



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding SYLTON HOLDINGS MANAGEMENT LTD/  
PAMC and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      PSF, LAT, OLC, MNDCT, LRE, LAT, OLC

### **Introduction**

This hearing was scheduled to deal with two applications filed by the tenant, that were joined together, for the following remedies:

- For the landlord to provide services or facilities required by law or the Act (heat)
- Authorization to change locks
- Orders for the landlord to comply with the Act, regulations or tenancy agreement (threats of eviction)

The tenant subsequently filed an Amendment to seek additional remedies, including:

- The landlord's right to enter the rental unit be suspended or with conditions
- Monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### **Preliminary and Procedural Matters**

1. Service of hearing materials

At the outset of the hearing, I confirmed the tenant sent the two original proceeding packages to the property management company via registered mail. The property manager confirmed receipt of these two packages.

I heard the tenant provided an Amendment and written submissions and evidence to the landlord's former legal counsel on November 29, 2023. Although this was not proper service, the landlord's current legal counsel confirmed she received the materials and the landlord did not take issue with service and the landlord was prepared to respond to the materials delivered on November 29, 2023. As such, I deemed the landlord sufficiently served pursuant to the authority afforded me under section 71 of the Act.

I confirmed the landlord's evidence was delivered to the tenant by attaching the materials to the rental unit door on December 3, 2023 and the tenant received these materials.

The tenant served late evidence to the landlord on December 7, 2023 and the landlord's legal counsel objected to inclusion of the late evidence. The late evidence was excluded.

## 2. Matter before the British Columbia Supreme Court (BCSC)

It was brought to my attention that there is a matter before the BCSC involving the parties that includes allegations the landlord unlawfully entered the rental unit and the remedy sought by the tenant includes authorization to change the locks. The tenant confirmed that to be accurate. The tenant stated she has filed an Amendment to remove those issues from her petition but that those issues have not yet been struck and a hearing is scheduled for January 2024.

under section 58(2)(d) of the Act, I declined to accept jurisdiction with respect to the alleged unlawful entry and request to change the locks or to suspend or set conditions on the landlord's right to enter the rental unit.

Section 58(2)(d) of the Act provides that the director must not determine a dispute if the dispute is linked substantially to a matter that is before the Supreme Court unless the Supreme Court orders that the director hear and determine the dispute. In this case, the above described matters are still before the Supreme Court as the petition has not yet been amended and the issues struck.

## 3. Issues to determine

The tenant clarified that the two primary issues to resolve during this proceeding is with respect to the tenant's lack of sufficient heat and the landlord's threats of eviction over the past two years.

**Issue(s) to be Decided**

1. Has the tenant established that she has not been provided sufficient heat in the rental unit? if so, is the tenant entitled to compensation that she seeks?
2. Has the tenant established that the landlord harassing the tenant by threatening her with eviction? If so, is the tenant entitled to compensation she seeks?
3. Is it necessary and appropriate to issue orders to the parties to facilitate resolution to these matters?

**Background and Evidence**

The tenancy started in 2004 and the tenant is currently required to pay rent of \$1,035.00 on the first day of every month.

***Heat***

The parties provided a consistent description of the heating system. There is a programmable thermostat located in a common hallway, under a locked box, that controls the central boiler system. The boiler circulates hot water to all 22 rental units in the building. The tenant does not have a thermostat in the rental unit that controls how much hot water is circulated through her rental unit. There is a valve on the radiator in the rental unit but it is difficult to access and it is intended only for servicing the system.

The tenant alleges that she has suffered from lack of sufficient heat over the past two years and the tenant wants the landlord to stop programming the thermostat to turn off twice a day and compensation equivalent to 50% of the her monthly rent.

The tenant asserts that the thermostat is programmable, with four periods per day. The tenant alleges the landlord has the thermostat programmed so that it comes on at breakfast time, then off at noon, then on again for the evening and off at night. The landlord denied that to be accurate and testified that the thermostat is programmed to set the heat at 23.5 degrees Celsius 24 hours a day.

The landlord was agreeable to showing the tenant the thermostat programming. The tenant's response was that the landlord could change the programming shortly before showing her and then change it back afterwards.

