



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, RR, FFT

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 \$2,925.57 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order for regular repairs, and to recover the \$100.00 cost of their Application filing fee.

The tenant, W.G., a representative for the tenant, K.P ("Tenant"), and an agent for the Landlord ("Agent"), 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 Agent 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.

In the Application, W.G. and K.P. are identified as the Tenants. However, only W.G. is identified as a tenant in the tenancy agreement. Further, K.P. said in the hearing that she is an agent for the Tenant, W.G. For simplicity, I have referred to the testimony of W.G. and K.P. as coming from “the Tenant” in this Decision. However, for accuracy of identifying the true Parties in this matter, and pursuant to section 64(3)(c) and Rule 4.2, I have amended the Applicants’ names in the Application and this Decision to be W.G.

While the Tenant applied for an order for regular repairs, I find that this claim has been addressed in a previous RTB proceeding. The Tenant confirmed in the hearing that she seeks monetary compensation, alone, in this Application.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on January 1, 2019, ran until December 31, 2018, and then operated on a month-to-month basis. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$1,523.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$725.00, and a pet damage deposit of \$725.00.

The Tenant submitted a monetary order worksheet setting out her claims, as follows:

	Receipt/Estimate From	For	Amount
1	[pharmacy]	Fire starter/ logs	\$60.46
2	[grocery store]	Fire starter/ logs	\$14.85
3	[pharmacy]	Fire starter/ logs	\$58.78
4	[grocery store]	Fire starter/ logs	\$22.56
5	[grocery store]	Fire starter/ logs	\$18.92
6	Rent reduction	\$350.00 x 5 months	\$1,750.00
7		Aggravated damages	\$1,000.00
		Total monetary order claim	\$2,925.57

Fire Starter and Logs → \$175.57

The Agent said that the Landlord agrees to pay the Tenant the cost she incurred purchasing fire starter and logs in 2019; however, I include the following evidence as background for the other claims.

The Tenant explained her claim, saying:

Essentially, the lease was entered into in January 2019. There was no heat coming from radiators in the apartment. I turned it up as high as it would go, but nothing. I sent an email as to Landlord.

In February 2019, signs went up acknowledging the heat – that the boiler was broken. It went on and on being cold in the apartment. There was no heat. It went on until April 2019. We were advised of a new boiler via a sign – that a new boiler would be installed in May 2019.

When it became cold again in October 2019, there were more notices of the same problem. More signs were posted saying the boiler needed to be fixed. The Landlord provided electric heaters, but they were blowing breakers, so we still had no heat. During this time, I had to buy fire logs to heat the apartment. There was no heat for all of 2019.

We had a previous hearing for an emergency order for heat. The Landlord was to attend and fix it in January 2020. It's been a year of ongoing complaints with the Landlord, and very uncomfortable.

K.P. said that W.G.'s mother passed away during this time, as she was very ill in the apartment. She said it was freezing and that she had injuries that flared up in the cold. "It was an ongoing battle to have it fixed. Heat is included in the tenancy agreement" she said.

The Agent said:

The boiler was not broken, it was working at half capacity. I know the temperature was down and pretty cold, but not freezing. We were doing our best. The temperature outside in the Spring was a bit better. A new boiler was ordered and installed, but it took time to find installer.

In May, the new boiler was installed and as [K.P.] mentioned, there was an issue in October, so we provided space heaters to units, as well as each unit has a wood burning fireplace. The company did their best to give heat and comfort. Also, see the boiler receipt part of boiler installation. We have boiler logs; maintenance goes in and checks the temperature and the pressure in the boiler. You can see that it was working at half capacity.

I reviewed the boiler inspection logs submitted by the Landlord; however, the numbers recorded do not mean anything to me and do not establish that the boiler was working at “half capacity”. I note the comments at the bottom of the log sheets:

February 2019:	Leaking under Furnace Feb 28.2019 Furnace still leaking
March 2019	Still leaking Leak increasing – March 13, 2019
April 2019	April 1 2019 leaking [indecipherable] not good – April 5 Boiler down 19 to 24 Operating at minimum capacity
May 2019	Leaking water Temp low May 12, 2019 – leaking
June 2019	No comments
July 2019	Pump making noise July 3, 2019 Bearing going out Paid fixed July 4, 2019
July 24, 2019	No pilot light Low pressure Low temp
August 2019	Low heat/pressure 20° Friday – Aug 30

September 2019	Low Pressure Low Temp
October 10, 2019	Turning off on by [indecipherable] Boiler off 10 Oct
November 2019	No comments

The Tenant said:

I'm in a corner unit on the bottom floor right above the boiler. I checked multiple days for smoke, and would jack [the heat] up to see. The butter is in a dish on the counter: I could pick it up with a knife; I'd have to microwave it. I was given two heaters, but every time I plugged them in it was blowing the breaker. The fire department said we could have fire in the walls if the breaker didn't break.

