.

The landlord testified to the tenant's reaction on one occasion when he took the temperature of the unit during one scheduled inspection. The thermostat indicated the temperature in the unit was at a warm and comfortable range; the landlord took a picture of the reading. The tenant became loud and angry, demanding that the landlord immediately delete the photograph of the thermostat from his phone.

The landlord stated he promptly responded to the tenant's complaints, retained the services of experts, made repairs and adjustments when required, corresponded with her dozens of times by text and by email. The landlord stated she had one of the warmest units in the apartment building.

For example, the landlord submitted a copy of an email dated February 18, 2019 to the tenant regarding the heat which stated in part as follows:

*Contrary to what you state, you do have heating in your unit. You have also been given two space heaters to augment the heat being delivered by the base building. I have been told you aren't using the space heater that was recently delivered. [Building construction manager] has offered to purchase a third space heater of your choice. You told them you wanted a specific model but you had yet to tell them what the model was. If you haven't already told them which heater you would like you should tell them immediately.*

*The building engineers will be on site tomorrow to double the water flow through the heating system. You already have one of the highest water flows in the building, once the flow is doubled you will have the highest output of any unit in the tower.*

The landlord testified that despite the landlord's efforts, the tenant remained unsatisfied with the unit's heating and continued complaining about the temperature. The landlord said the landlord reached the conclusion that the complaints were baseless; the tenant was a 'complainer' and no amount of effort would appease her. The landlord concluded the tenant had motives relating to obtaining a rent reduction and that there was no problem with the heat.

During the hearing, the landlord offered to allow the tenant to vacate the unit before the end of the fixed term. The landlord stated the tenant could move out at the end of the month, in two weeks. The tenant did not accept the offer.

### Analysis

The parties submitted considerable oral and documentary evidence. I will not refer to all the evidence. I will mention only selected, relevant and admissible portions.

Part of the tenant's claim for damages and compensation includes a claim akin to one for loss of quiet enjoyment. The tenant claims the unit is constantly cold and as a result she has been unable to enjoy living in the unit; as well, the temperature has negatively impacted her health and employment.

Section 28 of the *Act* addresses claims for a monetary award for loss of quiet enjoyment. That section provides in part:

28. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) ...
  - (b) freedom from unreasonable disturbance;

*Residential Tenancy Policy Guideline 6* further discusses quiet enjoyment and provides that [emphasis added]:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a **substantial interference** with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but **failed to take reasonable steps to correct these.***

***Temporary discomfort or inconvenience** does not constitute a basis for a breach of the covenant of quiet enjoyment. **Frequent and ongoing interference or unreasonable disturbances** may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

*In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the **landlord's right and responsibility to maintain the premises.***

...

*A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).*

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment.

The parties agreed that there was fluctuation in the temperature of the unit early in the tenancy. The tenant stated the landlord's efforts were inadequate and futile; the uncomfortable temperature of the unit continued.

The landlord asserted that any discomfort to the tenant was minor and promptly resolved. The landlord testified to all reasonable efforts to promptly address the tenant's concerns, to remedy the initial heat fluctuations, and to provide a comfortable unit to the tenant. The landlord testified that the heat in the unit has been stable for many months and is steady and adequate at present.

I find that the heat in the unit fluctuated in the early part of the tenancy causing minor temporary discomfort to the tenant which was not 'frequent and ongoing' or a 'substantial disturbance'. I find the landlord immediately took all reasonable steps to address the tenant's concerns and to remedy the situation promptly and effectively. I find the landlord took all practical actions in a diligent manner to address and correct the situation. I find that the tenant invented or exaggerated any temperature fluctuations in the unit after the initial period following her moving in. I find the tenant has normal, acceptable temperatures in her unit and her ongoing complaints are unsubstantiated and fabricated.

I find the tenant was not credible; I find the tenant was not genuinely disturbed by any heat fluctuation but had other motives than to assure the repairs were conducted. I find the tenant has failed to meet the necessary burden of proof; that is, the tenant has failed to establish her claim on a balance of probabilities.

I find the tenant is not entitled to any rent reduction. I find the tenant is not entitled to any damages or compensation of any kind, including a claim for loss of quiet enjoyment.

I find the tenant is not entitled to any order for repairs of any kind, including emergency repairs. In summary, I dismiss all the tenant's claims without leave to reapply.

Conclusion

I dismiss the tenant's claims without leave to reapply.

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 25, 2019

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Residential Tenancy Branch