

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

MNDC, OLC, ERP, RP, PSF

### **Introduction**

This hearing dealt with an application by the tenant seeking the landlord's action to remedy a number of deficiencies, primarily electrical code non-compliance issues, and for monetary compensation for loss under the Residential Tenancy Act (Act), Regulation or Tenancy agreement. At the outset of the hearing the tenant and the landlord agreed that the landlord has begun addressing some of the deficiencies he has identified on the property and the landlord advised that additional remedy to health and safety considerations will continue. The tenant advised at the hearing that he and his family are definitely moving March 1, 2009, and that his application in pursuit of repairs by the landlord is now revised to only seeking monetary compensation for loss. This decision will only deal with matters pertaining to the monetary claim.

Specifically, the tenant's revised claim is as follows:

- |  |                   |
|--|-------------------|
| 1). Loss of use, or inability to access parts of rental unit | <b>\$5,000.00</b> |
| 2). Compensation for loss of personal belongings             | <b>\$ 750.00</b>  |
| - 2 drywall screw guns @ \$125 each                          |                   |
| - 2 drywall pouches and assorted tools @ \$100 each          |                   |
| - Interior upholstery for truck @ \$300                      |                   |

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Total of claim **\$ 5,750.00**

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

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenant and landlord provided testimony under solemn affirmation to be truthful.

The tenancy started October 1, 2007. The rent is \$1200 per month payable on the first day of each month. The tenant testified that during the tenancy, he has made repeated requests for the landlord to make repairs to the roof. It is agreed by the parties that an area of the roof allows water to enter the rental unit and collect in the garage, basement laundry area and the upstairs washroom. The washroom consequently incurred some water damage and developed evidence of mould growth on the ceiling of the washroom. The garage area, also a storage area for the tenant, receives water, “whenever it rains”, and this area of the rental unit has been affected by water from the outset of the tenancy for, “12 out of the 16 months”, of the tenancy. The tenant testified that it has caused water damage to some of the tenant’s belongings stored in this area. The tenant provided a letter by the local health authority, to the landlord, stating that, “there was a musty smell in the basement as well”. The tenant also testified that during a particular episode of rainfall the particular belongings itemized in his claim for compensation were affected by water, and rendered unusable. Among the fifty (50) photographs supplied by the tenant, most depict water pooled in the laundry and the garage area floors, and there are some photographs showing a water pump which the tenant testified he has had to use periodically. However, none of the photographs supplied as evidence depict the personal belongings for which the tenant is claiming compensation. The tenant rests on his assurance that they were damaged and rendered useless.

### **Analysis**

On hearing the testimony of both parties I accept the tenant’s account that since the outset of the tenancy there have been repeated episodes of water entering the rental unit in the basement and garage areas, and affecting the upstairs washroom. I prefer the tenant’s evidence that he repeatedly asked the landlord to remedy the source of the water’s entrance and that this has gone unattended. I also accept the tenant’s account that water entered into the rental unit and adversely affected the tenant’s use of his rental area, in 12 of the 16 months of the tenancy. In accepting the tenant’s account I find the landlord was negligent in allowing the situation to continue and causing the tenant to lose access to and use of the referenced parts of the rental unit, when water

was present. However, with the tenant's knowledge of the situation and the predetermined likelihood of the presence of water, I do not find the landlord's negligence extends to causing damage to the tenant's itemized belongings. The tenant knew or ought to have known to guard these items from water damage, if water in the storage area was so prevalent. Therefore, I dismiss this portion of the tenant's claim in its entirety.

On reflection of all the evidence I find the tenant is entitled to compensation for the loss of access and use of rental property equivalent to \$180 per month, for 12 of the 16 months of the tenancy, for a total claim of **\$2160**.

### **Conclusion**

I grant the tenant an order under section 67 for the amount of **\$2160**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 03, 2009