



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFT, MNDCT, OT, PSF, RP

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 19, 2019 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- For an order that the Landlord make repairs to the unit or property;
- For compensation for monetary loss or other money owed;
- For reimbursement for the filing fee.

The Application also includes an additional issue not set out above in relation to an ongoing issue with a neighbour.

The Tenant appeared at the hearing with J.D. to assist. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Agent for the Landlord provided the correct Landlord name which is reflected in the style of cause.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?
2. Is the Tenant entitled to an order that the Landlord make repairs to the unit or property?
3. Is the Tenant entitled to compensation for monetary loss or other money owed?
4. Is the Tenant entitled to reimbursement for the filing fee?
5. Is the Tenant entitled to an order relating to the ongoing issues with her neighbour?

### Background and Evidence

The Tenant testified that there is a written tenancy agreement in this matter. The Agent testified that he could not locate a written tenancy agreement. The parties agreed the tenancy agreement in relation to the rental unit started in October of 2016 and is a month-to-month tenancy. The parties agreed rent is \$1,156.00 per month due on the first day of each month.

The parties testified as follows in relation to the issues raised in the Application.

### ***Order that the Landlord provide services or facilities required by the tenancy agreement or law and an Order that the Landlord make repairs to the unit or property***

The Tenant listed the following issues on the Application:

- Heat
- Blinds
- Glass display panel on the stove
- Removal of dead animal
- Drainage issue

### Heat

The Tenant testified as follows. There are not enough baseboard heaters in the rental unit. There are three heaters in the 840 square foot rental unit, one in the bedroom and two in the front room. Only two of the heaters are working as one stopped working the day before the hearing. The insulation and windows in the rental unit are 25 years old. The rental unit is drafty. The floor is tile and is cold. She has covered the floor with carpets as much as possible. She purchased an electric fireplace for the rental unit. She has birds and has to put a heating pad in their cage. It is hard to maintain the heat in the rental unit because there is no insulation on inside walls in the building. It is also hard to maintain the heat because other tenants keep the internal fire door open. She advised the Agent or someone for the Landlord about the heat issue in writing three times. She also spoke to the Agent about this twice. She is asking for more heaters to be installed in the rental unit.

The Agent agreed to have the heater in the second bedroom fixed.

The Agent testified as follows. He has never seen written complaints from the Tenant about the heat issue. He does not know if other agents for the Landlord received written complaints. The heating problem is news to him. The internal fire door should be open at all times. Other tenants cannot open the fire door if it is closed. There is no issue with the insulation in the building. The insulation exceeds requirements. The rental unit was built to code when it was built. The rental unit does not get sun because of plants on the patio which contributes to the temperature issue. The previous tenants of the rental unit did not raise an issue about the heat.

#### Blinds

The parties came to an agreement about this issue.

#### Glass display panel on the stove

The parties came to an agreement about this issue.

#### Removal of dead animal

The Tenant advised this is no longer an issue and therefore I have not considered it.

#### Drainage issue

The Tenant testified that water comes through a rock wall and onto her patio when it rains. J.D. advised that the Tenant does not know if there is something wrong with the wall and that the Tenant wants the Landlord to look at it. The Tenant asked for an order that the Landlord resolve the issue so there is not a muddy mess on her patio.

The Agent testified that the Tenant keeps plants on her patio which is the issue. The Agent testified that the Tenant waters the plants and there is nowhere for the water to go because the patio is surrounded by a fence. The Agent denied there is an issue with the rock wall or an issue with the drainage.

In reply, J.D. testified that the Tenant hand waters the plants and most of the plants are fake and therefore not the issue.

#### ***Compensation for monetary loss or other money owed***

The hearing was set for an hour. The parties were advised at the outset that I would deal with the repair issues first and hear the parties on the compensation request if there was time. The hearing proceeded for one hour and twenty-six minutes. The hearing was spent addressing the

other issues raised in the Application. There was not enough time to address the compensation request. I told the parties this would be dismissed with leave to re-apply.

***Additional issue in relation to an ongoing issue with a neighbour***

In the Application, the Tenant outlined ongoing issues with a neighbour. At the hearing, I asked the Tenant what she was seeking. The Tenant said she wanted the neighbour evicted. I explained to the Tenant that I cannot order that another tenant be evicted on the basis of a tenant's application as I do not have authority under the *Act* to do so.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

***Order that the Landlord provide services or facilities required by the tenancy agreement or law and an Order that the Landlord make repairs to the unit or property***

Heat

The parties came to the following agreement:

The Landlord will arrange for a qualified electrician to attend the rental unit and assess the baseboard heater in the second bedroom. The Landlord will arrange for a qualified electrician to fix the baseboard heater in the second bedroom if it is not working and will do so within one week of the hearing date. The parties will make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.

In addition, the Tenant sought an order that the Landlord install additional baseboard heaters in the rental unit.

The Tenant applied for repair in relation to the heat issue and for an order that the Landlord provide services or facilities required by the tenancy agreement or law.

The Landlord's obligations in relation to maintaining the rental unit are set out in section 32 of the *Act* which states:

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.

I do not find the issue with the number of baseboard heaters in the rental unit to be a repair issue as the Tenant is asking for further heaters to be installed. I find that the Tenant must prove that the temperature in the rental unit is such that it does not comply with health, safety or housing standards required by law or makes it unsuitable for occupation.

