



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ERP, FFT**

The hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- an order for emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application pursuant to section 72(1).

The Tenant and Landlord attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant testified that the Notice of Dispute Resolution Proceeding and her evidence ("NODR Package") was served on the Landlord by registered mail on October 13, 2021. The Tenant submitted a Proof of Service on Form RTB-9 together with the registered mail tracking number to confirm service on the Landlord. I find that the NODR Package was served on the Landlord in accordance with section 89 of the Act and, pursuant to section 90 of the Act, was deemed to have been served on October 18, 2021.

The Tenant stated that the Landlord did not serve any evidence on her.

Issues to be Decided

Is the Tenant entitled to:

- an Order that the Landlord perform emergency repairs on the rental unit?
- recover the filing fee for this application from the Landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the Tenant's claims and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is the Tenant to establish on a balance of probabilities that she is entitled to an order that the Landlord perform emergency repairs on the rental unit.

The month-to-month tenancy commenced on April 1, 2019 with rent of \$750 payable on the 1st day of each month. The Tenant paid a security deposit of \$375.00 which the Landlord confirmed is being held in trust.

The Tenant testified that she has never had any heat from the primary heating system in her bedroom or adjoining kitchen since she moved into the rental unit. The Tenant stated that the primary heating system in the rental unit is a single radiator that runs along the wall of her bedroom and the kitchen area located on the other side the partition between her bedroom and the kitchen. The Tenant stated that she told the Landlord on many occasions that a single radiator, that goes along the wall of her bedroom and the adjoining kitchen, was not working. The Tenant stated that, since she moved into the rental unit, she had been using her own space heater to heat the room until it stopped working recently. The Tenant stated that, even when her own heater was operating, cold air would enter her bedroom due to a large gap between a window located in the outer wall of the basement and the edge of the partition that separate her bedroom and kitchen. The Tenant submitted three photographs that display the gap between the partition wall and the window.

The Tenant testified that she was concerned about the lack of heat in her bedroom and adjoining kitchen as the fall season has begun. The Tenant stated that another tenant, who has lived in the residential premises since before the Tenant moved in, had told her that the previous tenant of the rental unit never received any heat from the radiator in the Tenant's bedroom or adjoining kitchen. ~~She stated that there is black mold around the radiator.~~ The Tenant submitted two photographs showing the condition of the radiator.

The Tenant stated that she understood that the boiler that heats the residential premises was replaced in late 2019. However, the replacement of the boiler did not result in any heat being received in her rental unit from the radiator.

The Tenant testified that she had made many verbal requests to the Landlord that the heating system be repaired in her rental unit. The Tenant stated that, as no repairs to the heating system had been undertaken by the Landlord, she gave the Landlord a written notice on September 22, 2021 requesting that the Landlord perform emergency repairs on the heating system by September 30, 2021. She stated, instead of the Landlord performing repairs on the heating system, she served the Tenant with a One Month Notice to End Tenancy for Cause on September 29, 2021.

The Landlord testified the boiler that heats the residential premises was replaced around October 2019 for \$6,510.00. The Landlord acknowledged that the Tenant had complained that the heater was not working in the rental unit in late 2020 and from time to time thereafter. The Landlord stated that the other areas of the residential premises were getting heat. The Landlord stated that, when the heat was turned up higher to try to accommodate the Tenant, the upstairs tenants complained they are too warm.

The Landlord stated she recently inspected the Tenant's rental unit and that the baseboard heater was working. However, she said it is an older house and there is nothing she can do. The Landlord also stated that in order to replace the basement heater, it would be necessary to remove the wall between the Tenant's bedroom and the adjoining kitchen. The Landlord stated that she had checked with Vancouver City Hall and was told that, if the wall was removed, she would not be able to replace it as it would violate current City bylaws.

When I asked when the last time a heating technician had inspected the baseboard heater in the Tenant's bedroom and adjoining kitchen, the Landlord stated that it was at the time the boiler was replaced in October 2019.

Analysis

Sections 32 and 33 of the Act, in part, state:

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.*

[...]

- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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.

- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

- (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

[...]

