



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNDC

OLC

ERP

RP

PSF

FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the landlord to comply with the Act, Regulation or tenancy agreement; an Order compelling the landlord to make repairs and emergency repairs to the unit, site, property, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, an Order that the landlord provide services or facilities required by law and reimbursement for the cost of the filing

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### **Preliminary Matter**

During the hearing the tenant advised that the landlord has addressed all of the repairs and the tenant is no longer seeking an order that the landlord make repairs or emergency repairs or for health or safety reasons. However, the tenant is seeking monetary compensation or a rental abatement of \$541.20 for the period of time during

which certain portions of the rental unit were not usable due to the water ingress or due to repairs that were underway. The tenant was also still seeking the cost of filing the application.

Another preliminary issue that arose was the admissibility of evidence. A portion of the tenant's testimony and evidence submitted in support of the monetary claim related to losses and damages that arose subsequent to the tenant's application for dispute resolution after the claim was already filed on January 27, 2009. This testimony and evidence were put forward in support of hardship and losses that the tenant suffered during the period between January 28, 2009 and February 3, 2009. Under section 75 of the Act, I declined to accept this evidence or consider it in relation to the matter before me because it was not directly relevant to the tenant's application, having transpired after January 27, 2009 when the application was made.

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

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation for loss of value of the tenancy and other damages. This determination is dependant upon answers to the following questions:
  - Has the tenant offered proof that the value of the tenancy was lowered sufficient to support a reduction in rent or compensation?
  - Has the tenant offered proof that the landlord committed a violation under the Act which caused the damage or loss?

The onus falls on the tenant/applicant to prove the case and show that due to the landlord's actions, the tenant is owed compensation for damage or loss.

## Background and Evidence

On January 27, 2009, the tenant has made an application for monetary compensation due to a loss of use and personal enjoyment of her suite beginning on January 12, 2009. The tenant testified that there was a water leak which was repaired by the landlord and that damage to the ceiling was also repaired. However the tenant testified that she took issue with:

- the landlord's failure to communicate,
- failure to give proper notice,
- failure to ensure that the unit was cleaned up after the repairs and,
- failure to compensate the tenant for loss of use.

The allegation of lack of communication was based on the fact that, according to the tenant, the landlord ignored the tenant's request for a complete breakdown of repair details, the duration of the repair, timelines for the repairs and refused to discuss loss of use compensation. The tenant testified that this lack of information left the tenant unsure about whether or not more work was imminent. The tenant testified that she was offered the opportunity to speak to the landlord, and took a day off work to deal with her concerns. However this did not resolve anything as the owner was not available to answer the tenant's concerns.

In regards to the landlord's failure to give proper notice, the tenant testified that despite having been informed that the tenant was not available on certain dates, the landlord still contacted the tenant. The tenant testified that accusations were made by the landlord that the tenant was intentionally stalling the repair process. The tenant testified that the landlord also appeared at the door on one of the days in question and proceeded to conduct an inspection of the cleanup and repair work, which the tenant felt was not done thoroughly.

In regards to the issue of clean-up, the tenant testified that the workers left drywall dust and particles in the unit and the tenant was unsure whether or not to clean up the mess as she was not given any information regarding whether additional work was done. The tenant stated that she was forced to come home from work to a dirty home and that she even felt it necessary to stay elsewhere.

In regards to the issue of compensation, the tenant was claiming \$541.20 representing a rent abatement of 100% for loss of use of the unit for twenty days amounting to \$461.20 and loss of wages of \$80.00 for the day the tenant was to meet with the landlord.

The landlord testified that as soon as the landlord became aware of the situation the landlord initiated repairs and the dry walling was fixed by January 16 2009 and the affected area was completely cleared up after the painter finished the landlord testified that she and her husband personally inspected the site and found it to be clean. In regards to the floor repairs, the landlord testified that the tenant was notified in writing on January 26, 2009 that the work would commence on January 28, 2009. The landlord stated that while some compensation may be warranted, the tenant's claim for \$541.20 was excessive.

A mediated discussion ensued and the parties came to an agreement that the tenant would be credited \$200.00 towards the next rent owed in full satisfaction of the claim.

### **Conclusion**

Given the above, and based on the settlement reached by the parties, I hereby order that the tenant may withhold \$200.00 from the next month rent owed as a one-time abatement in full satisfaction of all claims in this application.

March 2009

Date of Decision

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Dispute Resolution Officer