I am not satisfied based on the testimony of the Tenant and J.D. alone that the Landlord has breached section 32 of the *Act*. Neither the Tenant nor J.D. advised of what the temperature in the rental unit is or provided documentary evidence in this regard. Nor did the Tenant or J.D. provide documentary evidence that the temperature does not comply with health, safety or housing standards required by law. Nor am I satisfied, given the lack of detail about the temperature in the rental unit and lack of documentary evidence in this regard, that the heat in the rental unit is such that the rental unit is unsuitable for occupation.

The Agent took the position that the rental unit and building were built in accordance with the requirements relating to insulation and heaters. Further, the Agent took the position that previous tenants did not have an issue with the heat. In these circumstances, I do not find the testimony of the Tenant and J.D. about the heat sufficient to prove the Tenant is entitled to an order that the Landlord install additional baseboard heaters.

In relation to the services or facilities issue, I accept that heat is a service or facility as those terms are defined in section 1 of the *Act*. Section 27 of the *Act* sets out when services or facilities can be terminated or restricted and states:

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I am not satisfied the Landlord has terminated or restricted the heat as the issue raised by the Tenant is that the rental unit does not have enough baseboard heaters, not that the Landlord has done something to stop the heat in the rental unit. Again, I find the issue is whether the Landlord has breached section 32 of the *Act* in relation to the temperature in the rental unit. I am not satisfied the Landlord has.

Given the above, I am not satisfied the Tenant has proved that she is entitled to an order that the Landlord install additional baseboard heaters in the rental unit. This aspect of the claim is dismissed without leave to re-apply.

#### Blinds

The parties came to the following agreement:

The Landlord will replace the blind in the living room that is broken within one month of the hearing date. The Tenant will allow the Landlord into the rental unit November 22, 2019 without further notice being required to address the blind issue. The Tenant will allow the Landlord to access the rental unit to replace the blind. The parties will make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.

#### Glass display panel on the stove

The parties came to the following agreement:

The Landlord will fix or replace the glass display panel on the stove within one month of the hearing date. The parties will make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.

Drainage issue

The Tenant and J.D. took the position that there is an issue with the drainage around the rental unit or an issue with a rock wall on the property. The Agent denied there is an issue with either and took the position that the Tenant is causing the water build up. It is the Tenant who has the onus to prove the claim. The Tenant did not submit documentary evidence to support her testimony or that of J.D. in relation to this issue. In the absence of further evidence to support the testimony of the Tenant and J.D. about water build-up on the patio or where it is coming from, I am not satisfied the Tenant is entitled to an order that the Landlord address this issue. This request is dismissed without leave to re-apply.

***Compensation for monetary loss or other money owed***

This request is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

***Additional issue in relation to an ongoing issue with a neighbour***

This request is dismissed without leave to re-apply.

***Reimbursement for the filing fee***

Given the Tenant was partially successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenant can deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

***Summary***

Pursuant to section 62 of the *Act*, I make the following orders based on the agreement of the parties:

1. The Landlord is to arrange for a qualified electrician to attend the rental unit and assess the baseboard heater in the second bedroom. The Landlord is to arrange for a qualified electrician to fix the baseboard heater in the second bedroom if it is not working and is to do so within one week of the hearing date. The parties are to make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.
2. The Landlord is to replace the blind in the living room that is broken within one month of the hearing date. The Tenant is to allow the Landlord into the rental unit November 22, 2019 without further notice being required to address the blind issue. The Tenant is to allow the Landlord to access the rental unit to replace the blind. The parties are

to make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.

3. The Landlord is to fix or replace the glass display panel on the stove within one month of the hearing date. The parties are to make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.

I further find the following.

The Tenant's request for an order that the Landlord install additional baseboard heaters in the rental unit is dismissed without leave to re-apply.

The Tenant's request for the Landlord to address the drainage issue is dismissed without leave to re-apply.

The Tenant's request for compensation is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Tenant's request regarding the ongoing issues with the neighbour is dismissed without leave to re-apply.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment.

### Conclusion

I make the following orders based on the agreement of the parties:

1. The Landlord is to arrange for a qualified electrician to attend the rental unit and assess the baseboard heater in the second bedroom. The Landlord is to arrange for a qualified electrician to fix the baseboard heater in the second bedroom if it is not working and is to do so within one week of the hearing date. The parties are to make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.
2. The Landlord is to replace the blind in the living room that is broken within one month of the hearing date. The Tenant is to allow the Landlord into the rental unit November 22, 2019 without further notice being required to address the blind issue. The Tenant is to allow the Landlord to access the rental unit to replace the blind. The parties are to make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.



3. The Landlord is to fix or replace the glass display panel on the stove within one month of the hearing date. The parties are to make all reasonable efforts to agree on dates and times of entry into the rental unit so the Landlord can address this issue.

I further find the following.

The Tenant's request for an order that the Landlord install additional baseboard heaters in the rental unit is dismissed without leave to re-apply.

The Tenant's request for the Landlord to address the drainage issue is dismissed without leave to re-apply.

The Tenant's request for compensation is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Tenant's request regarding the ongoing issues with the neighbour is dismissed without leave to re-apply.

The Tenant is awarded reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 26, 2019

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Residential Tenancy Branch