



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding the Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$300.52 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The Tenant and two agents for the Landlord, M.U. and C.K. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing.

During the hearing, the Tenant explained that her claim for the Landlord to comply with the Act, regulation, and tenancy agreement was because the Landlord failed to provide heat and hot water at the end of December 2019. The Tenant indicated that these services have now been provided to the residential property again, so this claim is no longer relevant.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the tenancy began on February 1, 2008 and ran to January 31, 2009, and then operated on a month-to-month basis. They agreed that the Tenant currently pays the Landlord a monthly rent of \$970.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$387.50, and no pet damage deposit.

The Parties agreed that the subject matter of this hearing arose when the boiler for the residential property stopped working in December 2019, which resulted in the tenants being without heat or hot water for eight days.

Monetary Claim

In her claim, the Tenant requests compensation in the amount of \$300.52 from the Landlord for the time during which the heat and hot water were out. This claim consists of the following items:

	Receipt/Estimate From	For	Amount
1	(\$946.00/31 days) x 8 days (rent/day)	Recover rent for 8 days without heat or hot water	\$244.00
2	Grocery store receipts	Groceries while staying with a friend	\$49.26
3	Grocery store receipt	Heat from tea lights	\$7.26

		Total monetary order claim	\$300.52
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The Tenant said the heat in the rental unit went out on December 26, 2019, the day that she came home from the hospital to a cold apartment with no heat or hot water. "I was in no shape – my glasses were broken, too – no shape to search for a heater. In fact, when I came home from the hospital, I wanted to sleep."

The Tenant said she did not contact the Landlord, because there were notices on the wall next to the elevator. The Tenant said:

They said there was no heat, and that they were doing everything they could. They were apologizing and offering tenants \$50.00 for heaters for apartments. They said the part needed to get the boiler working was ordered.

The Agent said:

She's correct. We placed seven notices when we were advised that the heat went down. It happened on the early hours of Christmas. Shortly after the hot water . . . when this went down, we immediately acted and got our mechanical team out. Due to the circumstances of the holidays, there was a lot of closure, but we located the part to get the boiler back up and running.

We were transparent with the tenants and how we were going to get the parts. To add to the situation, the holidays made it difficult to attain the part. We offered a few available portable heaters, not enough to provide those to all tenants. Those who required more we reimbursed. We did as best we could in the circumstances.

We updated the tenants with our progress. An additional notice was provided per the *Residential Tenancy Act*. We worked in accordance with the RTA; in some case two or more heaters were purchase that we reimbursed.

The Landlord submitted documentary evidence, but I am unable to open these documents safely on my computer system; I cannot, therefore, consider it in making my decision.

The Tenant said that she did not purchase a portable heater, because she said she took the offer of a \$50.00 credit as an insult. She said she talked with her neighbours, and

based on the Landlord's notices, they believed they could have only one heater, which including tax, would have to come to \$50.00, because that was all they offered.

The Tenant also said they would have to pay for the electricity for these portable heaters, too, even though heat is included in the rent the Tenant pays for the rental unit.

The Tenant also said:

Where would we find a heater big enough to heat the full apartment, or were we expected to carry this heater from one room to the next? I didn't feel I could trust the Landlord to refund my money, because this had happened before, that he put in an email that he would reimburse us. But he had not followed through with that. And my ongoing emails would be ignored. So, I didn't think that if I was able to purchase anything that I could trust him to pay me back.

I wrote to him on [January] 21st asking for the money to be returned. There was no response to that letter. On February 10th, I wrote again. I told him I had been advised by the RTB that it was my right to contact him and request reimbursement. I quoted what I had been told. Heat is a service essential to the health and safety. I felt the \$50.00 offer was the minimum he needed to do. I didn't feel that he had my safety in mind.

Because I had been advised, I wanted to check; I was fairly sure that it was his responsibility to reimburse me, because I paid for my heat and hot water [with my rent]. The RTB said yes, and they put it in writing. When I would run into my neighbours, and they would voice their concern over the situation, that was when I informed them that they could ask for it in writing.

The Agent said:

It was never our intention to leave anyone alone unassisted. We have building caretakers in all of our buildings. I have a pretty good rapport with some of our tenants.

