



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRAMBLEBUSH FARM LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 20, 2020 (the “Application”). The Tenant applied for emergency repairs and to recover the filing fee.

The Tenant and Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package. The Agent testified that he did not receive any evidence from the Tenant.

The Tenant testified that she served all evidence submitted, except photos, on the Agent at his door. I asked the Tenant when the evidence was served. At first, the Tenant provided numerous dates, all of which were prior to the Application being filed. The only evidence the Tenant pointed to in support of her testimony were photos of receipts showing photocopies made. The Tenant subsequently testified that all evidence was served on the Agent December 26, 2020 with the hearing package.

This was an expedited hearing and rule 10 of the Rules of Procedure (the “Rules”) applied. Pursuant to rule 10.3 of the Rules, the Tenant was required to serve all evidence submitted on the Landlord within one day of the hearing package being made available. Pursuant to rule 3.5 of the Rules, the Tenant had the onus to prove service of her evidence. 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 their onus of proof.

The parties gave conflicting testimony about whether the Tenant served her evidence on the Agent. I did not find the Tenant's testimony compelling given the Tenant provided numerous service dates which pre-dated the Application being filed. The Tenant could not have served evidence for this proceeding on the Landlord prior to the commencement of this proceeding. I acknowledge that some of the evidence may have been provided to the Agent during the tenancy previously. However, I do not find this sufficient to comply with rule 10.3 of the Rules. I find the Tenant was required to serve all evidence on the Landlord once the Application was filed as part of this proceeding.

The Tenant testified that she served her evidence on the Agent December 26, 2020 with the hearing package. I did not find this testimony compelling for two reasons. First, the Tenant did not state this until I explained that I was not satisfied of service given the service dates provided. Second, the Tenant submitted evidence to the RTB for the first time on December 28, 2020 and submitted evidence up until the day of the hearing. I found it unlikely that the Tenant collected all of her evidence, served it on the Agent December 26, 2020 but then uploaded it to the RTB website December 28 and 31, 2020 as well as January 01, 04 and 05, 2021.

I did not accept that the photocopy receipts were sufficient to support the Tenant's testimony about service as I did not find that these tend to show that the Tenant served her evidence on the Landlord.

In the absence of further evidence, I was not satisfied the Tenant served her evidence on the Agent. Given this, I told the parties I was not satisfied the Tenant complied with the Rules in relation to service and told the parties I would consider rule 3.17 of the Rules. I heard the parties on whether the Tenant's evidence should be admitted or excluded. Both parties made submissions that were not relevant which have not been outlined here. However, the Agent submitted that the evidence should be excluded because it was not served on him and he cannot deal with something he cannot look at. The Tenant submitted that the evidence should be admitted because she wants to resolve the issue raised in the Application.

I excluded the Tenant's evidence pursuant to rule 3.17 of the Rules which states:

Evidence not provided to the other party...in accordance with the Act or Rules...10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

I found it would be unfair to the Landlord to consider evidence when I was not satisfied the Agent had seen it or could adequately address it during the hearing. I acknowledge that the Tenant testified that some of the evidence was provided to the Agent during the tenancy. However, the Tenant did not sufficiently prove which pieces of evidence were previously provided. Further, I do not find previously providing evidence sufficient. It was not the Landlord's responsibility to determine on their own what evidence the Tenant intended to rely on at the hearing by going back and considering what they had received in the past. It was the Tenant's responsibility to serve her evidence on the Landlord for this proceeding so that the Landlord had notice of what the Tenant would rely on at the hearing so the Landlord could address the evidence.

I told the Tenant her evidence would be excluded but that she could provide whatever verbal testimony she wished at the hearing.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the admissible 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 make emergency repairs?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The parties agreed on the following. There is a verbal tenancy agreement in this matter. It is a month-to-month tenancy. Rent is \$1,850.00 per month due on the first day of each month. A \$900.00 security deposit was paid.

The Tenant testified that the tenancy started in January of 2018. The Agent testified that it started in February of 2018.

The Tenant confirmed she is seeking repair of the gas furnace which is the main heating system in the rental unit.

The Tenant testified as follows. The furnace has been an issue since 2018. The pilot light goes out consistently. She cannot re-light the pilot light. J.P., a "furnace man" who works for a heating company has attended to look at the furnace. A new furnace was supposed to be installed in December, but this did not occur. There is no heat in the rental unit anymore.

The Tenant further testified as follows. The furnace is 28 years old. The wind blows the pilot light out. She has to call the Agent when this happens and the Agent or her ex-husband have to attend to re-light the pilot light. The furnace is broken. The furnace is not safe.

On December 02, 2020, the Agent's son put a cap on the roof in relation to the furnace issue; however, the pilot light has gone out three times since.

