



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; for an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed; and to recover his \$100.00 filing fee. However, at the outset of the hearing, the Tenant advised that the repairs have been completed on a temporary basis, anyway, and therefore, he withdrew his claim for repairs to be made.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 40 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on April 8, 2022. The Tenant provided a Canada Post tracking number as evidence of service. Based on the evidence before me, I find

that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and he confirmed his address in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Tenant that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the rent be reduced for repairs, services or facilities agreed upon, but not provided, and if so, in what amount?
- Is the Tenant entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed details in the tenancy agreement in the hearing, saying that the fixed-term tenancy began on September 1, 2017, and ran to August 31, 2018, and then operated on a month-to-month or periodic basis. The Tenant said the tenancy agreement requires him to pay the Landlord a monthly rent of \$1,435.00, due on the first day of each month. The Tenant said he paid the Landlord a security deposit of \$700.00, and no pet damage deposit. He said the Landlord still holds the security deposit in full.

In the hearing, the Tenant said that they had been without hot water in the rental unit for six months. The Tenant said they are claiming \$100.00 for each month they were unsuccessfully trying to get the Landlord to get the Tenant's hot water working. In his Application, the Tenant said:

Our hot water tank has been automatically shutting off randomly for 6 months now. This can happen multiple times a week and up to several times a day, causing a disruption of lifestyle and needs for myself, my wife, and our two young

kids (2.5 and 4 years old). We are asking for \$100 per month that we've been requesting repairs on the hot water tank, plus \$100 for the dispute resolution application fee, for a total of \$700 reimbursement.

The Tenant submitted a copy of the tenancy agreement, which indicates that "water" is included in the rent.

The Tenant documented their request for assistance in this matter, starting with an email to the property manager's assistant, A.S. In an email to A.S. dated September 30, 2021, the Tenant said:

Hello [A.]

We've been having trouble keeping our hot water tank on. Both myself and our neighbour upstairs have been trying to start it again today (the pilot light) but to no avail. Would you be able to send someone to look at it please?

Thanks
[Tenant]

The Tenant received an immediate form letter email response advising him that his enquiry had been received, but "due to a high volume of emails, our response time may be longer than usual." Among other things, this reply email included a suggestion that the emailer provide their name, address, phone number, and specific details about the request. The Tenant emailed back with such details, repeating some of what he had already said. The next morning, [A.S.] emailed back, saying: "...we will have someone attend asap."

The Tenant indicated that on October 1, 2021, the Tenant's wife, [R.B.], received a phone call from a technician stating that he was at the residence and was asking to be let in to look at the hot water tank. The Tenant wrote in submissions:

However, as we had no advanced notice when the technician would be coming, all residents who could have given him admittance were at work.

[R.B.] spoke with the technician and asked if he could come back to the residence around 4:30 or 5pm when someone would be home to admit him. If not, she would try to leave work early to let him in. Technician said he would

check and then call her back. Technician never called back. Below picture is a screenshot of [R.B.'S] call log, showing the technician's call.

There was more email interaction between [A.S.] and the Tenant on October 1, 2021; however, the next contact provided was on December 17, 2021, in which the Tenant again emailed [A.S.] to ask to have someone come look at the hot water tank, because:

The plumber has still not returned to check our hot water heater and it is going out almost daily. We have to continually try and relight the pilot light to get it to work.

Could you please send someone to take a look at it? Would you also have them call in advance to say when they are available to come and not just show up at the door, as we may be at work.

This was followed by another email from the Tenant to [A.S.] on December 21, 2021, asking again if someone could come to address the hot water heater problem. The Tenant immediately received the standard form letter (as above) in response.

This type of interaction went on for the next few months. The Tenant indicated that on February 4, 2022, he called a plumbing company to see if they would be able to come look at the hot water tank. The technician said he was in the area and might be able to stop by. He asked the Tenant to send the address, although he was unable to attend that day, and he asked the Tenant to send pictures of the hot water tank, instead. The technician responded as follows:

Hello

You have 2 options:

Option 1 *Recommend*

Replace hot water tank with similar specs

Add-seismic bracket

-expansion tank

-flex gas line

\$1900 +tax

Option 2

Replace thermocouple

Not %100 of that will fix the problem

Service rate is \$120/hr + \$30 van/travel + tax

The hot water tank is 10 years old.

I know that insurance

Companies do not cover any damages

To property if the tank

Exceeds 10 or 12 year.

Let me know what you would

Like to do.

The Tenant included this in a forward to the Landlord, and his response included the following:

Given that we have now had 4 counts of water damage to our place already since we have lived here and one of those did involve the hot water tank, I think it would be best to replace the tank. That said, I am not willing to pay \$1900 + unless I know for sure that I will be reimbursed by [the Landlord] for the total amount taking off our rent.

Please respond with what the land owner would like to do. Or please provide us with his/her number so we can contact them as this has now been over a month of us trying to get this issue resolved and it is getting worse.

After a few more form letter replies from the Landlord, the Tenant emailed on February 7, 2021, to ask if [A.S.] had received his email with the plumber's update. After receiving no response, the Tenants again emailed [A.S.] asking for a response.

