

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's resident manager (the landlord) confirmed that the tenant handed her a copy of her dispute resolution hearing package on March 5, 2011. I am satisfied that the tenant served her hearing and evidence packages in accordance with the *Act*. The landlord entered no written evidence.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*? Is the tenant entitled to recover her filing fee for this application from the landlord?

### Background and Evidence

This one-year fixed term tenancy commenced on August 1, 2010. The tenant is paying \$800.00 in monthly rent, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid on July 6, 2010.

The tenant applied for a monetary Order in the amount of \$1,743.43. In her application for dispute resolution, she stated the following.

*The condition of my apartment has not been great since the beginning of tenancy (august 1, 2010), from cosmetic things to pests, to leaks, and unfinished repairs. My bathroom ceiling was open and leaking from January 13 - February 23.*  
(as in original)

She testified that the landlord did not follow commitments made before she moved into her rental unit. She said that she raised concerns about necessary repairs many times orally and in writing with various building managers to little avail until the present resident manager started acting on her requests. She did not have copies of any letters she sent to the landlord nor did she present written commitments made by the landlord to address the concerns she raised in the early stages of her tenancy. The tenant testified that she advised the landlord in November 2010 that water was leaking into her

shower from a rental unit above her. She also complained of mould and pests, but admitted that she suffered no health effects from either of these problems.

After complaining about the leaks into her bathroom from November 2010 until January 2011, the landlord commenced attempts to repair these leaks on January 13, 2011. The tenant gave undisputed oral testimony that the landlord told her to not use her shower as of that date. She also presented photographs of the large hole that was cut in her ceiling to conduct these repairs. The parties agreed that water from upper floor(s) continued to leak into the tenant's bathroom from January 13, 2011 until February 23, 2011. The landlord's resident manager testified that the landlord conducted three separate sets of repairs to try to stop the leakage into the tenant's bathroom. When the leaks were eventually repaired, the landlord filled the hole in the bathroom of the tenant's ceiling and replaced the damaged floor. The landlord did not dispute the tenant's claim that there was no way that she could stay in the apartment during the period of the repairs because of the continuing leaks into her bathroom. The landlord did not dispute the tenant's claim that she had to pay a friend \$200.00 for each of January and February 2011 in order to stay with her during the repairs.

The tenant provided the following breakdown of her monetary claim:

<b>Item</b>	<b>Amount</b>
Pro-rated January 2011 Rent (Jan. 13 – 31)	\$490.32
Pro-rated February 2011 Rent (Feb. 1-23)	657.11
Less \$150/month deduction allowed by landlord for open ceiling (Jan. & Feb.)	-300.00
Rent paid for 2 months to stay in friend's home (\$200.00 x 2 = \$400.00)	400.00
Compensation for inconvenience since beginning of tenancy and extra time and money needed for travel from friend's home	500.00
<b>Total Monetary Order Requested</b>	<b>\$1,747.43</b>

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from

a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

There was essential agreement between the parties regarding the basic fact pattern presented into evidence by the tenant regarding the repairs to the tenant's bathroom between January 13, 2011 and February 23, 2011. The landlord said that there were delays in identifying the source of the leaks and in accessing drywall to conduct some of these repairs. The parties agreed that the landlord offered and the tenant received a rent reduction of \$150.00 per month for each of January and February to compensate her for her loss of services and facilities that the landlord committed to provide when this tenancy commenced. What is at issue is whether the tenant is entitled to any further compensation for her loss of these services.

Based on the tenant's oral, photographic and written evidence, and the landlord's oral evidence, I find that the \$150.00 in reduced rent that the landlord credited the tenant for each of January and February 2011 is inadequate compensation for the disruption the landlord's repairs caused the tenant. I agree with the tenant's undisputed assertion that the large ceiling hole and the frequent leaks in her bathroom prevented her from using this room from January 13, 2011 until the repairs were completed by February 24, 2011. Although the landlord questioned the amount of the monetary award sought by the tenant in her application, the landlord did not question the tenant's claim that she could not have lived in her rental unit for a five-week period without a washroom and with a ceiling constantly leaking overhead in that room. I accept the tenant's claim that she could not stay in her rental unit over this period without access to her washroom.

For January 2011, I allow a further monetary award of \$490.32 beyond the \$150.00 rent reduction already allowed by the landlord for that month. For February 2011, I allow the tenant a further monetary award of \$650.00, the retained amount of rent for that month that the landlord presently holds after reducing the tenant's rent by \$150.00 for that month. Although I am limiting my monetary award to the time period from January 13, 2011 until February 23, 2011 identified in the tenant's application, I recognize that the tenant experienced leakage and repair problems before January 13, 2011 that were not addressed by the landlord in a timely fashion.

I also issue a monetary award in the tenant's favour to compensate her for the \$400.00 in rent she paid her friend for January and February 2011 while the repairs to her rental unit were being conducted. I do so on the basis of a receipt the tenant entered into written evidence for this added expenditure she incurred as a result of this tenancy. In making this decision, I accept that the tenant took reasonable steps to reduce the landlord's losses by making arrangements to stay with a friend at a rate that is considerably below what she would have had to pay for a short-term rental of this nature. As such, I am satisfied that the tenant has discharged her duty under section 7(2) of the *Act* to minimize the landlord's loss.

As the tenant has been successful in her application, I allow her to recover her \$50.00 filing fee from the landlord.

Although I have given the remainder of the tenant's claim careful consideration, I find that she has not met the burden of proof required to obtain a monetary award for the remainder of her claim. She has not provided:

- written evidence of requests she made to the landlord to address her concerns;
- written evidence of commitments made by the landlord to conduct repairs; or
- receipts or any other evidence to verify the actual monetary amount of her loss or damage.

### Conclusion

I issue a monetary award in the tenant's favour that allows her to recover the pro-rated rent that she paid the landlord for the period from January 13, 2011 until February 23, 2011 and the rent she paid to stay elsewhere while her rental unit was repaired, less the amount of reduction already provided by the landlord. I issue this monetary award in the following terms:

<b>Item</b>	<b>Amount</b>
Pro-rated January 2011 Rent Reduction (Jan. 13 – 31- i.e., 19 of 31 days = $19/31 \times \$800.00 = \$490.32$ )	\$490.32
Pro-rated February 2011 Rent Reduction (Feb. 1-23)- i.e., 23 of 28 days = $23/28 \times \$800.00 = \$657.14$ reduced to \$650.00 as \$150.00 already rebated)	650.00
Less \$150/month deduction previously allowed by landlord for open ceiling (Jan. & Feb.)	-300.00

Rent paid for 2 months to stay in friend's home (\$200.00 x 2 = \$400.00)	400.00
Recovery of Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,290.32</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.