



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, RR, RP, PSF, OLC, 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:

- a monetary order of \$371.82 for damage or compensation under the Act;
- an Order to reduce the rent by \$600.00 for repairs, services or facilities agreed upon but not provided;
- an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed;
- an Order to provide services or facilities required by the tenancy agreement or law;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- recovery of their \$100.00 Application filing fee.

The Tenant and two agents for the Landlord, P.P. and R.M. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agents said they had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Agents confirmed that they had not submitted any documentary evidence to the RTB or to the Tenant.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before the Parties testified, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. The Tenant indicated different matters of dispute on her Application, which I find are not sufficiently related to all be decided in this one-hour proceeding – however, I also find that there is overlap between the claims, so we might be covering more than just one request. I asked the Tenant to tell me which of her claims is the highest priority for us to review in this hearing. The Tenant requested that we review her monetary claims in the hearing, which we did. The Tenant's other claims are dismissed with leave to reapply, pursuant to section 62.

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

### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of her \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the fixed-term tenancy began on October 1, 2019, ran to September 30, 2020, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$1,400.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit, and that the Landlord still holds the security deposit in full for the tenancy.

In her documentary submissions, the Tenant included four claims in a monetary order worksheet, which claims we reviewed in the hearing, as follows.

#### **#1     SPACE HEATER → \$191.46**

The Tenant explained that the Landlord should pay her for the space heater she

purchased during the tenancy for the following reasons. The Tenant said:

In previous emails I submitted, I spoke with [H.G.] about not having heat. Zero heat for months. He said we should talk to [R.] and they'd cover a space heater and hydro bills.

I didn't call [R.], because he harasses me and my partner; I don't trust him. He hasn't compensated anything. I was told I would be reimbursed for a space heater and my [electricity] bill.

The Agent said:

Well, maybe I would like to have [P.P.] start with the history of the building, and address the issues with the heating first, to give a grounding. And we can address the Tenant's concerns as to what steps are being taken to mitigate the issue in the future. As far as I understand, the heat has been restored

[P.] can speak to what were the issues, this is addressing something that happened a year ago. I presume steps were taken back then.

The Agent, P.P., said:

For context – this building is a multi-floored, multi-family building, and an older building. It has single pane windows, insulation – it's not typical of buildings built 60 years ago. It also has a gas-fired, double boiler system that serves the units with hot water heater baseboard units.

This is the original heating system when it was built. As with anything that gets old, it is not going to run as optimally as when it was new. I'm not an absolute expert, but I've been in the real estate business for 40+ years.

The system with the piping there now requires from the onset ongoing, specific maintenance – it is bled out on a consistent basis - to mitigate residue that occurs. It started to become known that, and earlier that [the Tenant] was making complaints about her heating. Other units were getting some heat, some interim heat. We were dealing with Covid then, too, and it was difficult to get maintenance people to come in; they had difficulties with their personnel. Tens of thousands of dollars and a multitude of things were done by the owners to make sure the boilers were working properly. There was materials delays – it's not



I might add there's no specific and distinct way to know how much the additional cost to use the space heater, but a small proportion of that total bill should be allocated to that space heater cost, but not the whole things – maybe 15 – 20%.

It's reasonable and fair if we could determine with [the Tenant's] evidence today, what her [electricity] bill was prior to using the space heater, and from that we can decipher more accurately how much the heating bill is comprised of.

[R.M.] said:

The use is noted on each bill as an average use per month, so there's a history, and the use is approximately during the summer months from May through ... is about a little bit more than a third of the bill, so in other words there would be three times the use in January through March, and March through May would be about three times as much use.

So approximately of the \$99.15, \$60.00 for heat, the other would have been for her regular use of [electricity].

The Tenant said:

First, I have the bill in front of me – one is 69% higher. When speaking about the space heater, and you cannot get one for less than that - we had to heat the entire place with one heater. It was during Covid, I was doing school work online, and we were freezing cold. You couldn't get comfortable. We needed one for the main room and the living room.

If you use the amount that is higher than the previous year – 70%, I would be happy.

While they were trying to fix the boiler behind the scenes – I asked for information and was told I have a discrepancy – that they were fixing it and they were deciding the cheapest way to fix it. I understand it's an old building. My right as a tenant is to have heat in my apartment.

I note that on the first page of the tenancy agreement, it states that the Landlord will provide heat as part of the rent.

An Agent said:

Her proposal is agreeable to use the amount it is higher in 2022 to 2021; that is as close as we can have by evidence in front of us. Not the entirety of the bill, but let's say 68 or 70% of the bill. Given that last year had also been colder than usual, that's not unreasonable to see that it would have been the use. So, we can go with those numbers.

The Parties agreed that the first bill is 68% more with the use of the space heater – all agree that that much of the bill is reasonable. And they agreed that the second bill is 70% higher - so that much of the claim is agreed.

**#3      RENT REDUCTION – NO HEAT → \$600.00**  
**→ Jan 5 – May 3 at \$150.00 per month**

The Tenant explained this claim, as follows:

The heat itself was still wholly inadequate. It was freezing - you can't not provide heat. It's an emergency repair if you don't have heat. We didn't have anyone coming in to look at the heat. They didn't care and for me I'm paying a lot for that apartment, and I pay to have heat to live in it and enjoy my own home. That prohibited me for doing that. So, I should pay less for getting less.

[R.M.] said:

That particular portion of claim, to be candid, is opportunistic. The owner of the property was actively pursuing remedies from day one to get the entire system up and running. They're operating in the mechanical room under the building where the majority of the piping is, and so those trades were here, and would not have gone into the units when they're working on the boilers in the mechanical room. So, it is unfair that the Tenant is speaking about what she wouldn't know about. She didn't know the frequency of these trades going to the building.

