



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

MNDC & FF

### Introduction

This hearing dealt with an application by the tenant seeking compensation due to loss of enjoyment of the rental unit due to multiple floods. Both parties appeared for the hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

### Issues(s) to be Decided

Is the tenant entitled to compensation due to loss of use of the rental unit or due to loss of quiet enjoyment of the rental unit which the landlord was responsible or for which the landlord could have prevented?

### Background and Evidence

This tenancy began on February 1, 2008 for the monthly rent of \$625.00 and a security deposit of \$312.50. The tenancy was initially a fixed term lease and subsequently continued on a month to month basis.

The building and the tenant's rental unit flooded on the following dates: October 17 & 18, and December 24<sup>th</sup> and 26<sup>th</sup>, 2008. The tenant explained that the first flood on the 17<sup>th</sup> came from the ceiling down into the living room. On the 18<sup>th</sup> the flood occurred again but it was much worse resulting in damaged drywall and requiring remediation to dry out the carpets. The tenant stated that he was disturbed by the influx of people which were in the rental unit to complete the repairs and lost the use of the living room from approximately a week. It was not until approximately November 25, 2008 that all the repairs were finalized.

On December 24, 2008 however a third flood occurred in the living room and the tenant's plans for Christmas were interrupted and he cancelled his plans for the 25<sup>th</sup>. On December 26<sup>th</sup> the flooding continued but now it was coming from the kitchen area. The tenant was disturbed that despite leaving a message with the landlord, no one contacted him about the flooding until December 27, 2008.

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As a result of the additional flooding in the kitchen, a large section of the kitchen ceiling had to be removed. The tenant stated that the landlord told him that the ceiling would not be repaired until the tenant vacated the rental unit.

As a result of this understanding and because of the length of time it was taking to have the repairs begun the tenant states that he wrote the landlord a letter in January 2009 requesting that all the repairs be completed. The tenant did not have a copy of this letter. Repairs continued into the first week of March when the living room was repainted. The tenant stated that oil paint was used and he could not remain in the living room for over a week and a half.

The tenant submitted that as a result of the multiple flooding and all the repair work he has lost the use of 60% of the rental unit. The tenant is seeking the sum of \$4,080.00 due to the loss of use of the rental unit and due to the loss of quiet enjoyment.

The landlord submitted that he finds the tenant's application to be unreasonable and frivolous. The landlord acknowledged that the floods occurred and that there have been significant repairs completed in the tenant's rental unit as a result; however, the landlord clarified that there were a total of 8 suites which all experienced the same type of damage during the same periods. The landlord stated that when the roof was being replaced an internal drain line was cracked and not detected until the rainy season hit. The landlord was responding to and organizing the remediation and repair of 8 suites and although it was inconvenient the landlord responded in a timely and appropriate manner.

The landlord also denied receiving a letter from the tenant in January 2009. The landlord did not, and continues to believe, that a rent reduction was not necessary. The flooding was not due to the negligence of the landlord and the landlord took all necessary steps to clean and repair all the units that were damaged.

The landlord acknowledged that it took from January 2009 until approximately March 8, 2009 to complete all the repairs; however, the landlord submitted this was largely due to the "dry out" period that was required. All of the areas had to be exposed and left open to dry out before the walls could be repaired or there would be potential mould issues in the future.

The tenant challenged the landlord's statements and argued that repairs were not completed on his unit until he wrote the letter in January 2009. The tenant also submitted that some individual, identified only as "Howard", had told him that work would not be completed until he vacated because of the potential mould issue.

## Analysis

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*.

Section 6 of the *Residential Tenancy Policy Guidelines Manual* discusses the covenant of quiet enjoyment as followings:

“This guideline deals with a tenant’s entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment “promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy. A landlord does not have a reciprocal right to quiet enjoyment.

The Residential Tenancy Act and Manufactured Home Park Tenancy Act (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord’s right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

It is essential that in considering the impact of repairs or maintenance on a tenant that any discomfort must be balanced against the landlord’s right to repair and maintain the property and/or rental unit.

I accept the evidence of the landlord that a significant flood that occurred that impacted multiple units in the same building. I also accept that the tenant was not necessarily informed of the nature of the flooding and that other rental units were affected. I also

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accept the landlord's evidence that all was being done to both protect the landlord's property and to minimize the impact on the tenants.

I do not accept the tenant's allegation that the landlord was purposely delaying the repairs in his rental unit. I find that the tenant's conclusions were reached based solely on his speculations and in the absence of all the information.

However, I do accept that despite the best efforts of the landlord to minimize the effects of the flooding and subsequent repairs the tenant experienced some loss of use of the rental unit.

From the evidence presented I accept that the tenant lost the use of the living room for one week after the flooding on October 17 and 18<sup>th</sup>, 2008, lost the use of the living room for two days on December 24 and 25<sup>th</sup>, 2008 and lost the use of the living room again for a week at the end of February or beginning of March 2009 when it was painted.

I find that any other discomfort or inconvenience experienced by the tenant was unavoidable and experienced by all affected tenants and the landlord. However, it was a necessary inconvenience as the landlord was required to and had the right to repair the property.

I find that the living room accounted for approximately 150 square feet of a 600 square foot one bedroom apartment based on the approximate dimensions of a 10 X 14 foot room. This sum represents about  $\frac{1}{4}$  of the total square footage. Therefore, for the total of 16 days I award the tenant  $\frac{1}{4}$  of the pro-rated daily rent cost for the sum of \$84.26 ( $\$625 \times 12/356 = \$21.06$  per day  $\times \frac{1}{4} = \$5.26 \times 16 = \$84.26$ ).

I also grant the tenant's request to recover the \$50.00 filing fee paid for this application from the landlord for a total monetary claim of **\$134.26**. The tenant may deduct this sum from his next month's rent owed to the landlord.



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## Conclusion

The tenant's application is granted in part. I find that the tenant experienced a minor loss of use of a portion of the rental unit. I did not accept that the tenant was entitled to further compensation due to loss of quiet enjoyment as the repairs were necessary and experienced by all parties. I accepted that the repairs were not the fault of the landlord and the landlord has the right to repair the rental unit.

Dated: July 14, 2009.

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Dispute Resolution Officer