If we had known any of this with her and her health, that's why we have our caretakers there to assist. If we had known re issues with her getting back from the hospital, [C.K.] would have assisted.

If she even needed us to assist with groceries or a heater. We had no idea; we

worked as best as we could to assist.

Re her notice to be reimbursed. . . we understand that everyone was inconvenienced. That's why we offered a base amount to start – people would be reimbursed when we received a receipt. We received letters, four quick letters from tenants thanking us. [The Tenant] is the only one who is pursuing this further.

Re the monetary claims, we did respond to that and apologized, but we're not reimbursing rent . . . given our plan, we wanted to make it clear that it's not our wish to have this measure resolved by other means.

Re communication, if we would have known anything, I'm certain that [the building manager] and our staff would have assisted her as we did with . . . we manage three buildings in [the City] and we try to accommodate everyone who needs extra health care. We've obtained groceries for some people.

It's unfortunate that the previous situation – the gift card seems to have gone missing - we never intend to leave anything undone. Furthermore, we did communicate as best as we could. The boiler was made in Ontario, so it was difficult to obtain the part, is why it took us longer than we expected. We air freighted the part, once we obtained it. People were working around the clock on New Year's, even, and New Years Day. We had it back up and running that day.

We managed it as best we could within the *Residential Tenancy Act*.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

“Test”

Section 27 of the Act sets out a landlord’s obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant’s use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

RTB Policy Guideline # 22 (“PG #22”) states:

An “essential” service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

. . .

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

[emphasis added]

Section 1 of the Act contains definitions of terms, including: “service or facility”. Section 1 states:

“service or facility” includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

. . .

(l) heating facilities or services;

[emphasis added]

I find that the boiler in the residential property is a “heating facilities or services” and that it is essential or fundamental to the tenancy, especially during the winter. I, therefore,

find that the failure to provide heat and hot water is a violation of section 27 of the Act, and that the Tenant is eligible for compensation for damages suffered in this regard.

I find that the Tenant was in no condition to purchase portable heater(s) when the heat and hot water were out upon her arrival home from the hospital. Further, I find that the \$50.00 compensation offered by the Landlord for the cost of a portable heater was insufficient. Further, I find that the Tenant's previous experience with the Landlord's promise of compensation made her lack trust that the Landlord would carry through on the promise of compensation for portable heater(s).

I find that the Landlord's breach of section 27 of the Act caused the Tenant to suffer a loss, as a result. I find that the Tenant found it necessary to stay at a friend's residence during the days without heat or hot water; and therefore, that she could not use the rental unit for which she had paid the Landlord rent. I find that the Tenant minimized the cost to her of the Landlord's violation of the Act by staying with a friend, rather than at a hotel.

I find that the Landlord owes the Tenant reimbursement of the rent for those eight days without heat or hot water in the amount of \$244.00. I award the Tenant with recovery of **\$244.00** from the Landlord in this matter, pursuant to section 67 of the Act.

Further, I find that the Tenant was reasonable to provide groceries to her host during the days away from the rental unit, and that she would not have incurred this cost if not for the boiler break down. Further, I find that the Tenant minimized this cost by purchasing groceries, rather than taking her host(s) out to dinner. I find it more likely than not that dinner out would have been more expensive than buying groceries. Based on the evidence before me on this matter, I therefore, award the Tenant with recovery of **\$49.26** in groceries from the Landlord pursuant to section 67 of the Act.

Further, the Tenant said she used tea lights to take the dampness out of the air for when she was in the rental unit when the heat was not working. I, therefore, award the Tenant with recovery of **\$7.26** for this cost pursuant to section 67 of the Act.

Accordingly, pursuant to section 67 of the Act, I award the Tenant with recovery of her costs, which I find were the outcome of the Landlord's breach of section 27 of the Act. I award the Tenant a monetary order of **\$300.52** from the Landlord pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application for a monetary order in the amount of \$300.52, as the Landlord violated section 27 of the Act by failing to provide heat and hot water to the residential property for eight days in December 2019.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$300.52**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 23, 2020

Residential Tenancy Branch