



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP

### Introduction

This hearing dealt with an application for dispute resolution under the *Residential Tenancy Act* (the Act).

On February 28, 2023, the tenants filed for an order for the landlord to make emergency repairs for health or safety reasons, the tenants having contacted the landlord to make repairs which have not been completed.

### Procedural History

This hearing was reconvened after it was adjourned on March 10, 2023. This decision should be read in conjunction with the Interim Decision issued on March 10, 2023.

The Interim Decision and notices of reconvened hearing were sent to each of the parties, at the emails addresses they provided to the Residential Tenancy Branch.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issue to be Decided

Are the tenants entitled to an order for the landlord to make emergency repairs to restore the heat and hot water to the rental unit?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began February 28, 2022; rent is \$2,400.00, due on the first of the month; and the tenants paid a security deposit of \$1,200.00, which the landlord still holds in trust. The tenancy agreement states that the tenants pay 100 percent of the electricity and natural gas.

The tenants testified the furnace broke December 17, 2022 when their neighbour turned off the electricity and changed the lock on the door to the breaker room common to the rental unit and their neighbour's unit. The tenants testified that the landlord has not responded to fix the furnace.

The landlord testified that the tenants had a key to the breaker room before December 2022, but on or around December 17 or 19, 2022 he visited the property and found the door to the breaker room open, so he replaced the lock to keep the equipment safe. The landlord testified that a handyman or the tenants pried open the door to the breaker room without the landlord's permission, damaging the door and the lock.

The tenants testified that their electricity and water were cut off on February 8, 2023 for over a month. The tenants testified that it occurred after the landlord and an electrician visited, said they would make repairs, then left without restoring electricity to the tenants' unit. The tenants testified that they had to get BC Safety, Fortis, and the health authority involved to get the electricity turned back on. The tenants testified that the landlord denied Technical Safety BC (TSBC) access to the breaker room, so TSBC had to obtain an order to have the landlord fix it, which took over a month. The tenants testified that at one point the landlord offered them another unit, then withdrew the offer.

The tenants testified they still do not have heat or hot water, but do have electricity and cold running water. The tenants testified they have temporarily been using multiple

heaters, but too many will trip the breaker, and they do not have access to the breaker box.

The tenants submitted they now seek an order for the landlord to restore the heat and hot water to the rental unit.

The tenants testified that a plumber visited and said that the hot water tank must be replaced as it is 11 years old, and he could not get the pilot light to stay lit.

The landlord testified that the tenants do not have hot water because the natural gas was shut off. The landlord testified it was the tenants' responsibility to pay for the gas, but they never took over the account, so there were no gas payments made from February 15, 2022. The landlord testified that Fortis BC contacted the landlord and said they had sent more than six letters to the tenants to take over the account, but Fortis received no reply. At the request of Fortis BC, the landlord gave the company the tenants' phone number. The landlord testified that Fortis said they received no response to their efforts to have someone take over the account.

The landlord testified that the tenancy agreement states that the tenants are responsible for natural gas and electricity. The tenants agreed with the landlord on this point, and a copy of the tenancy agreement is submitted in support.

The tenants testified they do have a Fortis account for the electricity.

The landlord speculated that the problem with the furnace is also a result of the natural gas being cut off to the unit. The landlord testified that in December 2022 he received two invoices for approximately \$900.00 for handyman services regarding repair of the furnace. The landlord testified that the December 18, 2022 invoice states that the handyman serviced the furnace and fixed it. The landlord submitted the invoices are part of the tenants' evidence package for an upcoming hearing. The landlord submitted it is not currently possible to know if the furnace is working as there is no natural gas supply to the unit.

The tenants testified they gave the landlord estimates for repair of the furnace, and that they obtained a diagnosis of the furnace issue during very cold weather, after receiving no response from the landlord after days of emails. The tenants testified they had the furnace looked at on December 25 because they could not make dinner as the breaker kept blowing, and they did not have a key for the breaker room.

The tenants testified they did not pay for the repair as it would be expensive, and they wanted to make sure the landlord was in agreement. The tenants testified they obtained only diagnoses, and that repairs were not made to the furnace.

The tenants submitted that, as far as they know, the furnace is electric, not gas.

The tenants submitted that when they had no electricity or water, they had extensive conversations with Fortis, and had Fortis out to the unit, but no one said anything about gas lines or that the natural gas should be in their name. The tenants said they think the only thing in the unit that runs on gas is the hot water tank, so the furnace should not be affected by the gas supply. The tenants submitted that they have offered many times for the landlord to visit to assess the situation.

The landlord submitted that Fortis electricity and Fortis natural gas are two separate services, and that the tenants have dealt only with Fortis electricity, not Fortis natural gas. The landlord submitted that users need to make two calls to Fortis to set up the two services.

The landlord testified that the furnace runs on natural gas, not electricity, so it will not work without gas supply to the unit.

### Analysis

Section 32 of the Act, on the obligations of a landlord and tenant to repair and maintain, includes:

- 32** (1) A landlord must 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.

Section 33 of the Act defines “emergency repairs” as repairs that are:

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,

- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, ...

The tenants seek an order for the landlord to restore the heat and hot water to the rental unit.

Rule of Procedure 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the tenants to prove their case.

The tenants testified that their furnace has not worked since December 17, 2022, when their neighbour turned off the electricity, and that the landlord has not responded to fix the furnace. The tenants submitted that the furnace is electric, not gas. The tenants did not present documentary evidence on this point, such as a report from a furnace repair person, or a photo. The tenants testified that a plumber visited and said that the hot water tank must be replaced as it is 11 years old, and he could not get the pilot light to stay lit.

The landlord testified that the furnace and hot water heater run on natural gas, not electricity, so will not work without gas supply to the unit.

The parties agree that the tenancy agreement states that the tenants are responsible for their natural gas and electricity. The tenants testified they have a Fortis account for the electricity. The landlord submitted that Fortis electricity and Fortis natural gas are two separate services, and that as the tenants failed to set up an account with Fortis for gas, the gas was shut off. The landlord testified that Fortis had contacted him, and stated they had attempted to contact the tenants so they could take over the natural gas account.

Neither party has submitted compelling documentary evidence in support of their position; the tenants have not submitted evidence of having an account for natural gas supply.

Based on the aforementioned, I am not satisfied on a balance of probabilities that the reason for the lack of heat and hot water is not due to the fact that the tenants have not

set up their natural gas account with Fortis, which they are responsible for under the tenancy agreement.

Therefore, the tenants' application is dismissed. The tenants are granted leave to reapply if, as part of their application, they submit proof they have set up an account for natural gas and that natural gas service is provided to the rental unit.

### Conclusion

The tenants' application is dismissed.

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: April 19, 2023

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Residential Tenancy Branch