The Tenant indicated in his written submissions that on February 28, 2022, his wife, [R.B.], called the Landlord's office, to no response, so she left a detailed voicemail message about the hot water tank. The next contact reported was on March 23, 2022, when [R.B.] delivered a letter to the Landlord's office to the property manager, [M.C.]. [R.B.] then immediately emailed the same letter to [A.S.]. The Tenant's note about this correspondence was as follows:

This letter addressed the hot water tank issue we have been having, along with the fact that [the Landlord] has not consistently responded to our emails and phone calls, nor have they resolved the issue, plus several others that we have informed them about. We asked them to take action to fix the hot water tank

within one week's time (which was March 30, 2022), or we would file a Dispute Resolution against them.

In the hearing, the Tenant said:

We sent that and then we heard no response by the deadline, so we filed for dispute resolution. One week later, [A.S.] emailed me asking if I'd heard from plumber.

I responded that, no, we hadn't this whole time. 20 minutes later, [M.C.], herself, responded, saying sorry – haven't had. . . She said a plumber named Christian would call, that he couldn't make it that night, but we responded to [M.C.], that as we filed for RTB and this is what we're asking for, hot water to be fixed, and compensation. If they are willing to agree to this, we will withdraw our RTB Application.

She said compensation for what? I am hearing for this the first time.

The next day a plumber came out; he cleaned a filter and that's all he did, but it has worked since. But he strongly implied that this would happen again. He gave his direct information to contact him if it needs to be replaced, and he will let them know.

[R.B.] did ask when he was there and he said the filter was not our responsibility. He had to buy a special vacuum attachment, and he had to get something to slide underneath. This is not something you should be doing, he said. And the tank is 10 – 12 years, and should be replaced. That's two plumbers who said that.

I did note in package that the plumber told me that the tank was off and had to be restarted again. Even he saw it as off.

As for compensation, we didn't want to be greedy, and \$100.00 seems fair.

I should note, even in the letter we sent them, there are other issues that aren't being responded to.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 32 of the Act and clause 26 of the tenancy agreement requires the Landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

As water is included in the rent, pursuant to the tenancy agreement, I find that providing hot water to this rental unit is an essential element in making it suitable for occupation. Problems with appliances happen and landlords are obliged to complete repairs in a timely manner and in good faith.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. I find that by failing to repair or replace the hot water tank for six months, the Landlord effectively removed this service or facility from the rental unit.

Policy Guideline #22, states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Hot water in a residence is critical to a number of human activities. A lack of hot water impacts a person's ability to shower, clean, do laundry, and other assorted actions. I find from the evidence before me that a hot water tank is fundamental to using a rental unit fully. I find the Landlord's actions in this matter indicate a significant failure in their duty to meet their obligations under the Act. The Tenant said their response to the hot

water tank issue was consistent with a “common pattern of not responding” to issues that arise for the tenancy. I find that the Tenant was thorough in providing dates on which contact and actions (or lack thereof) occurred in this matter; I find that this evidence reveals the Landlord’s unacceptable failure to respond in a satisfactory manner to the deficiencies in the residential property.

I find that the Tenant has established a solid ground for compensation in this matter. The Tenant has requested recovery of \$100.00 per month of rent for the six months of having gone without a reliable water tank. I find that this is insufficient to compensate them for the inconvenience they have inevitably and unnecessarily endured for six months. I find that at least ten percent of their rent per month is more appropriate for the inconvenience this matter has caused this family of four for much too long.

As such, I award the Tenant with 10% of his rent or **\$143.50** per month for October 2021 through March 2022, when the Landlord had the opportunity to meet their obligations to this tenancy, but failed to do so. Accordingly, I **award** the Tenant with **\$861.00** from the Landlord pursuant to section 67 of the Act.

Given the Tenant’s success in this matter, I also award him with recovery of his **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act.

The Tenant is authorized to deduct \$961.00 from one upcoming rent payment in complete satisfaction of these awards, and pursuant to section 72 of the Act.

As a CAUTION TO THE LANDLORD, please note that the RTB now has a Compliance and Enforcement Unit (“CEU”) that ensures compliance with the residential tenancy laws of BC. On the CEU website it states: “When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties.” Further, in terms of financial administrative penalties that can be imposed, the CEU website states:

. . .

For continued non-compliance, financial penalties of up to \$5000 per contravention per day may be levied. In addition, if any financial penalties are not paid the RTB can refuse applications to dispute resolution. The RTB may also publish CEU decisions, information may include the name and address of

the person or business, the nature of the contravention, and the amount of the penalty.

[emphasis added]

Conclusion

The Tenant is successful in his Application, as he provided sufficient evidence of the Landlord's failure to take appropriate, necessary action to repair or replace the residential property's hot water tank in anything close to a timely manner.

The Tenant is awarded 10% of his rent or **\$143.50 per month** for each of the six months the Tenant and his family were without a reliable hot water tank, for a total award of **\$861.00**. The Tenant is also awarded recovery of his **\$100.00** Application filing fee from the Landlord for a total award of **\$961.00**.

The Tenant is authorized to deduct \$961.00 from one upcoming rent payment in complete satisfaction of these awards, and pursuant to section 72 of the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 27, 2022

Residential Tenancy Branch