



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KIDD MANAGEMENT LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      ERP, FFT

### **Introduction**

The Tenant filed the Application for Dispute Resolution (the “Application”) on January 5, 2023 seeking an order that the Landlord make an emergency repair to the rental unit. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 30, 2023. In the hearing, I explained the hearing process and provided both the Landlord and the Tenant the opportunity to ask questions.

At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding the Tenant served to them, including the Tenant’s evidence. Reciprocally, the Tenant stated they received the Landlord’s prepared evidence.

### **Preliminary Matter – emergency repairs**

The Tenant described in detail the issue they are facing within the rental unit, with heating not being adequate within. I find this issue, described in more detail below, is not urgent, and does not fit within the consideration listed in s. 33(1) that define “emergency repairs”. This is not a situation that is *urgent*, in terms of heat being present in the rental unit, and not entirely absent, as the Tenant readily stated in the hearing. There is heat present in the rental unit; I find the situation is not that of an emergency.

The Act s. 64(3) permits me to amend an application for dispute resolution. Given that the Tenant described a repair in the rental unit that is not an emergency, I amend their Application to address their rights and the Landlord’s obligation concerning repairs.

### **Issues to be Decided**

Is the Landlord obligated by s. 32 of the *Act* to make repairs to the rental unit as requested by the Tenant?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### **Background and Evidence**

On their Application, the Tenant presented the issue of heating in the rental unit. They presented their issue with the installed furnace, which “was barely blowing and barely warm.” The Tenant also stated that they pay excessive electricity bills and have been using space heaters.

The Tenant set out the structure of the rental unit. This was a modified structure of what was originally a manufactured home, with an extension. The heating within the rental unit is a mix of baseboard heaters and a furnace. This means that there are “varying rooms, with varying temperatures”. The Landlord had replaced a baseboard heater within the rental unit, on December 6, 2022.

In their evidence, the Tenant presented messages between them and the Landlord, relevant to the heating issue. In October, the Tenant inquired on cooler air blowing in, and this led to the Landlord making adjustments on insulation. There was an acknowledgement that this led to the need for space heaters. In late October, the Tenant queried the Landlord on this insulation impacting what they pay for electricity. Specifically, the Tenant’s point to the Landlord was that their heating bill amount had already doubled by that time, being only October, prior to the onset of winter.

By mid-November, the Tenant was inquiring on a proper inspection on the furnace.

The Tenant hired a technician to come in to inspect the furnace, after notifying the Landlord and querying on repairs. In scheduling a technician visit, the Landlord repeatedly asked for clarification that the furnace was, in fact, working. The Tenant clarified, on November 28:

. . . the furnace blows barely any warm air . . . there are 2 vents blocked off from my own doing as they blow no air at all and it’s a cold draft. I have to crank the furnace to 30 and that barely does anything

To this, the Landlord responded there would not be a need to call a professional, and “it’s not an emergency if you still have heat.” The Landlord stated their concern about a furnace technician’s cost, as opposed to regular maintenance. The Tenant stated their frustration and queried whether they should “hold rent until a professional comes in and fixed it?” After a maintenance visit (noted by the Landlord as work on additional insulation and a plugged furnace filter), the Tenant reiterated that this maintenance was “not making a difference warmth wise”. Soon after this, the Tenant noted one of the baseboard heaters stopped working, and the Landlord replaced this with a bigger one, on December 6<sup>th</sup>.

The Landlord also messaged the Tenant around this time that “it is quite an old trailer” and there are baseboard heaters in place for when the outside temperature is -20. At the time of the baseboard heater replacement, the Landlord checked the temperature in all rooms in the rental unit. On December 6, the Landlord notified the Tenant that temperature checks were “around 23-24 C so you are in the comfortable range of heat.”

By December 19, the Tenant informed the Landlord that they hired a furnace technician. In their evidence, the Tenant provided the December 14 invoice (\$277.20) they paid. This was “furnace service” due to “blower not blowing a lot of air – furnace needs replacement.” The recommendation of the technician was to replace the furnace due to its age – manufactured in 1974 – and “heat exchanger worn out”. Further: “Blower motor was replaced at some point but is currently working.”

