



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            MNR, MNDC, OLC, ERP, RP, FF

### Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to make emergency repairs for health and safety reasons, an Order for the landlord to repair the unit, site or property and to recover the filing fee for this application. At the hearing the tenant withdrew his application for a Monetary Order for the cost of emergency repairs and their request for the landlord to comply with the *Act*.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent by registered mail to the landlord on November 22, 2010.

The male tenant and an agent for the landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to make emergency repairs?
- Are the tenants entitled to an Order for the landlord to make repairs?



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## Background and Evidence

Both parties agree that this tenancy started on September 01, 2009 and a new tenancy agreement was entered into on September 01, 2010 for a fixed term tenancy due to expire on July 31, 2011. Rent for this unit is \$2,700.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$1,350.00 on September 01, 2009.

The tenant attending testifies that the house has not been well maintained by the landlord with many repairs required of which some the tenant did himself with the landlords permission. The tenant testifies that in September, 2010 they asked the landlord to look at the guttering as it were leaking. A contractor did come out and found the gutters required repairs along with the roof flashing. The tenant states that later in September they found a book which had been stored under the sofa was covered in mould and the carpet in this area was damp. They informed the landlord who arranged to remove approximately 54 square feet of carpet. However, the rotten wood and exposed nails and carpet gripper were left in situ. The tenant states due to this problem and the fact they had young children they could not use the living room on a daily basis.

The tenant states a roofing contractor came to look at the roof and recommended that the roof should be replaced as it would not hold a heavy snowfall. The tenant states many weeks went by and they asked the landlord about the replacement carpet for the living room but were told the landlord was waiting for the roof repairs before the carpet could be replaced. The tenant states the roofing contract was awarded on October 05, 2010 and this work was finally completed on December 11, 2010. The tenant states they were without a living room carpet for three months and the area remained dangerous for their children during this time.

The tenant testifies that on November 06, 2010 the landlord told them that they wanted to put the house up for sale. The tenant states they have a fixed term tenancy and had to then live with the inconvenience of contractors, decorators, realtor visits, an open house and viewings. The tenant claims they have not had peaceful enjoyment of their home for three months and initially sought compensation of \$1,620.00 however the tenant now feel they are entitled to seek

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compensation in the form of a rent reduction equivalent to \$90.00 a day for three months to the sum of \$8,100.00. The tenants also seek compensation for damage to their book which they claim has a retail value of \$208.00. The book was purchased in 2001.

The tenant states the landlord has failed to either inspect or repair the electrical system which throws the breakers when they plug their items into the circuit. The fence outside requires repairs as it is due to collapse, the gutters require repairs and the seals to the windows have gone which makes a white film on some of the windows and prevents the tenants seeing out of them. The tenant states the landlord was informed of the hazy windows in April, 2010 and about the electrical wiring on September 03, 2010 by e-mail. The fence and gutters have been an ongoing problem since they moved into the property and the landlord was aware of this. The tenant states the landlords' agent asked too much of the tenants regarding repairs to the property and these repairs are the landlord's responsibility not the tenants. The tenants seek to obtain an Order for emergency repairs to the electrical system and an Order for repairs to the fence, windows and gutters.

The landlords' agent disputes the tenant's claims. The landlord states the compensation the tenants seek is excessive as they rent out the basement of the home and collect \$600.00 a month from this tenant.

The landlords' agent testifies she has always dealt with repairs to the property in a timely manner. She states the tenants have never mentioned to her that there is an issue with the electrical system until September, 2010. The landlords' agent states the tenants notified her on September 12, 2010 about the carpets and on September 15, 2010 she had the roof patched while waiting for estimates for additional roof repairs. These were obtained on September 30, 2010. On October 05, 2010 the landlords' agent states they signed a contract with a roofing company to complete the roof repairs but the first available date for the contractors to commence work was November 08, 2010.

