



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, FFT**

Introduction

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

- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 25 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlord with the notice of hearing and all materials by email sent to an email address provided as the address for service by the landlord. The tenant submitted into evidence a copy of correspondence from the landlord where they confirm their email address as the address for service of all documents on October 23, 2021 and a subsequent screenshot of the tenant having sent their materials to the landlord on that same date. The tenant also submitted correspondence from the landlord later that day confirming receipt of the tenant's materials. Based on the evidence I find the landlord duly served with the tenant's materials on October 23, 2021 in accordance with sections 88 and 89 of the *Act* and Regulation 43.

Issue(s) to be Decided

Should the landlord be ordered to provide services or facilities as required under the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

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

The tenant gave undisputed evidence regarding the following facts. This periodic tenancy began in October 2017. The current monthly rent is \$550.00 payable on the first of each month. A security deposit of \$275.00 was paid at the start of the tenancy and is still held by the landlord. A copy of the written tenancy agreement was submitted into evidence. The agreement provides that included in the monthly rent is the electricity and heating.

The respondent assumed this tenancy from the previous landlord when they purchased the rental property in the autumn of 2021. The tenant testified that upon assuming the tenancy the landlord promptly shut off electricity and heating to the rental unit as of October 17, 2021. The tenant informed the landlord that these utilities are included in the monthly rent but the landlord refused to provide these services as required. The landlord wrote in their email correspondence to the tenant:

If you need electricity you have to sign your own contract with BC Hydro

The tenant provided subsequent email correspondence with the landlord seeking that they restore the utilities as required under the tenancy agreement and the landlord steadfastly refusing to do so on the basis that they do not deem it to be economically feasible. The tenant testified that the landlord has communicated to them that they intend to issue a Notice to End Tenancy as they believe they would be able to find a new occupant at a significantly higher monthly rent than that currently paid by the tenant.

The tenant testified that the rental property is located in a region of the province with average winter temperatures -15C. The tenant has been unable to occupy the rental unit as it is without heating or electricity. The tenant testified that they have continued to

pay the monthly rent in the amount of \$550.00 to the landlord despite being unable to use the rental unit.

Analysis

Pursuant to section 65 of the Act I have the authority to reduce past or future rent by an amount equivalent to a reduction in a tenancy agreement where there has been non-compliance with the Act, regulations or tenancy agreement by the landlord. This section, in conjunction with section 67 of the Act, allows me to determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 32(1) provides the obligation of a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In the present circumstance it is plainly obvious on the face of the signed tenancy agreement that heating and utilities are included in the monthly rent of \$550.00. I accept the undisputed evidence of the tenant that since October 17, 2021 they have been without heating or electricity in the rental unit. I find no basis for the landlord to withhold these essential utilities and accept that the breach on the part of the landlord has had a significant detrimental effect on the value of this tenancy.

I find that a rental unit that is without heating or electricity during the winter months is not suitable for occupation.

I therefore find that the tenant has lost all of the value of the tenancy from October 17, 2021 to the present time.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award to the tenant in the amount equivalent to the loss in the value of the tenancy from October 17, 2021 to the date of the hearing, February 28, 2022 of \$2,466.10 on the following terms:

October 17, 2021-October 31, 2021 = 15 days x \$17.74/day =	\$266.10
November, 2021 – February, 2022 = 4 months x \$550.00/month =	<u>\$2,200.00</u>
	\$2,466.10

I order that the landlord restore the electricity and heat to the rental unit immediately.

Until such time as the landlord restores these utilities, I reduce the tenant's monthly rent by \$550.00 to \$0.00. I order that the tenant's rent will return to the normal monthly amount under the tenancy agreement and the Act in the month following the restoration of these services.

As the tenant was successful in their application they are also entitled to recover their filing fee from the landlord.

Because I am concerned with the fundamental nature of the violation on the part of the landlord by terminating heating and electricity in a rental unit making it wholly unsuitable for occupation, I am sending a copy of this decision to my manager.

My manager will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials from this dispute resolution file to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of this dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this decision. The orders made in this decision are, however, final and binding and cannot be challenged or set aside in the administrative penalty process.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

The landlord is ordered to restore the heating and electricity to the rental unit.

I order that the monthly rent for this tenancy is reduced by \$550.00. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the restoration of these utility services.

I issue a monetary order in the tenant's favour in the amount of \$2,566.10, allowing for recovery of the loss in the value of the tenancy and their filing fee. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an 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: February 28, 2022

Residential Tenancy Branch