



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

*CNR, RR, MNDC, FF*

### **Introduction.**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to cancel the ten day notice to end tenancy. The tenant has also applied for a monetary order for compensation for the inconvenience endured during the time that repairs were in progress and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing the landlord stated that the tenant paid rent within five days of receiving the notice to end tenancy and therefore she agreed to allow the tenancy to continue. Since the notice to end tenancy was withdrawn by the landlord the tenant's application to cancel the notice was moot. Therefore, this hearing only dealt with the tenant's application for a monetary order for compensation and for the recovery of the filing fee.

### **Issues to be decided**

Was the landlord negligent in maintaining the rental unit? Was the damage a result of the tenant's actions? Is the tenant entitled to compensation for the period during which the restoration work was in progress? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on September 04, 2010. Rent is \$1,800.00 due on the first of each month. The rental unit is a two storey home with a finished basement. There are three full bathrooms and one half bathroom in the home. In the summer of 2010, just prior to the start of the tenancy, the kitchen and master bedroom were completely renovated by licensed tradesmen.

On December 30, 2010, the tenant reported a leaky bath tub in the master bedroom. The water leaked into the kitchen below.

The landlord came out that day and cut a hole in the kitchen ceiling to determine the cause of the leak.

On December 31, 2010, the landlord visited the unit along with the plumber who had installed the tub. The landlord filed a report written by the plumber. The report states that on July 19, 2010, he had installed the free standing tub parallel to the back wall, but upon inspection on December 31, 2010, he found that the tub was not parallel to the back wall of the bathroom. The report states that upon filling the bath tub with water when it was not straight caused the drain pipe to leak and when the tub was straightened and in line with the wall, the drain functioned properly without any leaks.

The landlord stated that after the complete renovation of the bathroom, the tenants were the first occupants of the home. She stated that the leak and the resulting damage occurred due to movement of the tub and since the tenants were the only users of the tub after the renovation, the tenants were responsible for the damage.

The tenant argued that on December 31, the plumber could not determine the cause of the leak and therefore it may have been for reasons other than the alignment of the tub. The tenant denied having moved the tub and stated that she had not caused the leak.

The landlord arranged for another company to assess the damage caused by the leak and she also reported the damage to her insurance company. The insurance company hired a restoration company to fix the damage.

The restoration work started on January 12. The landlord filed a report from the restoration company which gives a detailed log of repair activities. Three kitchen cabinets were removed along with the microwave oven. Drywall removal and treatment of mould in the bathroom was carried out and on January 18, the work in the bathroom was complete, the drying equipment was removed and the bathroom was ready for use.

The report from the restoration company states that the kitchen was usable at all times with the exception of the stove area for periods when the workers were on site. The microwave oven was relocated to a temporary area and was available for use. The cosmetic work finished on January 28, 2011.

Despite being informed of the availability of the use of the master bathroom by the repair person, on January 18, 2011, the tenant stated that she did not use the master bathroom until January 28 due to the chemicals that were used for the treatment of mould.

She stated that the drying equipment was in the bathroom until January 28 thereby making the bathroom inaccessible for use. She also stated that the microwave oven was placed on the floor and therefore it could not be used.

The tenant stated that she had to be available to let the tradesmen into the home for the period of January 12 to 28 and that on January 13, she had to leave the home with her child for three hours while the insulation was being installed.

### **Analysis**

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law. In this case, I find that the landlord fulfilled her obligations by acting on the tenant's complaint in a timely manner and making the necessary arrangements to repair the damage and restore services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. 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 of completing renovations.

The landlord and tenant had different versions of the cause of the leak, the date that the equipment in the bathroom was removed and the availability of the bathroom. However the landlord has filed evidence by way of reports from the contractors that conducted the restoration work to support the landlord's version of events.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Based on the evidence in front of me, I find that the tenant was deprived of the use of the tub in the master bathroom for the period of December 31, 2010 to January 18, 2011 and full use of the bathroom from January 12 to January 18. There are a total of three full bathrooms plus one half bathroom in the rental unit. In addition, one of the full bathrooms is on the same floor as the master bathroom.

Therefore, I find that even though the tenant experienced some inconvenience due to the temporary loss of the master bathroom, she still had full use of the other bathrooms in the house.

I find that the tenant may have been inconvenienced while the restoration work was in progress, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the repair work. Therefore I find that the tenant is entitled to nominal damages. The landlord offered a rent reduction in the amount of \$400.00 and accordingly, I award the tenant this amount. Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee of \$50.

Overall the tenant has established a claim of \$450.00. The tenant may retain \$450.00 off a future rent.

### **Conclusion**

The tenancy will continue. The tenant may retain \$450.00 from a future rent.

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: February 21, 2011.

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Residential Tenancy Branch