[emphasis in italics added]

I find the evidence of the Tenant to be persuasive that the primary heating system in her rental unit has not functioned since she moved into the rental unit and that she has relied on a space heater to provide heat in her rental unit. I find that the Landlord has had a lengthy period of time to investigate, and if necessary, repair the primary heating source in the Tenant's rental unit. I find the Landlord, even though she has had a reasonable period of time, has made an insufficient response to the Tenant's request for emergency repairs to the primary system to the rental unit. I accept that the lack of heating during the fall, winter and spring is impacting on the Tenant's use of the rental unit. I find that the Landlord has not complied with the health, safety and housing standards required by law to make it suitable for use by the Tenant. Based on the foregoing, I find the Tenant has met the burden of proof and is entitled, pursuant to section 33(3) of the Act, to an order that the Landlord perform emergency repairs on the primary heating system in the Tenant's bedroom and the adjoining kitchen area.

I find December 15, 2021 is a reasonable deadline for the Landlord to have an inspection performed by a heating technician on the primary heating system in the Tenant's bedroom and the adjoining kitchen, and if the primary heating system in those areas requires repair, then to repair the heating system, or alternatively, to install a new functional heating system in the Tenant's bedroom and adjoining kitchen that complies with health, safety and housing standards required by law.

If the Landlord does not perform this inspection and, if necessary, perform repairs on the primary heating system, or alternatively install a new functional heating system in the Tenant's bedroom and adjoining kitchen area, by December 15, 2021, then I order that the Tenant may deduct \$100.00 from the

January 2021 rent. If the repair work to the existing primary heating system, or installation of a new functional heating system is not completed by January 15, 2022, then the Tenant may deduct an additional \$100.00 (\$200.00 total) from the February 2022 rent, and so on for each month the work is not done, to a maximum of a \$500.00 monthly deduction (if the work is not done by May 15, 2022) in recognition of the Tenant's continued lack of heat in the rental unit, until such time as the Landlord completes repairs on the primary heating system, or installs a new functional heating system, at which time the rent can be increased to its original amount. The foregoing deductions are to be made pursuant to subsection 72(2)(a) of the Act.

As the Tenant has been successful in this application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act and, pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion

I order the Landlord to have an inspection performed by a heating technician on the primary heating system in the rental unit by December 15, 2021, and if the heating system requires repair, then to repair the primary heating system so that it functions properly, or alternatively, install a new functional heating system in the Tenant's bedroom and adjoining kitchen area by December 15, 2021.

If the Landlord does not perform this inspection and, if necessary, perform repairs on the primary heating system, or alternatively install a new functional heating system in the Tenant's bedroom and adjoining kitchen area, by December 15, 2021, then I order that the Tenant may deduct \$100.00 from the January 2021 rent. If the repair work to the existing primary heating system, or installation of a new functional heating system is not completed by January 15, 2022, then the Tenant may deduct an additional \$100.00 (\$200.00 total) from the February 2022 rent, and so on for each month the work is not done, to a maximum of a \$500.00 monthly deduction (if the work is not done by May 2022) until such time as the Landlord completes repairs on the primary heating system, or installs a new functional heating system, at which time the rent can be increased to its original amount. I order the Tenant may deduct this amount from future rent payments as follows in the event the Landlord does not perform the

emergency repairs and install a new functional heating system by the following dates:

Date for Repairs or Installation	Date of Rent Deduction	Amount of Deduction	Rent Payable
December 15, 2022	January 1, 2022	\$100.00	\$650.00
January 15, 2022	February 1, 2022	\$200.00	\$550.00
February 15, 2022	March 1, 2022	\$300.00	\$450.00
March 15, 2022	April 1, 2022	\$400.00	\$350.00
April 15, 2022	May 1, 2022	\$500.00	\$250.00

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of her monetary award for recovery of the filing fee.

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: November 28, 2021

Residential Tenancy Branch

THIS DECISION CORRECTED PURSUANT TO SECTION 78(1)(a) OF THE RESIDENTIAL TENANCY ACT ON DECEMBER 14, 2021 AT THE PLACE INDICATED IN STRIKETHROUGH ABOVE

Residential Tenancy Branch