The Tenant’s messages increased in frequency as the temperature dropped. The Landlord noted images of the temperature checks sent to the Tenant – “around 21c to 28c” – and noted their attendance “2-3 times”. This was at “-40 and [the Tenant] in a 1970 mobile.”

The Tenant responded in a lengthier text message to the Landlord, undated in their evidence. This included the following points:

- they measured the ambient temperatures in the trailer side of the house using gauges (“brand new from Home Depot”), when -30 outside, at 10 degrees in that area, with 18 degrees in the kitchen (with a baseboard) and in the “bedroom that is right beside the furnace”
- the Landlord’s use of the temperature reader was right beside the heat registers – this is not the ambient temperature of the rooms
- the furnace technician stated the furnace needs to be replaced
- the Landlord had indicated they would replace the furnace; however, this would take over 6 months

- they requested reimbursement of the \$277.20 for the cost of the furnace technician's invoice, as well as \$600 of the electrical utility bill for the use of space heaters – this is a hydro bill that is nearly as much as rent.

In their evidence, the Tenant provided temperature readings on an indicator they purchased on their own. With no reference to outside temperature or dates, this evidence shows a temperature of approximately 15 degrees in four different areas of the rental unit. The Landlord responded specifically to this evidence in the hearing to say that these images do not indicate what the furnace setting was when the Tenant took these particular photos. The Tenant maintained throughout their messaging to the Landlord that a “thermos gun at [a] heat vent” does not capture the ambient room temperature readings at the coldest outdoor temperatures in the rental unit.

The Landlord presented images from their evidence, using their temperature reading device that “takes measurement of the air, reading & image of the area.” provided to the Tenant on December 20 via text message. They specified that in construction, this gauge is used to pinpoint areas of concern in a given space, and would highlight particular areas that draw away from existing heat. The four temperature readings in the unit, from December 6, 2022, range between 21.4 degrees, to 29.5 degrees. The Tenant's statement, repeated in their text messages to the Landlord, and in the hearing, is that this is a directed temperature gauge reading focused only at the heat-producing register in each room of the house, and not accurate ambient room temperature readings in lower freezing temperatures outside.

After this, when citing s. 33 of the *Act* governing emergency repairs, the Tenant requested a furnace replacement by December 30, 2022. After a delay, the Tenant did provide the technician's invoice to the Landlord toward the end of December. The Landlord advised on December 23 that they would “put this furnace replacement on our capital list for 2023 repair” and noted “finding a high efficiency down flow furnace that will fit in the same hole will be a challenge.”

## **Analysis**

The *Act* s. 32 clearly sets out the Landlord obligations for repairs to the rental unit. This is to “provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find the evidence from the Tenant is sufficient to establish that they made the issue with heating into separate areas within the unit known to the Landlord on several occasions. I find the Landlord throughout responded to all of the messaging from the Tenant in a prompt manner, and followed up with visits to the rental unit, undertaking incidental repairs (insulation), and analyzing the functionality of the furnace and baseboard heaters (with one replaced) when and as needed. I find the Landlord fulfilled their obligation for repairs within the rental unit, as and when needed. In my mind and in this analysis, there is absolutely no question of a breach of the *Act* by the Landlord here. The Landlord did not at any time ignore the Tenant or their requests for assistance.

I also find the Tenant has shown on a balance of probabilities that the temperature within the unit was inadequate. They questioned the accuracy of the Landlord's temperature readings within the rental unit, and I find it more likely than not that the temperature inside the rental unit was on the lower scale, more specifically with regard to the outside temperature dropping to rather extreme cold, and in different areas of the rental unit.

