



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Strathmore Lodge Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP

### Introduction

This expedited hearing was scheduled pursuant to a tenant's application for emergency repairs concerning insufficient heat.

Both the landlord's agent and the tenant appeared for the hearing. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord received the tenant's hearing materials via email on January 12, 2022 and was willing to be deemed sufficiently served even though the landlord did not have a clear copy of the Notice of Dispute Resolution Proceeding. I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The landlord's agent testified the landlord's evidence was sent to the tenant via registered mail on January 19, 2022. The tenant stated she did not receive it. The landlord orally provided the tracking number for the Xpresspost package and a search of the tracking number showed that two notice cards were left by Canada Post. The tenant acknowledged receiving a notice card from Canada Post but that she did not go pick up the mail.

I was satisfied the landlord met its obligation to serve the tenant and it was upon the tenant to go retrieve her mail. Accordingly, I admitted the landlord's evidence for consideration in making my decision. In recognition the tenant had not seen the landlord's evidence, I informed the parties that the evidence may be read into evidence so that the tenant may respond to it. During the hearing, the landlord pointed to one piece of evidence in particular, an invoice from the electrician, and it was read aloud by me so that the tenant could hear its content.

Issue(s) to be Decided

Is it necessary and appropriate to issue orders in order to facilitate emergency repairs?

Background and Evidence

The tenancy started on January 1, 2019, and the tenant is currently required to pay rent of \$1226.00 on the first day of every month.

The rental unit is located in an old historic building constructed in 1911. The rental unit is described as being a studio apartment approximately 30 feet by 15 feet, or 450 square feet.

The tenant submits that there is insufficient heat in the rental unit due to:

1. Insufficient amount of baseboard heaters -- the tenant testified that she performed calculations and determined that a unit of her size requires 14 linear feet of baseboard heaters and she only has 6 feet.
2. Lack of insulation in the walls – the tenant acknowledged that insulating the walls exposed to the weather is not recommended in these types of older buildings but interior walls could be insulated.
3. A gap between the entry door and door frame – the tenant testified that the landlord had the entry door replaced but that there continues to be a gap between the door and door frame because the door frame is rotten.

The tenant submitted that at the time of filing there were two small 2 foot long baseboard heaters in the living/sleeping room and no other heaters in any other location in the rental unit. After she filed, the landlord had an electrician attend the rental unit and install a third 2 foot long baseboard heater in the living/sleeping room.

The tenant testified that despite turning up the thermostat to its highest setting the temperature in the unit does not go past 18 or 19 degrees on cold days, even with the third heater installed.

The landlord's agent responded that upon receiving complaints from the tenant, the landlord had its electrician attend the rental unit and once it was determined the existing

electrical system could handle another baseboard heater the electrician installed the third 2 foot heater the landlord supplied to the electrician. Also, the landlord had weatherstripping installed and given to the tenant, as she requested, for the entry door. Finally, the landlord did replace the entry door because it was leaking, following an order from the city.

The landlord's agent acknowledged that the landlord has not done any calculations to determine the amount of baseboard heater length required for the size of the rental unit. The landlord acknowledged she is uncertain if there is sufficient electricity to the rental unit to accommodate more baseboard heaters but the landlord was agreeable to having an electrician return to make such a determination and, if there is sufficient capacity, additional baseboard heater(s) will be installed in a timely manner.

If there is currently insufficient electrical capacity in the rental unit, the landlord was agreeable to investigating options to either bring in more electrical capacity or insulate the rental unit.

Finally, the landlord acknowledged they had not inspected the door/door frame after the new door was installed to investigate whether the gap was addressed with the installation of the new door. However, the landlord was agreeable to having the issue of the gap between the door and door frame investigated within two weeks and take appropriate action to close the gap in a timely manner.

