# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes RP, LAT, LRE, OLC, MNDCT

Introduction

This hearing was convened on February 11, 2022 by way of conference call concerning an application made by the tenants seeking an order that the landlord make repairs to the rental unit or property; an order permitting the tenants to change the locks to the rental unit; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlord comply with the *Residential Tenancy Act,* regulation or tenancy agreement; and for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

The hearing was adjourned from January 21, 2022, and my Interim Decision was provided to the parties.

One of the tenants attended the hearing with an Advocate, and also represented the other tenant. The landlord also attended and was accompanied by the landlord's spouse. All who attended gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties have provided evidentiary material to the Residential Tenancy Branch and to each other, all of which has been reviewed and is considered in this Decision.

During the course of the first scheduled hearing, the tenants withdrew the application for an order that the landlord make repairs to the rental unit or property. The tenants' application for an order that the landlord comply with the *Act,* regulation or tenancy agreement refers to the application for an order limiting or setting conditions on the landlord's right to enter the rental unit. The landlord consented to an order that the landlord comply with the *Act,* regulation or tenancy agreement with respect to the landlord's right to enter the rental unit, and I so order.

At the commencement of the second day of the hearing, the tenants withdrew the application for an order permitting the tenants to change the locks to the rental unit.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically undue stress, anxiety, and for loss of a service or facility?

Background and Evidence

**The tenant** testified that this month-to-month tenancy began on November 1, 2014 and the tenants still reside in the rental unit. Rent in the amount of $1,850.00 was originally payable on the 1st day of each month, which has been increased over time and is now $1,928.00 per month, and there are no rental arrears. On October 21, 2014 the landlord collected a security deposit from the tenants in the amount of $925.00 as well as a pet damage deposit in the amount of $450.00, both of which are still held in trust by the landlord. The rental unit is a suite in a duplex, and the other side is also rented. Both sides of the duplex are owned by the landlord, and the landlord does not reside on the rental property.

In 2016 the tenant notified the landlord of faulty wiring, backward faucet handles, temperature issues and a lot of mold in the house. The house is very run-down and is almost 80 years old. The eavestroughs have been clogged for years and contain no downspouts, so flooding occurs.

The landlord did not want to put a new furnace in the house, saying he'd tear it down before he did that, and gave the tenants 2 space heaters. The tenants also got heaters themselves. The tenants are in their 70's and was pleased to hear that the tenants' Advocate would draft a letter to the landlord about required repairs, however considering previous dealings with the landlord, who is a little hot-headed and yells a lot, the landlord terrifies the tenant. The tenant put the Advocate's letter in the landlord's mailbox, but didn't speak to the landlord, and the tenant learned that the landlord tore up the letter. However, the landlord was upset and knocked on the tenant's door. The tenant told the landlord that he couldn't get downstairs, but the landlord called the tenant twice. The tenant had just been released from hospital, and

was afraid for his safety, shaking and very nervous. The tenant called the Advocate and was grateful that someone was intervening for the tenant. The tenant could not deal with the landlord. The tenant had a bad accident, and the landlord was well aware of that.

The tenant had asked the landlord to not increase rent in 2017. The landlord's response was to not increase rent so long as the tenants made no demands for repairs.

The tenants claim $4,000.00 for the verbal abuse from the landlord and harassment, causing unreasonable stress to the tenants, and $4,000.00 for compensation for having no furnace for 5 years.

**The landlord's spouse** testified that the tenants could have refused the electric heaters, filed a dispute, withheld rent and contacted Social Services in 2017.

The landlord did not tear up the letter composed by the tenants' Advocate. However, when the letter was given on September 8, 2021 the dispute was filed the next day, so there was no chance to talk to the tenants.

The landlord's spouse denies that the landlord has been abusive or harassing the tenants. A letter from the tenant next door has been provided for this hearing, which states that the landlord is never on the property, or abusive or threatening. The letter was written by the landlord's spouse, who explained the contents to the neighbouring tenant, and the neighbouring tenant signed it. The neighbouring tenant is about 75 years of age, and speaks English. There is no proof of harassment, such as pictures, videos, recordings or text messages to prove that because none exist. However, the letter of the neighbouring tenant states that the person is 80 years old.

A lot of repairs were completed; the lawn was replaced, deck was replaced, new washer and stove and bathtub installed, and the fence was repaired. The plumbing was re-done 2 years ago and a new furnace was installed.

**The landlord** testified that he has never entered on the property without permission since the tenants moved in. At some point the tenant asked the landlord to open the door because the tenants didn't have a key.

The tenant agreed that no new furnace would be installed and there would be no increase in rent for one year, but rent wasn't increased for 5 years from 2017 to 2021. Only in 2022 was the rent increased after the tenants applied for monetary compensation.

The landlord's evidentiary material states that the furnace was replaced in September, 2021 and has provided a copy of an Invoice dated October 27, 2021 for the sale and installation of a new furnace. Also provided is a heating services furnace checklist dated October 28, 2021 showing that the furnace is not safe to run and CO was detected.

