



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding **C.B.T. HOLDINGS LTD.**  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ERP, FFT

### Introduction

On November 21, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an emergency repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with L.H. attending as an advocate for the Tenant. M.P. attended the hearing as well, and he advised that he was the property manager that represented the Landlord. As such, the Style of Cause on the first page of this Decision has been amended to reflect the correct name of the Landlord.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no disputes over receiving the Tenant’s Notice of Hearing and evidence package. As such, the Tenant’s documentary evidence will be accepted and considered when rendering this Decision. M.P. confirmed that there was no documentary evidence submitted by the Landlord for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair Order?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2019, that rent was currently established at an amount of \$1,674.00 per month, and that it was due on the first day of each month. A security deposit of \$825.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

In addition, all parties agreed that the radiators in the rental unit were considered the primary heating system, that the Tenant first informed the Landlord that this system was not working correctly in September 2019, that the Landlord was continually reminded of this issue over the years, and that it is still not functioning correctly. They confirmed that only the Tenant's December 2020 rent was reduced by half, due to this problem, and that the Tenant was given an oil heater to use as an alternative source of heat. They acknowledged that the only solution to date was that the Tenant was given an additional oil heater on November 9, 2022, to address this ongoing lack of heat.

The Tenant advised that she cannot use the oil heaters on specific areas as it will trip the breakers. As well, she noted that she does not feel safe leaving these heaters on all the time. Moreover, the tenancy agreement indicates that heat is included; however, she is responsible for the costs of electricity, and she has been incurring the costs associated with the use of the oil heaters.

M.P. advised that the radiators are approximately 100 years old, and that the Landlord was aware since 2019 that the Tenant's radiators were "not working correctly". Although, it is his estimation that they are working to 50% efficiency. He stated that in order to correct this problem, the entire heating system in the building must be shut down and bled, and that will render all of the residents without heat for weeks.

Despite the Landlord being aware of this problem for years, M.P. could not provide an explanation for why the Landlord did not complete any repairs to this system during warmer months of the year. He testified that he suggested to the Landlord that baseboard heaters could be installed in the building instead. However, the Landlord claimed that there was not enough power in the building to have this hooked up.

He submitted that the rental unit was "not the warmest in the world", but was not "unliveable". He stated that the Landlord's proposal to address this problem was to provide oil heaters to the Tenant as an alternative, while compensating the Tenant for the cost of additional electricity required to operate the heaters. However, he acknowledged that despite his claims that the Landlord offered compensation in lieu, none has been given to the Tenant for the cost of the extra utilities.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property 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, makes it suitable for occupation by a tenant."

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required.

### **Emergency repairs**

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,

- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
  - (c) made for the purpose of repairing
    - (i) major leaks in pipes or the roof,
    - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
    - (iii) the primary heating system,
    - (iv) damaged or defective locks that give access to a rental unit,
    - (v) the electrical systems, or
    - (vi) in prescribed circumstances, a rental unit or residential property.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

When reviewing the totality of the submissions before me, the consistent and undisputed evidence is that the radiators in the rental unit are the primary heating system, and I am satisfied that this issue would fall under the emergency repair Section of the *Act*. I am also satisfied that the Landlord has been alive to this issue since the Tenant made them aware of it in 2019, and that the Landlord has failed to take the necessary steps to remedy this situation in a timely manner, as is their responsibility as a Landlord.

Furthermore, given the length of time that this has been ongoing, the Landlord had ample opportunity to undertake these repairs in warmer months, so as not to affect other residents of the building. However, it is clearly evident that the Landlord has refused to make the necessary repairs as they did not want to spend the money to do so. The only remedy to this was to offer the Tenant a stop gap solution of providing oil heaters. As well, in spite of this insufficient remedy, the Landlord also offered to

compensate the Tenant for additional utilities required to operate these heaters; however, no compensation has been granted to the Tenant to date other than the one-time deduction of a half month's rent.

As it is the Landlord's responsibility to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, I find that they are responsible for rectifying this emergency repair issue. Based on my assessment of the evidence before me, I am satisfied that the Landlord has been intentionally negligent in addressing this issue for years. As the Landlord has been aware of this ongoing issue for such a significant period of time, I **Order** the Landlord to hire a qualified professional to investigate and assess the nature of the heating system within a week of being deemed to receive this Decision.

I further **Order** that the Landlord have the necessary repairs commence, by a qualified professional, within a week of receiving the assessment of the required repairs. As a note, the Tenant may serve a copy of this Decision to the Landlord in a manner in accordance with the *Act* to expedite receipt of this Decision, and consequently the start of the emergency repair Order.

I note that the Landlord is faced with the possibility that complying with these Orders would result in the other residents of the building going without heat. However, I emphasize that this outcome is solely as a result of the Landlord's continuous inaction and negligence. I also reiterate that the Landlord could have undertaken these repairs at any other warmer time of the year, which would have mitigated any of these problems. Of course, the Landlord would now likely face additional problems with other residents in the building and would likely be required, at minimum, to compensate those residents for their loss as well. However, again, these consequences are all due to the Landlord's own ongoing neglect and ambivalence, which was likely borne out of an unwise attempt at refraining from paying for necessary expenditures and repairs.

The Landlord is cautioned that failure to comply with the above noted **Orders** could lead to justification in a Tenant's future Application for compensation. As well, as an aside, the Landlord is cautioned from continuing to breach the *Act* by failing to complete necessary repairs in a timely manner. The Compliance and Enforcement 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 repeated matters of contraventions of the *Act*, and the sole authority to determine whether administrative penalties are warranted in certain

circumstances. The Tenant can contact the Residential Tenancy Branch to inquire about initiating an investigation by the Compliance and Enforcement Unit should they believe that the Landlord is continuing to attempt to circumvent the *Act*.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the filing fee in the amount of \$100.00, which she may deduct from the next month's rent or otherwise recover from the Landlord.

### Conclusion

I **Order** that the Landlord complete the following actions:

- As soon as is reasonably possible, and within a week of being deemed to have received this Decision, the Landlord must hire a qualified professional to investigate and assess the nature of the issue in the primary heating system.
- As soon as is reasonably possible, and within a week of receiving the qualified professional's recommendation for repairing the primary heating system, the Landlord must have the necessary repairs commence. These repairs must be fully completed within a reasonable period of time after the work commences.

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: December 15, 2022

---

Residential Tenancy Branch