The landlord raised the issue of getting access to the rental unit as the tenant has insisted upon receiving four days of advance notice when notices of entry are emailed to the tenant. The tenant acknowledged she had been requiring such but was agreeable to reducing that to accommodate the landlord's need for entry to deal with these repair issues. As such, the tenant agreed to check her email every day and the landlord may indicate an entry date/time that is 24 hours after sending the notice of entry via email.

### Analysis

The tenant has made this application seeking repairs for emergency repairs. Section 33 of the Act provides the definition of emergency repairs. The definition of emergency repair is as follows:

- 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.

From what I heard from both parties, the tenant's primary heating system was comprised of two baseboard heaters and they are working at the time of filing; however, the tenant is of the position they fail to provide sufficient heat to get the rental unit beyond 18 – 19 degrees on cold days and the rental unit fails to maintain sufficient temperature due to a gap in the door frame and inadequate insulation. I would not consider the issues raised by the tenant to constitute an "emergency repair" since the heaters provided with the rental unit are working and much of the time the tenant has sufficient heat, or slightly below ideal room temperature. I caution the tenant that emergency repair applications are scheduled very quickly, on a priority basis, and that tenants who make requests for emergency repairs where it does not meet the definition of section 33 are at risk of having their application being dismissed.

In any event, I continued to hear the matter under section 32 of the Act. Section 32(1) of the Act provides for a landlord's obligations to repair and maintain a rental unit and residential property, as set out below:

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.

[My emphasis underlined]

I heard undisputed evidence that the rental unit is located in a very old building, constructed in 1911. It is important to point out that section 32(1)(b) takes into account the “age and character” of the property under the landlord’s obligation to repair. As such, a tenant renting an old historic building built to the standards of its time cannot expect the landlord to retrofit the building to today’s standards.

Despite the aforementioned, I accept the tenant’s evidence, including photographs of the thermometer and thermostat in the rental unit, that the baseboards are unable to achieve a temperature beyond 18 – 19 degrees on very cold days and considering the age of the building, it is likely the unit cools quickly due to lack of insulation and old windows. Given the lack of insulation and old windows, I am of the view the landlord is left with providing more sources of heat to the tenant so that the temperature can reach 21 degrees if the landlord choses not to add insulation or new windows. I also accept the tenant’s evidence, including photographs, that there are gaps around the door. The gaps may be the result of a rotting door frame and if so, I find that a rotting door frame is not part of the “age and character” of the building and ought to be repaired so that gaps are minimized.

Given the submissions of both parties, including their respective agreements, and the requirements of section 32 of the Act, I issue the following orders to the parties:

1. Within one week of today’s date, the landlord shall have an electrician determine whether there is sufficient electrical capacity in the rental unit to install more baseboard heater(s) in the rental unit and if so, the landlord shall have an additional heater installed in a timely fashion. Considering there is already three baseboard heaters in the living/sleeping room, I suggest the landlord consider

having another heater installed in a different room, such as the kitchen or bathroom but this may depend on the electrical capacity so I leave that decision to the landlord after consulting with the electrician.

2. If there is currently insufficient electrical capacity to install another heater, the landlord shall have greater electrical capacity installed to accommodate another heater, or install insulation, in a timely manner.
3. Within two weeks, the landlord shall have the gap in the door frame investigated to determine the appropriate course of action to minimize the gap and proceed to make the appropriate repair in a timely manner. If the door frame is rotten or rotting the landlord shall have the rotten section replaced.
4. For the landlord to gain entry to the rental unit for the purposes of accomplishing the above, the landlord may serve notices of entry by email and the tenant shall be deemed in receipt of the emailed notices of entry when they are sent rather than three days after sending. As such, the date/time of entry may be 24 hours after sending the emailed notice of entry. Upon receipt of the notice of entry the tenant shall not interfere or hinder the landlord's efforts to accomplish the above described orders.

### Conclusion

I have issued orders to both parties with a view to facilitating repairs.

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: February 01, 2022

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Residential Tenancy Branch