**The tenants' Advocate** testified that the Advocate called the landlord on September 8, 2021, introducing herself and told the landlord that the tenants sought assistance with ongoing discrepancies about having no heat and a working furnace. The Advocate also told the landlord that the Advocacy would pay $450.00 per month directly to the landlord to assist with rent. The landlord was happy with that until the Advocate raised the issue of the furnace, stating that not having a working furnace was against the law. The Advocate was yelled at, screamed at, and was told the house would get torn down, leaving the Advocate with no opportunity to get a word in edgewise. The landlord also said he was calling 911 due to the Advocate causing high blood pressure, and wanted to talk to the Executive Director of the Advocacy. The Advocate transferred the call and when the Executive Director picked up the phone, the landlord hung up.

The Advocacy decided that based on the landlord's reaction, it would not be possible to work with the landlord effectively and applied for an emergency repair order for the furnace. On October 14, 2021 the Arbitrator ruled in favour of the tenants and ordered the furnace to be repaired immediately. During the hearing, the landlord was very aggressive and the Arbitrator had to tell the landlord many times to calm down and not interrupt, which is why the landlord's wife has testified today.

SUBMISSIONS OF THE LANDLORD'S SPOUSE:
At the time that the furnace broke in 2017, the landlord did offer to fix it but the tenants used that as a bargaining tool to avoid an increase in rent. The tenants preferred that. It was not the landlord's intent to make the tenants suffer, but that's what the tenants wanted. In hind-sight the landlord should have repaired it rather than be blackmailed. On September 8 the landlord received a call from the tenant saying that there was a letter, and the landlord tried to get ahold of the tenants but wouldn't take the call. The landlord was not given an opportunity to resolve it.

SUBMISSIONS OF THE TENANTS' ADVOCATE:
Five years is a long time to be without a furnace whether or not the tenants agreed. The landlord should have a sense of duty and ownership pride and what's right or wrong. The Advocate tried to resolve it, but based on how the Advocate and tenants were treated, this was the only resolution. It's an anxious situation that did not need to come to this.

Analysis

Firstly, the *Residential Tenancy Act* specifies that a landlord or tenant may not contract outside the *Act,* and the *Act* outlines the landlord's responsibilities:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
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> (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.

Further, the primary heating system is considered an emergency repair, and therefore is a service that is essential to the tenants' use of the rental unit.

> **27** (1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

Where a landlord fails to comply, the tenants may make an application for dispute resolution claiming compensation for that failure. That is not blackmail, even if the tenants requested that rent not be increased. The landlord still maintains the obligation of providing the rental unit as described in Section 32 above with the essential service of a furnace.

I have reviewed all of the evidentiary material and I've considered the testimony of the parties, including the written submissions of the landlord and letters. The tenants had no operable furnace from 2016 to 2021 and claim $4,000.00 for that time period, which equates to about $66.00 per month. Considering that rent at the time was $1,850.00 per month, I find the claim is entirely reasonable for the landlord's failure to comply with Section 32 of the *Act.*

The tenants also seek $4,000.00 for damages for loss of quiet enjoyment, caused by the landlord's aggressive and intimidating behaviour, including verbal abuse, causing stress. I refer to Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss which states, in part:

> "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."

I advised the parties that I would review the Decision of the director dated October 14, 2021 to ensure that I do not make any rulings on a matter that has already been adjudicated upon. That Decision carefully sets out the agitation of the landlord during that hearing, and considering the tenant's testimony that the tenants are in their 70's and that the landlord terrifies the tenants and are afraid for their safety, I accept that the tenants have not enjoyed quiet enjoyment of the rental unit, free from unreasonable disturbances of the landlord. The tenants were grateful for the Advocate intervening because the tenants couldn't deal with the landlord. That type of aggression was also contained in the affirmed testimony of the tenant's Advocate, who attempted to work with the parties regarding the dispute but was yelled at and screamed at, and ultimately decided to file the emergency application on behalf of the tenants.

I find that the landlord was determined to not replace the furnace until after the tenant's Advocate filed the application for emergency repairs, simply because the landlord did not raise the rent.

In the circumstances, I find that the tenants have established aggravated damages as sought in the amount of $4,000.00.

With respect to the landlord's consent to comply with the *Act* regarding entering the rental unit, the law states:

> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
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> > (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I grant a monetary order in favour of the tenants as against the landlord in the amount of $8,000.00 and I order that the tenants be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenants' application for an order that the landlord make repairs to the rental unit or property is dismissed, as withdrawn by the tenants.

The tenant's application for an order permitting the tenants to change the locks to the rental unit is hereby dismissed, as withdrawn by the tenants.

By consent, I hereby order the landlord to comply with the *Residential Tenancy Act* by refraining from entering the rental unit except as set out in Section 29 above, by consent.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $8,000.00, and I order that the tenants be permitted to reduce rent for future months until that sum is realized or may otherwise recover it.

This order is final and binding and may be enforced.

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 18, 2022

Residential Tenancy Branch