My acceptance of the Tenant's evidence for the consistently lower temperatures throughout the rental unit is bolstered by the notes of the technician who inspected the furnace in the rental unit. The age of the furnace is relevant to the fact pattern here: the *Residential Tenancy Branch Policy Guideline* setting out "Useful Life of Building Elements" (#40), sets out the useful life of a furnace to be, alternately, 20 or 25 years. Here, I find the evidence plainly sets out as fact that this furnace was nearing 50 years in age.

As above, I acknowledge the Landlord's efforts in assisting the Tenant with their heating issues, being responsive to the Tenant's queries in a timely manner. I also acknowledge that the Landlord identified the furnace as one set for replacement, and I find it plausible that an immediate replacement for the furnace just is not possible. I factor this into the difficult situation in which the parties find themselves with this older rental unit, with an old furnace past its prime and not performing as it should.

I grant that the old furnace, well past its life cycle, is having an unreasonable impact on the Tenant's budget to keep their family warm. I find the Tenant could not have anticipated this in advance, and the extra costs to them in terms of needing additional space heaters is burdensome. While I find the Landlord has not shirked their duties in responding to the Tenant's requests for assistance, I grant that the costs to the Tenant, in terms of ongoing utilities that would definitely increase in the colder months due to the state of the furnace in the rental unit, is excessive in addition to the full amount of rent, and this impact on the Tenant's finances is what is violating their right to a rental unit that is suitable for occupation.

I make no order to the Landlord for the immediate replacement of the furnace. This is not a situation where the Tenant is without any heat in an emergency situation; however, the costs for maintaining an adequate level of heat in the rental unit is burdensome, particularly where the furnace is not functioning properly because of its age.

In line with this rationale, I grant the Tenant a rent reduction for the colder months. This is \$200 reduced from rent for each of the months of February 2023 and March 2023, with the March reduction serving as recompense for the added utilities' costs to the Tenant for the month of January 2023. My discretion on this rent reduction is authorized by s. 67 and s. 72 of the *Act*.

I also order the Landlord to replace the furnace in the rental unit in 2023. I find there was evidence that the Landlord accepted the furnace was problematic and stated a commitment to replace it in 2023. Should this not occur in 2023, the Tenant may reapply for the Landlord's compliance.

I also recognize the Tenant paid \$277.20 for the furnace technician's inspection in December 2022. I find this was necessary in the circumstances. I grant compensation to the Tenant for this amount, with half this amount of \$138.60 deducted from February 2023 rent, and \$138.60 deducted from March 2023 rent. This is in addition to the \$200-per-month rent reduction for each of these months for increased utilities' costs to the Tenant, as set out above.

In sum, this is a very old furnace heating an older rental unit that is not adequate given the lower-end temperatures in this area of the province during the winter months. Aside from their comfort level, I find this is impacting the Tenant financially to an unnecessary degree. I balance this against the Landlord's efforts at addressing the Tenant's concerns, and the impracticality of replacing the furnace immediately in circumstances that are not, strictly speaking, an emergency.

Because the Tenant was successful in this Application, I grant them reimbursement of the Application filing fee. I authorize, as per s. 72(2), their deduction of \$50 from the February 2023 rent, and \$50 from the March 2023 rent.

I grant the Tenant a reduction of \$388.60 for each of the months of February 2023 and March 2023. I order a refund to the Tenant if, by the time they receive this decision dated February 1, 2023, they have already paid this amount in rent to the Landlord for that month. I commend the Tenant for maintaining full rent payments to the Landlord during this timeframe of December 2022 and January 2023.

I also order the Landlord to replace the furnace in the rental unit in 2023 as soon as practical. I grant the Landlord has already acknowledged the need for this work. I also commend the Landlord on their responsiveness to the Tenant's queries in each instance, and making repeat maintenance visits to the rental unit to address those concerns. In each instance, this was in a timely manner, and with concern to the Tenant's immediate well-being.

### **Conclusion**

I grant the Tenant's Application for repairs in the rental unit, though they will not happen immediately in these colder months. I find the Tenant is entitled to limited rent reduction, compensation for money owed to them, and reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 1, 2023

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Residential Tenancy Branch