The landlords' agent states the roofing contractors did not turn up on the agreed date. The landlords' agent states she called the company and was told they had signed on new

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contractors to do the work. On November 15, 2010 the roofing supplies were delivered but the weather took a turn for the worse and the work could not commence at that time. The roofing work was finally completed on December 11, 2010. The landlord states the weather was out of her control but she acted promptly in organising repairs

The landlords' agent testifies that she provided a dehumidifier for the tenants and contacted a flooring company about the carpet on September 18, 2010. The flooring contractor came out on that day and ripped up the damp carpet but did not find any mould present. This company have provided a letter stating this. The landlords' agent states the tenant informed her she had covered the bare area of flooring with an area rug but never told her that she considered it to be unsafe. She states the new carpets were organised to be laid on December 02, 2010 but as this was not convenient for the tenants the date was changed to December 06, 2010.

The landlords' agent states she responded to the tenants' e-mail of September 03, 2010 and asked the tenants to get an electrician to look at the wiring and send her the bill. She states she also gave the tenants the go ahead concerning fence repairs and if the tenant could not do this he should have informed her.

The landlords' agent testifies that the tenants claim they lost quiet enjoyment of the property when the house was put up for sale. The landlords agent states they never entered the property without permission and the tenants were notified that an open house would take place on November 22, 2010. The landlords agent states she did not realize at the time that they could not give the tenants Notice to End Tenancy but now she is aware of this she does not intend to give the tenants notice to vacate if the house is sold.

Both Parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the tenants claim for compensation for loss of use of part of the rental property and for loss of quiet enjoyment of their home due to repairs; when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the landlord did act promptly when notified about the gutters and repairs required to the roof. I also find the landlord acted promptly with regard to removing the damaged section of carpet. However, the landlord did not ensure that the living room area where the carpet had been removed was left safe for the tenant's family by leaving rotten wood, carpet grippers and nails exposed. The tenants did attempt to mitigate this by covering some of the area with an area rug. Consequently, I find the tenants are entitled to receive some compensation from the landlord for the period of time the area could not be used. I do find however that the tenants claim is excessive due to the landlords' diligence in attempting to remedy the issues promptly. Therefore, I find the tenants' compensation claim is reduced to \$10.00 a day from September 18, 2010 to December 02, 2010, the day the landlord wanted to replace the carpets, to a total sum of **\$750.00** pursuant to section 67 of the *Act*. The tenants claim for further compensation for the disruption caused by the roof is denied due to the landlords' diligence in affecting repairs.

With regard to the tenants claim for damage to a book to a sum of \$208.00; in this instance I find the landlord is not at fault because the roof and/or gutters leaked into the living room area causing damp to seep into a book left under a sofa by the tenants. The landlord did not act negligently in this matter. Consequently, I find the tenants claim for replacement costs for this book is denied.

With regards to the tenants claim for compensation due to disruption and a loss of peace and quiet enjoyment of their rental property due to the landlord putting the house up for sale; a landlord is entitled to put their property up for sale and a viewing schedule should be arranged between the parties. The landlord is not however entitled to end the tenancy if the property is sold until the end of the fixed term but could sell the property and the purchasers would take over as landlords. Consequently, I find the tenants are not entitled to compensation due to this.

With regards to the tenants application for emergency repairs; Section 33 of the *Act* deems what can be regarded as an emergency repair. In this instance the tenants claim there is a problem with some of the electrical wiring which causes the breakers to blow. The landlords' agent argues that she gave the tenants permission to have an electrician look at the wiring and send her the bill. This is however the landlord's responsibility to arrange and consequently I uphold the tenant's application for an Order for the landlord to send a qualified electrician to inspect and if necessary repair any electrical faults pursuant to section 33 of the *Act*.

With regard to the tenant's application for an Order for the landlord to make repairs to the unit, site or property, in this instance I refer both parties to section 32 of the *Act* which states:

**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.

I find the tenant's evidence supports their claim that the fence, gutters and windows require repairs, consequently I uphold their application for an Order for the landlord to make repairs to the gutters, fence and windows pursuant to section 32 of the *Act*.

As the tenants have been partially successful with their application I find they are entitled to recover their **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*.



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## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. The tenants are entitled to a monetary award for compensation of \$750.00 and the \$50.00 filing fee to a total sum of **\$800.00**. The tenants may deduct this amount from their next rent payment which is due to the landlord.

I HEREBY ORDER the landlord to arrange an inspection and any necessary repairs to the electrical system with two weeks of receiving this Order and make effective repairs to the gutters, fence and windows of the property within two months of receiving this Order.

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: December 29, 2010.

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