I asked the tenant if she knows the temperature inside her rental unit, especially when the heat is allegedly off. The tenant testified that she has a handheld thermometer in her rental unit and sometimes it reads as cold at 10 degrees. The tenant also testified that the thermometer reads the outside temperature which I confirmed with her before she changed her testimony to say it reads the inside temperature.

The tenant also testified that she knows when the boiler is not providing her with enough heat by feeling her electric space heater. Sometimes the space heater is running and sometimes it does not. I asked the tenant to describe the temperature at which she sets the space heater and her reply was that it is set to 28 degrees.

The tenant stated that she has complained to the landlord about the lack of heat and in response to her complaints the landlord states they will have a technician check her unit. The landlord agreed this is accurate and went on to point to the several emails where the tenant complains the heat is not working and when the landlord says they will send a technician the tenant then states the heat is working and there is no need to send the technician.

The tenant testified that the landlord's assistant served the tenant with a notice of entry on October 31 or November 1, 2023 to perform an inspection of the heating system in the rental unit on November 6, 2023. The landlord confirmed that to be accurate.

On November 6, 2023 the landlord's agent and the heating technician arrived at the rental unit door. The tenant answered the door and stated the heat was working. The tenant would not permit the technician and the landlord's agent to enter at the same time. The tenant explained that he would not permit them to enter at the same time because the tenant heard the landlord's agent say they needed to "collaborate" or "corroborate". The tenant also confirmed that she is fearful of catching a virus.

During the hearing, it became clear to me that the landlord has tried to address the tenant's complaints but the tenant is convinced the landlord is deceptive and she is interfering with the landlord's ability to address her complaints.

1. The tenant may request the landlord show her the programming on the thermostat and the landlord will oblige at the date and time agreed upon by both parties.
2. Should the tenant complain of insufficient heat in her rental unit again, the landlord shall arrange for the technician to inspect the rental unit and the tenant shall not cancel, decline, withdraw, deny entry or otherwise interfere with the scheduled inspection.

3. The landlord's agent is authorized to be present with the heating technician in the rental unit at the same time as the technician and the tenant shall not preclude, deny entry or otherwise interfere with this. However, the landlord's agent and the technician shall wear masks while in the rental unit.
4. Should the technician determine that a repair is required, the landlord shall undertake the repair work in a timely manner.
5. If the technician does not find anything wrong with the heating system, any further complaint by the tenant of insufficient heat shall be addressed by the landlord inspecting the rental unit to determine if there is actually a heating issue that requires further action.

### ***Threats of eviction***

The tenant seeks compensation of \$6000.00 or 30% of her monthly rent for what she considers to be harassment by the landlord threatening to evict her over the last two years.

The tenant's submissions on this issue were less clear and subject to change.

Initially, the tenant testified the landlord has threatened her with eviction five times in the last two years but then she reduced that to three times.

The tenant testified that she has been receiving unfounded compliant letters that threaten her with eviction. I instructed the tenant to point to the most recent warning letter and describe the content and date of the warning.

The tenant testified that she received a warning letter on September 13, 2023 but then she changed her testimony to say it was issued on April 29, 2023. As for the nature of the complaint the tenant testified that the landlord informed her that her water pipes were too noisy and the landlord threatened to evict the tenant if she used water.

The property manager responded that they issued a warning letter to the tenant on May 4, 2023 regarding noise but there was no mention of noisy water pipes or threats to evict the tenant if she used water.

In response, the tenant became focused on what other tenants say about her and allegations other tenants make against her rather than the communications between the landlord and her. I tried to get the tenant to focus on communications with the landlord

rather than other tenants but the tenant repeatedly interrupted me and the hearing was ended shortly thereafter.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

### ***Heat***

The tenant alleges the landlord has programmed the central boiler system so that the heat turns off twice a day: at noon and at nighttime. The landlord disputes this to be accurate.

I find the tenant's testimony to be unreliable to conclude the landlord has programmed the thermostat so that it shuts off the heating system twice a day as alleged by the tenant.

Although the tenant claims to have a reading of the interior temperature on her hand held thermometer, the tenant provided changing testimony as to whether it was reading the outside or inside temperature. Nor, did the tenant provide any photographs of the thermometer.

