



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP

### Introduction

On March 17, 2020, the Tenant applied for a Dispute Resolution proceeding seeking an Emergency Repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing; however, the Landlords did not make an appearance during the 37-minute hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that she served each Landlord with a Notice of Hearing and evidence package by registered mail on March 19, 2020. While she did not have the registered mail tracking numbers on hand, I note that the Landlords submitted documentary evidence for consideration. Based on this and the Tenant’s undisputed testimony, I am satisfied that the Landlords were served the Notice of Hearing and evidence package in accordance with Sections 89 and 90 of the *Act*.

The Landlords submitted documentary evidence to the Residential Tenancy Branch on this file and the Tenant confirmed that she had received this evidence on April 8, 2020. She also stated that she had read it, reviewed it, and was prepared to respond to it. However, as the Landlords were not present to speak to this evidence, I have excluded it and will not consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair order?

Background and Evidence

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

The Tenant advised that the tenancy started on February 15, 2019 and rent was established at \$1,400.00 per month, due on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

She advised that the rental unit is an old house and that when she viewed it, the fireplace was not working. Before moving in, she stated that she sent the Landlords an email asking if there was a furnace. The Landlords confirmed there was not one, but there were only four baseboard heaters. She did not submit this email as documentary evidence. After she moved in, she stated that it was cold and she wrote the Landlords an email in March 2019 asking them to fix the fireplace, but she did not submit this email as documentary evidence either.

She stated that in January 2020, it was really cold inside the rental unit and she had to put a tarp over the door for added insulation. She had all the baseboard heaters on but they were insufficient for heating the rental unit, as evidenced by their breath being seen inside. She advised that she received a hydro bill of over \$1,500.00 and that there was some sort of rent reduction provided by the Landlords; however, she did not submit any documentary evidence to support any of these points.

Her position is that the fireplace is the primary heating system because it is the oldest appliance and it is located in the main part of the rental unit. However, she confirmed that the Landlords never advised her that the fireplace was the primary heating system at the start of the tenancy and that they advised her that the heat was provided by the baseboard heaters.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 33 of the *Act* outlines the Landlords' and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

### **Emergency repairs**

- 33** (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.

When reviewing the totality of the evidence before me, while the Tenant believes that the fireplace is the primary heating system, her only basis for this belief is that it is the oldest appliance and is centrally located in the rental unit. I find that this position carries little weight, especially given the fact that there is insufficient evidence that this was ever raised as an issue at the start of the tenancy. Furthermore, the Tenant confirmed that she was advised by the Landlords at the start of the tenancy that the fireplace was not the primary heating system, but the baseboard heaters were. If it were truly her belief that the fireplace was the primary heating system, it is not clear to me why she only addressed this issue so long after the tenancy started. As such, I am satisfied, on a balance of probabilities that the baseboard heaters are the primary source of heat for the rental unit. In addition, I find it more likely than not that the Tenant understood that the baseboard heaters were the primary source of heat when she rented the unit, but she is no longer satisfied with this now based on the expense of the utilities.

When reviewing the testimony and documentary evidence provided, I am not satisfied that the Tenant has established that this issue constituted an emergency repair. If the Tenant is of the belief that the baseboard heaters are insufficient in heating the rental unit and this somehow does not meet housing, health, or safety standards required by law, it is up to the Tenant to address this issue accordingly.

Ultimately, I dismiss the Tenant's Application in its entirety.

### Conclusion

I dismiss the Tenant's Application 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: April 16, 2020

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Residential Tenancy Branch