



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **ERP, FFT**

### Introduction

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

- an order to the landlord to make emergency repairs pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to the relief sought?

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 parties agree on the following facts. This periodic tenancy began on March 1, 2022. Monthly rent is \$2,000.00 payable on the first of each month. The tenants are responsible for paying all of their own utilities. The rental unit is a single detached house.

The parties agree that when the tenancy began there was a wood burning stove that provided heat to the property. The stove was the subject of a Wood Energy Technology Transfer (WETT) inspection in March 2022. A certified technician deemed the stove to not be compliant with local codes and it was subsequently disconnected. The stove remains inoperable as at the date of the hearing.

The parties agree that the primary source of heating for the rental property are electric baseboard heaters. The tenants submit that the heaters are costly and inefficient as they require a great deal of electric power to operate. The tenants also submit that in instances where there are electrical outages they are left with no source of heating and therefore require a secondary heating source in the form of the wood burning stove.

Tenant MC testified that they do not dispute that the stove was never the primary heating source but say it was an element of the tenancy and a reason they chose to enter the tenancy agreement. The tenants seek an order that the landlords either restore the stove to working conditions or provide an alternate secondary source of heating for the rental unit in case the baseboard heaters are insufficient or malfunction.

### Analysis

Section 33 of the *Act* describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- **the primary heating system**
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

I accept the undisputed evidence of the parties that the wood burning stove in the rental unit has not been working since March 7, 2022. I further accept the evidence of both parties that the wood burning stove is not the primary heating system for the property. Both parties confirm that the primary heating system for the rental property are the electrical baseboard heaters.

The tenants’ own testimony was that they do not dispute that the wood stove is not the primary heating source. The tenants submit that the wood stove was a secondary heating source which is necessary in case the electrical system fails rendering the baseboard heaters inoperable. The tenants made reference to past instances of electrical failure and outages but did not suggest that this was attributable to any malfunction in the electrical or heating systems.

Based on the undisputed evidence of the parties I find that the primary heating system for the rental property, the electrical baseboard heaters, are operating normally. While the tenants suggest that the electrical heaters are inefficient, costly and prone to failure when there are power outages, I find insufficient evidence that these complaints are attributable to any malfunction.

I accept the evidence of the parties that the wood stove is a secondary or backup heating source and not the primary heating system for the property.

I find that repairs to a secondary heating system is not an emergency repair as defined in section 33 of the *Act*. Based on the submissions of the parties I find that there is a functioning primary heating system in the form of the baseboard heaters. I therefore find no urgency to repair the wood burning stove. I further find that inability to use the

stove does not pose a risk to the health or safety of anyone nor is it necessary for the preservation of the residential property. Based on the undisputed evidence that the wood stove failed to meet safety standards and achieve WETT certification I find that its use would, in fact, cause risk to health and safety of the tenants and the residential property.

While I accept the evidence of the parties that the wood stove was initially operational at the start of the tenancy and the tenants may have a basis for a claim for rent reduction or a loss in the value of the tenancy, these matters are not before me in the present application.

As delineated in Policy Guideline 51 the expedited hearing process is reserved for urgent matters where there is an imminent danger to health, safety or security. I find that it would be an inappropriate use of the expedited hearing process to amend the present application to consider claims for repairs that do not meet the definition of emergency repairs or a reduction in rent. The tenants remain at liberty to file a separate application for such claims through the ordinary dispute resolution process.

For these reasons I dismiss the present application of the tenants for emergency repairs. I find the work requested by the tenants is not emergency repairs as set out in the *Act* as it is not for the purposes of repairing the primary heating system of the property.

As the tenants were unsuccessful in their application they are not entitled to recover their filing fees from the landlords.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: November 3, 2022

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Residential Tenancy Branch