The tenant also claims that her space heater is another way she knows the landlord is turning off the heat; however, having heard the tenant set the temperature on the space heater to 28 degrees, this would result in the space heater running very frequently since the landlord only sets the thermostat to 23.5 degrees.

I have also provided evidence by the landlord that the landlord has responded to the tenant's complaints of insufficient heat by offering to send a technician to the unit and the tenant responds to that by indicating the heat is working and it is not necessary to send the technician.

The landlord provided photographs of the thermostat and its programming. The landlord was also agreeable to showing the programming to the tenant.

As with most heating systems, they will cycle through periods of providing heat and periods of not providing heat in an effort to maintain a temperature near the temperature set on the thermostat. Perhaps the tenant is confused by what she perceives as the landlord programming the boiler system to turn off and the normal cycling of the system.

In any event, I find it logical and reasonable that if the tenant maintains the position that she is not provided sufficient heat and she complains of that to the landlord that the landlord and the heating technician would inspect the components in the system within the rental unit and the tenant must not interfere with such an inspection. The landlord would be required to give the tenant a written notice of enter in accordance with section 29(1)(b) of the Act.

In light of the above, I find the tenant has not satisfied me that the landlord failed to provide the tenant with sufficient heat. However, it is apparent to me that this is an on-going issue that both parties want to see resolved, including the landlord since the landlord is receiving frequent complaints from the tenant. Accordingly, I issued the orders to the parties as seen in the Background and Evidence section of this decision.

Having been unsatisfied that the landlord has failed to provide the tenant with sufficient heat over the past two years, I dismiss the tenant's monetary claim that is associated with her allegation of insufficient heat without leave to reapply.

### ***Threats of eviction***

The tenant submitted that in receiving warning letters from the landlord the warning letters are without merit and the landlord threatens her with eviction. The tenant

testified that she had received a warning letter from the landlord due to noisy water pipes and that her continued to use water would result in her eviction. I find this statement to be very far fetched and not based in reality. I have reviewed the two emails the tenant received from the landlord: on May 4, 2023 and September 13, 2023. No where in those emails does the landlord's agent describe noisy water pipes or threaten the tenant with eviction for using water.

In the emails, the landlord informs the tenant that unreasonable disturbance of others may be grounds for ending a tenancy. I do not see the statement as a threat but more in the nature of putting the tenant on notice that unreasonable disturbance is grounds for ending the tenancy, which is an accurate statement.

In reviewing the emails, I do note that they are rather vague as to what the tenant did specifically to warrant a warning or the date she was unreasonably noisy. I am of the view that a more specific warning would be helpful so that the tenant may take corrective action if it is warranted or give the tenant the opportunity to respond in a meaningful way. The landlord's agent had listed several activities that would be considered noisy during quiet hours but it is unclear if the landlord is alleging the tenant did all of these things or whether these are examples of loud noises.

In hearing from the tenant at the hearing, it is apparent the tenant is focused on complaints made against her by other tenants. This is beyond the control of the landlord. I cannot issue an order against another tenant. Rather, it is upon the landlord to receive complaints from all of its tenants, vet the complaints to determine which complaints warrant action, and take reasonable action in response to the complaint such as investigating the matter and/or issuing a warning letter.

In light of the above, I am unsatisfied the landlord is harassing the tenant by threatening her with eviction and I make no order against the landlord except the suggestion that the warning letters be more specific. I am not satisfied the tenant is entitled to compensation and I dismiss this part of her claim without leave to reply.

### **Conclusion**

I have dismissed the tenant's requests for compensation for insufficient heat and threats of eviction.

I was unsatisfied the landlord is terminating the heat twice a day by way of the programmable thermostat; however, I have issued orders to the parties with a view to

bringing resolution to the tenant's belief the landlord is doing so and the landlord receiving repeated complaints from the tenant.

I have suggested to the landlord that future warning letters include more specific information such as the date the alleged disturbance occurred and the nature of the noise that is the subject of the complaint so that the tenant may take corrective action or respond to the complaint, as appropriate.

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, 2023

---

Residential Tenancy Branch