



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNDCT, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1511.50 for the reduced value of the tenancy
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on March 28, 2019. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The parties entered into a written tenancy agreement that provided that the tenancy began on April 1, 2018 and was for a fixed term of one year. The tenancy agreement provided that the tenant(s) would pay rent of \$2750 per month payable on the first day of each month. The tenancy agreement has been extended for a further one year fixed

term with a rent of \$2818. The tenant(s) paid a security deposit of \$1375 at the start of the tenancy.

The tenant seeks compensation for the reduced value of the tenancy based on the following evidence.

- Heat and hot water is included in the tenancy agreement as a responsibility of the landlord.
- The heat in the building failed to work for the period of February 7, 2019 to February 13, 2019. The tenants are elderly (85 and 91 years of age). It was so cold that they had to vacate the rental unit for 4 days and stay with one of their children.
- At the encouragement of the landlord they bought 2 heaters. The heaters reduced the cold a little but it was still extremely cold.
- The tenants were without hot water for the period February 6, 2019 to February 20, 2019.

The landlord did not dispute the evidence provided by the Tenant as to the failure of the boilers and the lack of heat. However, the landlord submits that it was not negligent. The rental property is 1 ½ years old. There are many individually owned units in the rental property including this one. There are two boilers in the rental property which were under warranty. It took a period of time to get the parts to repair the boilers all of which was out of the control of the landlord. Both boilers were out for a period of time. Eventually one boiler was fixed and there was some hot water available if you accessed the hot water at non busy times.

### Law

I determined the landlord was responsible to provide heat and hot water as provided in the tenancy agreement. I do not accept the submission of the landlord that they are not responsible to compensate the tenants because they were not negligent. The landlords received rent but did not provide two important services (heat and hot water) that they were obliged to provide. The tenants are entitled to be compensated for the reduced value of the tenancy.

Section 32(1) of the Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Tenant's Application for a Monetary Order:

With regard to each of the Tenants claims I find as follows:

- The daily rent paid by the Tenants for February is \$98.21 (\$2750 divided by 28 days equals \$98.21). I determined the Tenants are entitled the sum of \$392 which is full compensation the rent for 4 days they were forced to leave the property because of the lack of heat and hot water.
- In addition I determined the tenants are entitled to compensation of \$196 which represents 50% of the daily rent for lack of heat and hot water for the 4 additional days they lived in the rental unit with limited heat and no hot water. I accept the evidence of the Tenant that he was extremely cold and uncomfortable during this time. However, I determined the situation of the tenant was eased to some extent by use of the two heaters. .
- In addition I determined the tenants are entitled to compensation in the sum of \$172 which is a 25% reduction of daily rent for the period February 14, 2019 to February 20, 2019 (7 days) where the tenants did not have hot water.
- I determined the tenants are entitled to \$136.50 for the cost of the two oil filled heaters. The landlord encouraged the tenants to buy heaters. The heaters are the property of the tenant.

Monetary Order and Cost of Filing fee

**In summary I ordered the landlord to pay to the tenant the sum of \$896.50 plus the sum of \$100 in respect of the filing fee for a total of \$996.50 such sum may be applied against future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the 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: June 07, 2019

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Residential Tenancy Branch