



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding PORTE REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

On March 16, 2023, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. R.S. attended the hearing as an agent for 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 the Tenant’s Notice of Hearing package, and the respective parties’ evidence was discussed, and there were no issues concerning service. As such, I have accepted both parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral 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 a Monetary Order for compensation?
- Is the Tenant entitled to an Order to comply?
- 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 February 1, 2008, that the rent is currently established at \$1,003.00 per month, and that it is due on the first day of each month. A security deposit of \$387.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that she is seeking compensation in the amount of **\$253.93** for the pro-rated amount of rent for eight days that she was without heat. She testified that the boiler in the building stopped working on December 1, 2022, and the temperature outside was below freezing. She stated that she purchased her own space heater because there was no heat in the rental unit. She stated that she was not informed that the Landlord would provide her with a space heater until she went to the office on or around December 8, 2022. She submitted that she was provided with a cheque and a gift card from the Landlord which was intended to cover the excess electricity used by a space heater, and for the inconvenience of not having heat. She acknowledged that she returned these to the Landlord.

She then advised that she is seeking compensation in the amount of **\$246.10** for the expenses she incurred when she stayed with a friend for five days. She referenced the receipts submitted to support this claim.

As well, she is seeking compensation in the amount of **\$66.01** for the cost of a space heater that she purchased. She referenced the receipt submitted to support this claim.

R.S. confirmed that the boiler failed on December 1, 2022, and the Landlord immediately had an assessment done. However, on December 5, 2022, the supplier

indicated that a replacements burner was not in stock, so the part was manufactured instead, and the boiler was fixed on December 9, 2022. He testified that a notice was placed in the common areas where the Landlord indicated that they would source space heaters for the residents of the building. As well, he stated that employees were on site on December 2 or 3, 2022, offering space heaters to the residents, but the Tenant refused this offer. He stated that the Tenant even confirmed this in an email that she sent. He advised that the Tenant was again offered a space heater when she went into the office on December 7, 2022, but she refused this as well.

He stated that the Landlord kept all of the residents informed and updated about the heating issue, and did everything they could to assist the residents. He submitted that the Landlord even credited the residents for extra hydro and gave them a gift card as well. He referenced the documentary evidence submitted to support his testimony.

The Tenant disputed that the Landlord offered space heaters on December 1, 2022, and that the only time she was offered this was when she went into the office on or around December 8, 2022.

Analysis

Upon consideration of the testimony 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* outlines that the Landlord “must 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 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or

loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Regarding the Tenant’s claim for compensation in the amount of \$253.93 for being without heat for eight days, the consistent and undisputed evidence is that the building’s boiler stopped working on December 1, 2022, and that it was repaired on December 9, 2022. While R.S. claimed that space heaters were offered to residents of the building, I note that the Landlord’s notice dated December 1, 2022, states “Unfortunately our heating system has suffered a major breakdown and will be down for major repairs until next week. Hopefully you have or can source some some [sic] small electrical heating units that you can use in the meantime...” When reviewing the contents of this notice, I find that this clearly indicates that the residents of the building were to obtain their own source of heat.

Moreover, even if I were to accept that the Landlord provided a space heater for the Tenant, I can reasonably infer that this appliance would not be an equivalent substitute for the heat that was required to be provided by the Landlord under the *Act*. While I agree that the Landlord did the best they could in repairing the heating issue in a timely manner, I am satisfied that a loss of the primary heating system, especially in

December, is a significant issue. As such, I grant the Tenant a monetary award in the amount of **\$253.93** to remedy this claim.

With respect to the Tenant's claim for compensation in the amount of \$246.10 for expenses incurred while out of the rental unit, when reviewing these receipts, I find it reasonable to conclude that most of these expenses would have been necessary for day-to-day living, in any event. However, I do accept that having a rental unit without adequate heat would have likely led to some unforeseen expenses. As such, I find it appropriate to grant the Tenant a monetary award in the amount of **\$100.00** to satisfy this issue.

Finally, regarding the Tenant's claim for compensation in the amount of \$66.01 for the cost of a space heater that she purchased, I acknowledge that she did so for the few days that she was in the rental unit without heat. However, given that she has already been compensated for a loss of the primary heating system, and given that she has this appliance for her own use, I decline to award compensation for this item.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a monetary award as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Compensation for loss of heat	\$253.93
Compensation for expenses	\$100.00
Filing fee	\$100.00
Total Monetary Award	\$453.93

Conclusion

I provide the Tenant with a monetary award in the amount of **\$453.93** in the above terms, and the Tenant is permitted to withhold this amount from the next month's rent to satisfy this debt.

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: August 11, 2023

Residential Tenancy Branch