



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** ERP MNDC RP FF

### **Introduction**

This matter dealt with an application by the tenant for various orders relating to repairs and for a monetary order relating to a failure of the landlord to provide a required service.

The landlord and the tenant appeared at the hearing and were afforded a full opportunity to present evidence. I advised both parties that I would consider their oral testimony along with any written submission received prior to the hearing in reaching a decision in this matter.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation for a lack of services, and if so in what amount?

Is the tenant entitled to an order that the landlord effect required repairs to the rental unit?

### **Background and Evidence**

The evidence of the tenant is that the tenancy commenced in June 2005 and that the current monthly rent is \$808.00 per month. The tenant states that in October 2005 that she noticed a problem with the heating supplied to the rental unit, in that the temperature was dropping significantly at night and that it was also cool in the mornings. The tenant advised the landlord, in writing at that time of the lack of heat.

The tenant further states that the temperature has routinely dropped down to about 15 degrees C. on numerous occasions, and has supplied logs of times when that occurred. The tenant also spoke about numerous conversations with the landlord's agent in regards to his attempts to correct the problems. The evidence is that these problems continue to happen, as recently as several days ago and that she has had to supplement the heating system with the purchase of an oil heating device.

The tenant seeks compensation for the failure of the landlord to provide reliable heat over a prolonged period of time, as required in the tenancy agreement. The tenant has given evidence where in late 2007 there was no heat at all for a period of at least three days and another period where it was off in October 2007 for about 24 hours. As recently as November 2008 the heat was again out for a period of time and the tenant was required to find alternate accommodations due to the lack of heat in the rental unit. The tenant also gave evidence that the North American standard for heat in a residence is in the range of 19 to 22 degrees C.

The landlord's agent gave evidence about the heating system in the building, which is gas fired hot water system. The system is a building wide system over which none of the 11 rental units have any control over. The provision of heat is provided by way of a timer system which sets the heat at various temperatures during a 24 hour period. The minimum setting for any part of the 24 hour period is that of 18 degrees C.

The landlord's agent admitted that there have been outages due to boiler failure and that one failure was caused by the tampering of a thermostat by another tenant. The evidence is that only this apartment and one other may have been the subject of complaints regarding lack of heat. The heating system was also recently checked and found that it was recording the wrong temperature by two degrees, and has now been adjusted accordingly. The agent placed the estimated cost of the heat provision for this unit at about \$800.00 per year.

The landlord's agent did not dispute the temperature readings provided by the tenant and does not dispute that there have been periods of no heat and that this rental unit does suffer from a low ambient temperature when compared to other units in the building. The landlord's agent further advises that the building owners have offered the

tenant 2 months of free rent if she will vacate the rental unit by April 1, 2009, an offer which the tenant has rejected.

### **Analysis**

In reviewing the evidence presented I find that the landlord has over the course of this tenancy failed to provide adequate heating service on a consistent basis. The provision of heating service is included in the tenancy agreement and is also an integral service that must be provided.

There has been no dispute in the evidence before me that the heating system has been problematic and on numerous occasions has been unable to provide a reasonable ambient temperature to the tenant's apartment. The tenant has suffered a loss of quiet enjoyment of the unit and on at least one occasion has been required to seek alternate accommodation. The tenant has also needed to obtain an auxiliary heating device at her own cost to supplement the heat.

The landlord has in most cases responded in a timely manner to loss of heat calls, but there appears to be a fundamental flaw in the system in regards to this unit. The actions of the landlord in responding are good but they are still under an obligation to make every effort to see that heat is provided in a consistent and adequate manner.

The landlord's agent at the hearing has agreed to reimburse the tenant for the purchase of the heating device as well as some security devices which the tenant has installed. The landlord also agreed that the installation of the security devices by the tenant will not be consider a breach of the tenancy agreement.

In looking at the tenant's application which relates to issued back to late 2005 I am troubled that the tenant has not filed for compensation earlier. Such a delay tends to

mitigate the intensity of the claim as being important to the applicant and makes it difficult for the respondent to present evidence regarding events that far gone. I find that

due to the lengthy delay that I will only consider awarding compensation for the period from January 1, 2007 to current.

I find that the tenant is entitled to be reimbursed for the costs of the security devices and the auxiliary heating device in the amount of \$132.10.

I also find that the tenant is entitled to recover the filing fee for the cost of this application in the amount of \$50.00.

I find that during the period of January 1, 2007 to current, that the tenant has had inadequate heat provided for an equivalent to 117 days and that the daily rent is approximately \$26.00 per day. I calculate the compensation for the tenant to an amount equal to 70% of the daily rent. The tenant is entitled to be consistently supplied with a reliable source of heat and the loss of that is significant and in some cases makes the rental unit unfit for occupancy. I find that the tenant has established a claim for loss of heat and for quiet enjoyment of the rental unit of January 1, 2007 to December 5, 2008 in the amount of \$2129.40.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$2311.50**. The tenant is entitled to deduct the amount of the monetary order from future rent payments starting in January 2009, and continuing monthly until the debt is satisfied. In the event the tenancy ends prior to the satisfaction of the debt the landlord is required to pay the balance to the tenant forthwith, and the tenant is entitled to apply for a monetary order if required.

I further order that the landlord is to make immediate repairs to the rental unit to ensure a permanent ability of the heating system to provide a minimum overnight temperature of 18 degrees C. and a daytime minimum temperature of 22 degrees C. in the

applicant's rental unit. The landlord may comply with this order by making adjustments to the current heating system, providing more insulation or weatherproofing, the installation of permanent electric baseboard heating or any combination of the above. This must be completed within 30 days of receipt of my decision.

Dated: December 5, 2008