I didn't know if it was working in the summer, as I had no heat on.

In the fall, a couple of tenants and I got together to do something, but [the Landlord] kept stalling and stalling. We brought in an outside company, but they refused them access. It doesn't take six months to get a boiler. I've done a lot of research and it takes seven days to get a boiler. There's no reason it should be off for five months.

The Agent said:

It was installed in May, and it's hard to explain what happened, but it stopped working. I have called the plumbers who were doing their best to fix it, but it took three to four days to fix it. It wasn't minus outside, but space heaters were provided in October. Nothing was provided in January to May.

I was just given money to give tenants heaters. The company tried to fix the boiler, as soon as possible.

The Tenant said:

My neighbour plugged in an extension cord in the hall, but someone kept unplugging them. It wasn't blowing the fuses in the hallway, and the plug was right across from her unit. Hallway power wouldn't be charged to her, so that

might be why they kept unplugging them.

The Agent agreed that heat is included in the rent. She said as for the Tenant's monetary order worksheet for wood and fire starter, "We agreed with the previous arbitrator to pay those expenses"; however, the Agent said that those costs were not covered in the previous decision. She said: "The company okayed to pay those monies back. We agreed to deduct this amount from the next month's rent."

The Tenant said the last hearing was for an emergency boiler, and that they did not deal with the monetary issues at all.

Rent Reduction → \$1,750.00

The Tenant said that she claims a rent reduction of \$350.00 for five months of 2019: January through May. She said this amount seemed reasonable, based on what is included in the rent. \$350.00 is approximately 23% of the Tenant's monthly rent.

The Tenant said:

I'm not going to ask for the full rent back. Just one aspect was not provided. It's pretty substantial that heat is included, but for January through May, nothing was done at all. In October, there were additional problems, but they were trying. There were no issues in the summer.

The Agent said:

The boiler was working at half capacity - not enough, I understand, but the company was working to get the new boiler and other parts of the boiler. It was replaced, so I disagree with this reduction. The company okayed to pay for starter logs and wood.

The Tenant said:

It's not enough to now say we'll reimburse you for the fire logs and starter. This has been ongoing for a year. This was not offered in those five months with no heat. It's unreasonable, having to constantly go out and buy the fire starters and logs, when the tenancy agreement says heat provided, it's not acceptable. I did a lot of research. My son works for a company that called in about that boiler; he said it could have been replaced in one week. Years ago, they used to

have the big boilers from Germany. There's no reason it should have taken that long.

My mother caught pneumonia and died. I feel she would have been here, if the heat was working properly

The Agent said:

I'm sorry for her mother. There's huge grief, but the company did as much as the company could. They were working. I wasn't involved in the search for the boiler. As a manager, I've done everything from my side. The company was looking for another boiler. I understand it's not enough, but it was working.

Aggravated Damages → \$1,000.00

When I asked the Tenant about the amount claimed in this category, she said:

It seemed reasonable, based on what was included in the rent. I'm not going to ask for full rent back, as just one aspect was not provided. It's pretty substantial that heat is included in the rent. I'm just claiming this from January through May, where nothing was done at all. In October we had additional problems, but they were trying. There were no issues in the summer.

The Agent repeated that the boiler was working at half capacity, although she acknowledged that it was not enough. She stressed that the company was working to get the new boiler, and ultimately replaced it. The Agent disagreed with this claim, saying that the Landlord agreed to pay for starter and wood.

Analysis

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

Landlords' and tenants' rights and obligations for repairs are set out in section 32 of the Act. Section 32 states:

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.

. . .

[emphasis added]

Fire Starter and Logs → \$175.57

As this is undisputed, I award the Tenant with recovery of **\$175.57** for this claim.

Rent Reduction → \$1,750.00

Section 65 of the Act authorizes the Director to allow a tenant to deduct from rent an amount awarded for costs incurred by the Tenant in terms of maintenance or repairs, when a landlord has been found to not comply with the Act, regulation or tenancy agreement.

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

. . .

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent,

. . .

(d) that any money owing by a tenant or a landlord to the other must be paid;

...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

[emphasis added]

Section 27 states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation.

This section limits terminations and restrictions of services and/or facilities to those that are not material terms of the tenancy agreement or are not essential to the use of a rental unit. Accordingly, a landlord must bear a reduction of rent in an amount equivalent to the loss in the value of the tenancy resulting from the termination or restriction of such a service. I find that heat in a rental unit in the cold seasons is an essential service. In this case, the tenancy agreement sets out that the Landlord agreed to provide heat as part of the rent.