The Tenant testified both that the wind blows the pilot light out which is the issue and that the wind is not the issue, the furnace is broken and old.

The Agent testified as follows. The rental unit is a mobile home. It has a double chimney that is about 14 inches across. There are two parts to the chimney. Inside, there is a four inch vent that vents gas once burned. On the outside, there is space for cold air to be drawn into the furnace. The winds in the area are quite strong. When the wind is strong, it goes down the chimney and extinguishes the pilot light. J.P. recommended the cap referred to by the Tenant to shield the chimney where the fresh air enters. His son installed the cap. There should not be a further issue with the pilot light with the cap installed.

The Agent further testified as follows. There is nothing wrong with the furnace. J.P. has confirmed the furnace is fine. The Tenant contacted "E" about the furnace being a safety issue and "E" is satisfied there is no problem with the furnace.

The Agent testified that he is prepared to attend the rental unit and re-light the pilot light when needed as he lives on the property. The Agent did not deny that there have been difficulties with the furnace pilot light going out due to wind but maintained that the furnace is not broken and is fine. The Agent acknowledged that a new furnace would not have a pilot light so would not have the same issue. The Agent acknowledged that the furnace is the only heating system in the rental unit.

I do not find it necessary to outline the Landlord's evidence here as I do not find it adds to the above points.

### Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

As stated, 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.

Section 32 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of the Landlord to repair and maintain the rental unit and 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.

An "emergency repair" is defined in section 33 of the *Act* which states:

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.

The Tenant seeks an order that the Landlord repair the gas furnace, the primary heating system in the rental unit.

The Tenant submitted that the furnace is old, broken, not safe and that the pilot light is blown out by wind. The Tenant acknowledged that a cap has been put on the chimney to address the issue. However, the Tenant submits that the pilot light has gone out three times since.

The Agent acknowledges that the pilot light has been blown out by the wind in the past and that this has been an issue. The Agent submits that the cap should address this issue. The Agent submits that the furnace is safe and there is nothing wrong with it.

The only admissible evidence before me is the Landlord's evidence. The only relevant evidence submitted by the Landlord is the Agent's written statement.

I do not have documentary evidence before me to support that the furnace is too old to be operable, broken or not safe. I do not have reports or statements from J.P. or "E" to support these points. In this type of claim, I would expect to see reports or statements from someone qualified to assess the gas furnace outlining if there are issues with it and what the issues are. Such reports or statements are not before me. Nor did J.P. or "E" attend the hearing to provide testimony about the furnace.

In the absence of further evidence, I am not satisfied the furnace is too old to be operable, broken or not safe. The parties gave conflicting testimony on these points and there is no further evidence before me to support the Tenant's testimony.

In relation to the pilot light being blown out by the wind, both parties agreed a cap has been put on the chimney to address this issue. The Tenant submits that the cap has not addressed the issue. The Agent submits that the cap should address the issue. I do not have further evidence before me to support the Tenant's testimony that the cap has not addressed the issue. Again, in this type of claim, I would expect to see photos, videos, witness statements or reports showing the problem with the pilot light has continued and how often it occurs. There is no such evidence before me. In the absence of further evidence, I am not satisfied as to whether the cap has addressed the issue of wind blowing out the pilot light or how often the issue occurs.

I also note that the Tenant has provided insufficient evidence about how often the wind blows the pilot light out. I find this relevant given the Agent is willing to attend and re-light the pilot light when it does go out.

In the circumstances, I am not satisfied the Tenant has met the onus to prove she is entitled to an order that the Landlord make emergency repairs. The parties gave conflicting testimony on the main points. There is no further evidence before me to support the Tenant's position. I did not find there to be reliability or credibility concerns with the testimony of either the Tenant or Agent. In these circumstances, I am not satisfied the Tenant has provided sufficient evidence to prove the claim.

However, I acknowledge that having adequate heat in the rental unit is necessary and that a lack of adequate heat is an important issue. Further, I am not satisfied based on the evidence provided that the cap has not addressed the pilot light issue, but I am not satisfied based on the evidence provided that the cap has addressed the pilot light issue. Given this, I dismiss the request for emergency repairs with leave to re-apply. The Tenant can re-apply for emergency repairs if the issue with the wind blowing the pilot light out continues on some regular basis.

Given the Tenant was not successful, I decline to award the Tenant reimbursement for the filing fee and dismiss this request without leave to re-apply.

### Conclusion

The Application is dismissed.

The request for emergency repairs is dismissed with leave to re-apply. The Tenant can re-apply for emergency repairs if the issue with the wind blowing the pilot light out continues on some regular basis.

The request for reimbursement for the filing fee is dismissed without leave to re-apply.

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: January 06, 2021

---

Residential Tenancy Branch