



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes RR, RP, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order for regular repairs pursuant to section 32 and 62 of the *Act*;
- an order to allow the tenant to reduce rent for repairs, services and facilities agreed upon but not provided, pursuant to section 65(1) of the *Act*;
- authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

The tenant RB and the tenants' Counsel SM attended the hearing and the tenant RB were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant RB affirmed that the landlord was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on June 06, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*, and find the landlord was deemed to have received the documents in accordance with section 90 of the *Act* on June 11, 2020. Canada Post tracking number is listed on the first page of this decision.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant RB, Counsel and I had called into the hearing. I confirmed the correct call-in number and participant codes for the landlord had been provided.

Rule of Procedure 7.3 states:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the Arbitrator may conduct the Dispute Resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

#### Issues to be Decided

Are the tenants entitled to an order for regular repairs pursuant to section 32 and 62 of the *Act*?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon pursuant to section 65(1) of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the tenant RB not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim, and my findings are set out below.

This tenancy began on November 1, 2019 for a fixed term of one year. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants and the landlord continues to hold this deposit in Trust.

The tenants have applied for an order to have the hot water tank repaired or replaced and a rent reduction on the basis that they have not had hot water since they have moved into the rental unit.

Counsel argued that since the tenants moved in, they have not had access to hot water resulting in a significant loss in the value of their tenancy. Counsel argued that the landlord has consistently ignored texts, letters and phone calls from the tenants.

The tenant RB affirmed that the temperature of the water in the rental unit is below body temperature and he regularly boiled hot water to bathe himself resulting in an increase in the utility bills.

The tenant RB gave sworn testimony that his daughter endured surgery in November 2019 and had to travel to the local Marina every day to take showers. The tenant affirmed his daughter was taking 5 minutes showers at \$2.00 per minute.

The tenant RB affirmed that he completed a monetary order sheet submitted in evidence illustrating \$180.00 per month for the showers. A further letter from the Port Authority was submitted confirming the cost per minute for a shower at the Marina.

The tenant RB affirmed they were seeking recovery of the money paid for the showers plus a deduction in the rent. He confirmed he was a qualified plumber and testified the landlord had deliberately delayed the repairs.

Counsel argued the landlord sent a plumber into the rental unit when he was informed, the tenants had submitted an application for Dispute Resolution to the Residential Tenancy Branch and had a hearing pending.

The plumber inspected the hot water tank a few days before the hearing and advised that the element required replacing and the “hot water tank “required repairing. The landlord’s plumber failed to return to carry out the repairs to the hot water tank or element.

By contrast, tenant RB, who is a qualified plumber affirmed that the element requires replacing and could be done ‘quickly” if the part was ordered, and as of this hearing, the hot water tank remains unrepaired.

Counsel advised that the landlord was due to travel to Europe on vacation in the next 14 days and requested an order as soon as possible for the landlord to carry out the repairs.

### Analysis

Based on the testimonies of the tenant RB provided during the hearing, the documentary evidence before me and on the balance of probabilities, I find the following:

The landlord has refused to undertake the necessary repairs to the element and the hot water tank in the rental unit. The tenants have been denied hot water resulting in one of the tenants travelling to a local Marina to undertake showers.

Section 27(1) of the Act reads in part as follows:

#### **Terminating or restricting services or facilities**

- 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.

### Rent Reduction:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

**RESIDENTIAL TENANCY POLICY GUIDELINE 22** states the following:

If the tenancy agreement doesn't state who is responsible for any added service or facility, not provided by the tenant, after the commencement of the tenancy, and there is a cost involved in obtaining the service or facility, the landlord is responsible for the

cost, unless the landlord has obtained the written agreement of the tenant to be responsible for the cost.

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

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.

There are six issues which must be addressed by the landlord and tenant.

- whether it is a service or facility as set out in Section 1 of the Legislation;
- whether the service or facility has been terminated or restricted;
- whether the provision of the service or facility is a material term of the tenancy agreement;
- whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

In this case, I find that the tenants have established on a balance of probabilities that there has been a reduction for loss of services and facilities. The hot water tank is an essential service and facility and is a material term of the tenancy. The landlord has breached the requirements of section 27(1) of the *Act* by restricting a service of the tenancy *and* has failed to provide the tenants with hot water.

The tenant RB provided testimony that he had to boil the water to bathe himself. This is contrary to health and safety standards. The tenants have incurred additional utility bills as a result of boiling the water. Whilst the landlord has refused to undertake the necessary repairs to the hot water tank in the rental unit. I find that the tenants are

entitled to a monetary award for the loss in value of their tenancy for the nine-month period.

For these reasons, I find that the tenants are entitled to a retroactive reduction in rent of 20% of the monthly rent paid for a nine-month period of this tenancy, which approximates the period between November 2019 to July 2020.

I order a monetary award in the tenant's favour in the amount of \$220.00 for each month for nine months (\$1,100.00 rent x 9 = \$9,900.00)  $9,900.00 \times 20\% = \$1,980.00$

As the tenants have been successful, I grant the filing fee of \$100.00 pursuant to section 72 of the *Act*.

Item	Amount
Loss in the Value of this Tenancy for November 1, 2019 to July 2020	\$1,980.00
Shower bills – November to July 2020, \$2.00 per minute. (5-minute showers x 3 days per week) – (34 weeks)	\$1,020.00
Filing fee	\$100.00
<b>Total</b>	<b>\$3,100.00</b>

Furthermore, I order the landlord to instruct a qualified plumber within **14 days** of this decision to carry out urgent repairs to the hot water tank and element.

If this work is not completed by August 31, 2020 the tenants will be allowed to deduct a further \$220.00 from their monthly rent until the month after these repairs have been completed.

### Conclusion

I issue a monetary award for **\$ 3,100.00** in the tenants' favour which allows the tenants a retroactive rent reduction for the loss in the value of their tenancy, shower bills and the filing fee.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible.

Should the landlord fail to comply with these Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as Order of that Court.

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: July 13, 2020

---

Residential Tenancy Branch