I find that the heat was not sufficiently provided to the rental unit for January through May 2019, nor from October through December 2019. The Tenant's anecdote: "The butter is in a dish on the counter; I could pick it up with a knife," illustrates the temperature in the rental unit on any given day.

The Agent argued that the boiler was not broken, but operated at half capacity. However, she did not clearly set out how her evidence indicates even as much as "half capacity". Rather, the logs quoted above indicate that it was leaking under the furnace in February through May, and in April 2019 it was "operating at minimum capacity". The logs also state: "boiler off 10 Oct".

The Tenant had applied for dispute resolution last year in an effort to get an emergency order to force the Landlord to fix this problem and provide this essential service. I do not have a copy of this decision before me, but the Tenant said: "The Landlord was to attend and fix it in January 2020. It's been a year of ongoing complaints with the Landlord, and very uncomfortable." This indicates to me that heat was a problem for the entire year, although, it was not as dire a matter in the warmer months; however, even in the Spring and Summer there can be cool evenings, during which a tenant may wish to have the heat on. I find that this was not an option for the Tenant.

The Agent said: "Space heaters were provided in October. Nothing was provided in

January to May.” However, the Tenant’s undisputed evidence is that the space heaters caused fuses to blow, which indicates that the space heaters in this building put the tenants’ safety at risk, thereby decreasing the usefulness of the space heaters. The Tenant said: “The fire department said we could have fire in the walls if the breaker didn’t break.” Accordingly, I find on a balance of probabilities that providing space heaters was not a viable option for this residential property.

I find that heat in residential properties in the Canadian climate, even on the West coast, is an essential service. I find that the rental unit was not “suitable for occupation” for the colder months of the year. I find that the Tenant is entitled to compensation in the form of a rent reduction of 20% of the rent, which I find to be on the low side, given the importance of heat. I find that the Tenant is entitled to compensation from January through May and October through December 2019 or for eight months in 2019. The Tenant’s rent was \$1,523.00; therefore 20% of this is \$304.60, which for eight months is \$2,436.80. I, therefore, award the Tenant with a rent reduction of **\$2,436.80**.

Aggravated Damages → \$1,000.00

Policy Guideline #16 (“PG #16”), defines aggravated damages as follows:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

The above represents a summary of the law of aggravated damages. Pursuant to PG #16, I must also consider the following where a party applies for aggravated damages:

- The requirement to specifically ask for an award for aggravated damages;
- Proving a claim for aggravated damages;
- Augmenting awards to compensate for particularly poor the conduct;
- Not intended to punish the wrongdoer or deter undesirable behaviour; and
- Losses may include pain, anguish, grief, humiliation, wounded pride, or damaged self-confidence or self-esteem.

The Tenant specifically applied for aggravated damages in this case, and said that she

was claiming for the initial portion of the year without sufficient heat: January through May 2019. The Tenant noted that the Landlord did nothing for the tenants during this time.

Further, when considering the evidence before me, overall, I note that it took a year and an application for emergency repairs at the end of the year for the Landlord to resolve this problem. In the meantime, the Tenant was without sufficient heat for the seasonal conditions, as well as the age and structure of the residential property (e.g. the portable heaters created additional problems with breakers blowing). I find that the Agent did not provide sufficient evidence to explain why it took so long to resolve this important matter.

In addition, the Tenant asserted that the cold temperatures contributed to the decline and eventual death of her mother. There is no medical evidence before me establishing the link between these factors; however, I find that the Tenant's inevitable stress, angst and discomfort in this situation were contributing factors. I find this to be especially so, considering the Landlord's failure to resolve the problem as quickly and efficiently as is reasonable in this situation – I find that taking a year to replace and install a boiler properly is inconsistent with common sense and ordinary human experience – and that there is insufficient evidence to the contrary. These aspects lead me to find in favour of the Tenant for this claim.

Based on the evidence before me overall, I award the Tenant **\$500.00** in aggravated damages, pursuant to section 67 of the Act.

Summary

Compensation awarded:

Fire starter and logs	\$ 175.57
Rent Reduction	2,436.80
Aggravated damages	<u>500.00</u>
Total:	<u>\$3,112.37</u>

The Tenant is also awarded recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act for a total monetary award of **\$3,212.37**, which I grant to the Tenant from the Landlord, pursuant to sections 27, 32, 65, 67, and 72 of the Act. The Tenant is authorized to reduce her rent by this amount in the coming months in satisfaction of this award, pursuant to section 65 of the Act.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to establish entitlement to a monetary award in every category for which she applied for a total award of **\$3,212.37**, including recovery of the Application filing fee.

The Tenant is authorized to reduce her rent in upcoming months by this amount in satisfaction of this monetary award.

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: July 9, 2020

Residential Tenancy Branch