



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes: MNDC, OLC, ERP, RP

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / and a order instructing the landlord to make repairs to the unit, site or property. Both parties attended and / or were represented and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

A previous hearing was held concerning this dispute on August 12, 2013. Pursuant to the decision issued by date of August 27, 2013 (corrected October 3, 2013), a monetary order was issued in favour of the tenant. The landlord was not present at the previous hearing, and filed an application for review consideration on the basis that he / she was unable to attend because of circumstances that could not be anticipated and were beyond his / her control. By way of review consideration decision dated October 29, 2013, the landlord's application for leave for review was granted, and the decision and order dated August 27, 2013 were "suspended until a review hearing has been completed."

The unit which is the subject of this dispute, is 1 of 35 different units located within a 45 year old, 3 storied building. Pursuant to a written tenancy agreement, the tenancy began on July 1, 2010. Monthly rent is due and payable in advance on the first day of each month. Effective September 1, 2013, the monthly rent is \$870.42. A security deposit of \$417.50 and a pet damage deposit of \$417.50 were collected on June 19,

2010. A move-in condition inspection report was completed with the participation of both parties.

While the tenancy agreement provides that utilities are not included in the rent, heat generated from a boiler room in the building is transferred to the units by way of baseboard heaters. There are 2 thermostats which serve to control the level of heat provided: 1 is located on the roof of the building, and 1 other is located within each unit.

In summary, the tenant seeks i) compensation for the increased cost to her from supplementing the baseboard heat by way of electric heaters; ii) compensation for the loss of books which were discarded as a result of damage from mould, itself the result of inadequate heat in the unit; and iii) compensation for breach of the right to quiet enjoyment arising from the negative impact on her health and well-being as a result of inadequate heat, and on-going dealings with the landlord around both of the aforementioned issues.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a limited resolution and it was specifically agreed as follows:

### **RECORD OF SETTLEMENT**

- that the landlord will compensate the tenant in the amount of **\$500.00** with respect to hydro costs she has incurred over a period of approximately 2 ½ years;
- that as an acknowledgment of costs incurred by the tenant arising from her desire for more heat in her unit, effective from **September 1, 2013** and going forward, the tenant's monthly rent will be reduced by **\$15.00**;
- that the above agreement serves to reduce the current rent of \$870.42 to **\$855.42** (\$870.42 - \$15.00);
- that within 15 days from the date of this decision, the landlord will undertake to schedule a time which is mutually agreeable to both parties, for a site visit

to the tenant's unit at which time a mould air test will be completed by a suitably qualified technician;

- that during the above site visit the tenant will direct the technician's attention to any particular areas of concern to her within the unit;
- that the parties will attempt to schedule a mutually agreeable time for the removal of carpets within the unit, and their replacement with new flooring;
- that the landlord will provide assistance to the tenant in relation to the above work, where it involves removal and / or rearranging of furniture and other possessions.

Based on the documentary evidence and testimony, the remaining aspects of the tenant's claim and my findings around each are set out below.

\$500.00: *compensation for discarded books damaged by mould*

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises." I find, on a balance of probabilities that the tenant has established entitlement limited to **\$250.00**.

\$3,600.00: *compensation for breach of the right to quiet enjoyment*

Section 27 of the Act addresses **Terminating or restricting services or facilities**, and Residential Tenancy Policy Guideline # 22 speaks to "Termination or Restriction of a Service or Facility."

Further, section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment.**" As well, Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment" and under the heading **Claim for damages**, provides in part as follows:

In determining the amount by which the value of the tenancy has been reduced, the Arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

I find on a balance of probabilities that the tenant has established entitlement limited to **\$250.00**.

**Total entitlement: \$1,060.00**

I hereby order that the tenant may withhold a total of **\$1,060.00** from the regular payment of rent due **January 1 and February 1, 2014**. This total amount is calculated as follows:

\$500.00: *compensation for hydro costs, as agreed above*  
\$60.00 (\$15.00 x 4): *retroactive rent reduction for September, October, November and December 2013, as agreed above*  
\$250.00: *compensation for loss of books damaged by moisture and mould*  
\$250.00: *compensation for breach of the right to quiet enjoyment*

Specifically, I order that the tenant may withhold the full amount of rent due on January 1, 2014 of **\$855.42**, and withhold **\$204.58** from rent due on February 1, 2014.

Section 82 of the Act speaks to **Review of director's decision or order**:

82(1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

- (a) based solely on the record of the original dispute resolution proceeding and the written submission of the parties, if any,
- (b) by reconvening the original hearing, or
- (c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all the above, the decision dated August 27, 2013 (corrected October 3, 2013) and order dated August 27, 2013 are hereby set aside.

### Conclusion

The parties are hereby ordered to comply with the terms of their agreement as above.

The tenant is ordered that she may withhold a total of **\$1,060.00** from rent due on January 1 and February 1, 2014, as set out in detail above.

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: November 26, 2013

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Residential Tenancy Branch