So, when she has a right to peaceful enjoyment, and we believe by paying for her space heater, and her extra hydro bills is an adequate remedy in this case. This was not a landlord sitting on their hands.

In this case, the Landlord was very active and continues to be in finding a solution that does not involve vacating the building. They want to stay in this building, and the other tenants do, so they were looking for a remedy that did not require vacating.

We have agreed to – my predecessor may have agreed to - reimburse her for both the heater and the hydro use for during the time when the repairs or the anticipated repairs were being done, so we basically agreed to provide heat, otherwise, and incur the cost of heating the unit while we are addressing those issues. On our side, it would be better to be able to spend this money on fixing the unit permanently than refund money when we have already agreed to do so, otherwise.

The Tenant replied:

I find it very offensive to be called opportunistic. They don't do repairs and keep up the building. Secondly, I find it very insulting to be called opportunistic. Nobody... I was asking about what was happening, and I was given zero answers, and I saw zero people. I don't believe that they were actively working on it, because they have been actively working on it since I lived there. My heat was just returned. We were cold the entire last month, because we didn't have heat again.

I asked the Tenant how she determined that the amount she is claiming for this is appropriate in the circumstances. She replied:

I am willing to compromise, but I do want to be compensated. I just thought about what I am paying for in my unit - paying for appliances, a house, a space, the balcony and dividing it up. Heat is a very large part. Without heat it is unlivable, so it should be highly valued.

The Agent responded:

I'd like to go back to the evidence – we do have numerous emails that start in November 2020, specifically the email from Wednesday, November 11<sup>th</sup> – there is an email specifically saying the heat has been on and off for the past two months. In other words, there were some instances of heat or it was working sometimes and not other times. It isn't that it has consistently been off, as stated in these emails.

Also, we have evidence to show that we called in and asked the plumbing mechanical companies to address these issues and we have found that there was a bigger issue with the system itself. And we suggested and agreed to compensate for the heat itself, and I think that that's what we have done - we are

prepared and agreed to compensate [the Tenant] for the heater and the hydro. And the time has gone on, and to address her last statements, we do have a plumber working on the building, and they have worked in the last couple weeks restoring heat starting with the [Tenant's] floor, and I understand that the heat has been restored to your unit?

The Tenant confirmed that, "It is currently working, as of about a week ago, but for the periods I am speaking of it was totally off."

The Agent said:

Yes, maybe on and off in the past, but we think that this solution we came up with is going to address it. We have provided a way for you to heat your space, you could have purchased two or three heaters and we would have reimbursed you for all the hydro and we are ready to do that and our position has not changed.

### Analysis

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

#### **#1 SPACE HEATER → \$191.46**

In the hearing, the Agents agreed to pay for the Tenant's space heater. I, therefore, **award the Tenant \$191.46** for the cost of her space heater, pursuant to section 67 of the Act.

#### **#2 ELECTRICITY – BC HYDRO BILL → \$99.15 for January 5 to March 4 → \$81.21 for March 5 – May 3**

In the hearing, the Parties agreed that the Landlord would pay 68% of the first hydro bill and 70% of the second bill, to reflect the amount of electricity used to heat the rental unit during the relevant time periods. Accordingly, I find the Landlord has agreed to pay \$67.42 for the first time period, and \$56.85 for the second. I, therefore, **award the Tenant \$124.27** for recovery of the added electricity the Tenant had to pay, due to the space heater, and pursuant to section 67 of the Act.

#### **#3 RENT REDUCTION – NO HEAT → \$600.00**



**→ Jan 5 – May 3 at \$150.00 per month**

Based on the evidence before me, I find that the Agents were taking steps to resolve the heating problem in the residential property, which did not require them to work in the tenants' rental units. As such, I find the Tenant's following statement to be inaccurate:

We didn't have anyone coming in to look at the heat. They didn't care and for me I'm paying a lot for that apartment, and I pay to have heat to live in it and enjoy my own home.

I find that the Landlord was working on this issue in the background, and that they succeeded in restoring heat to the residential property.

I find that the Tenant did not provide sufficient evidence to support this claim for additional compensation, which she requests in addition to being reimbursed for the space heater - which the Tenant may continue to use and keep - and being reimbursed for the electricity cost for using the space heater in the relevant time period.

Further, I find from the Agents' testimony that the Tenant could have purchased additional space heaters for which she could have been reimbursed, had she advised the Landlord that one heater was insufficient. If the Tenant was still cold, it raises questions in my mind about why she did not request more space heaters.

Given these findings, **I dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

Summary and Offset

I have awarded the Tenant the following amounts:

\$191.46	- space heater;
<u>\$124.27</u>	- extra electricity cost from using space heater
<u>\$315.73</u>	- Sub-total
<u>\$100.00</u>	-recovery of Application filing fee
<b><u>\$415.73</u></b>	<b>TOTAL AWARD</b>

The Tenant is also awarded recovery of her \$100.00 Application filing fee from the Landlord for this claim. The Tenant is awarded a total of **\$415.73** from the Landlords for having to use a space heater to heat the rental unit during the time period when I find that the Landlord provided insufficient heat. The **Tenant is authorized to deduct**

**\$415.73** from one upcoming rent payment in complete satisfaction of these awards, pursuant to section 72 of the Act.

Conclusion

The Tenant is predominantly successful in her monetary claims, as she provided sufficient evidence to support her burden of proof on a balance of probabilities to be awarded \$315.73. The Tenant is also awarded recovery of her \$100.00 Application filing fee from the Landlord for a **total award of \$415.73**.

The **Tenant is authorized to deduct \$415.73** from one upcoming rent payment in complete satisfaction of these awards. The Tenants other claims were dismissed with leave to reapply.

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: November 28, 2022

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Residential Tenancy Branch