



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, RP, MNDC, FF

### Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act by making repairs or emergency repairs, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Are repairs required?
2. Is the Tenant entitled to compensation and if so, how much?

### Background and Evidence

This fixed term tenancy started on November 1, 2010 and expires on October 31, 2011. Rent is \$850.00 per month payable in advance on the last day of each month. The Tenant has been paying a reduced rent of \$750.00 since January 2011. The rental unit is a one bedroom apartment. The Tenant says the total area of the rental unit is 408 square feet however the Landlord says it is 700 square feet. The Landlord is a principal of the corporate owner (and builder) of the rental property.

The Tenant said that on December 13, 2010, water began leaking through the ceiling of the bedroom. The Tenant provided photographs of the damaged section of the ceiling that he said he took on December 14, 2010. The Tenant said he was unable to contact the Landlord about the damage that day because he had an incorrect telephone number for her so he reported it to the building manager. The Tenant said the building manager finally was able to contact the Landlord on or about December 20, 2010 but no one came to the rental unit to assess the damage until December 27, 2010. On that day, the Tenant said, an agent for the Landlord removed the damaged drywall and insulation which exposed areas of black mould on the trusses. The Tenant provided photographs of the exposed ceiling that he said he took on January 4, 2011.

The Tenant said the ceiling was left in that condition for 3 weeks during which he had no contact from the Landlord so he sent the Landlord a letter dated January 31, 2011 asking her to let him know what repairs would be made and requested compensation for the loss of the use of the bedroom. The Tenant said the Landlord did not speak to him but he was advised by the building manager that the Landlord was only willing to reduce

his rent by \$100.00 per month which the Tenant said he felt was inadequate. The Tenant said the Landlord's agent returned to the rental unit at the end of March 2011 to paint over the mould, install new insulation, trusses and a poly barrier but did not repair the leak. Consequently, the Tenant said water has continued to leak into the rental unit to date. The Tenant said some agents came to the rental unit to install dry wall approximately a week ago but refused to do so when they saw the wet insulation and pools of water that had accumulated inside the plastic barrier. The Tenant provided a copy of a picture of this that he said he took on June 23, 2011.

The Landlord did not dispute that there was a leak in the bedroom ceiling of the rental unit however she claimed that there was little she could do about it at this time. The Landlord said that she had an agent inspect the leak shortly after it was reported but the source of the leak could not be verified. The Landlord said she believes that the leak may be coming through an exterior wall by the patio of the suite above the rental unit however, in order to know for sure (and to make repairs) it would involve removing a "pony wall." The Landlord said she has recently put a tarp over the suspect area to try to prevent any further water from entering. The Landlord would not elaborate on why this had not been done.

The Tenant argued that with the loss of the bedroom, he was essentially renting a bachelor suite and that the rent for bachelor suites in the rental property was \$500.00 per month. Consequently, the Tenant sought compensation of \$250.00 for the past 7 months and a further rent reduction for \$250.00 for future months. The Landlord claimed that the rent for bachelor suites in the rental property was \$550.00. However, the Landlord also claimed that even with the loss of the bedroom, the area of the rental unit was larger than that of a bachelor suite. Consequently, the Landlord argued that the Tenant was already receiving fair compensation for the loss of the bedroom by having his rent reduced by \$100.00 per month.

### Analysis

During the hearing, the Parties agreed that any repairs to the rental unit would not be completed for some time and as a result, they also agreed that the fixed term tenancy would end early on September 1, 2011 ***without any penalty to the Tenant***. For this reason, the Tenant's application for an Order that the Landlord make repairs and/or emergency repairs are dismissed without leave to reapply.

Section 32(1) of the Act says that a "landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment which includes the right to freedom from unreasonable disturbance and exclusive use of the

rental unit subject only to the landlord's right to enter the rental unit in accordance with s. 29 of the Act.

I find that the Tenant's rent is based on accommodations that include the use of one bedroom. Although the Landlord argued that the Tenant still has the use of the closet in the bedroom, I find that the Tenant has lost substantially all of the use of that room for which he pays rent and therefore is entitled to be compensated for that loss.

The Landlord claimed that any compensation should be based on a square footage basis and argued that the Tenant only lost 1/7 of the total square area of the rental unit. The Landlord also argued that the amount of rent on which this is based should be reduced by \$200.00 to account for services and facilities included in the Tenant's rent such as utilities, garbage, parking and so forth. The Tenant argued that he measured the rental unit and the total area was 408 feet with the bedroom being 100 square feet. In any event, the Tenant argued that he should be paying an equivalent rent to that charged for a bachelor suite.

I find that the Landlord's argument is in error in a number of respects. Firstly, I find that the Landlord's calculation of the area of the rental unit is not reliable. The Landlord said the rental unit was 700 square feet or 13 x 25 feet and the bedroom approximately 100 square feet. However, 13 x 25 is not 700 square feet but rather 325 square feet. The Landlord also argued that the Tenant could use his living room as a bedroom however, he would then lose the use of the living room. I also find that there is no evidence of the value of the services and facilities that the Landlord said should be deducted from the amount of rent and note that the tenancy agreement does not indicate that garbage and parking are included in the rent. Consequently, I find that the Tenant's approach is more reasonable and conclude that he should be paying a reduced rent equivalent to that of a bachelor suite in the rental property or \$550.00 per month.

As a result, I find that the Tenant is entitled to compensation of \$200.00 per month (or \$750.00 - \$550.00) for January to July 2011 or \$1,400.00. As the Tenant has been successful in this matter, he is also entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee he paid for this proceeding. The Tenant will also be entitled to pay the reduced rent for August 2011 in the amount of \$550.00.

Pursuant to s. 72(2) of the Act, I Order that the Tenant may withhold his rent payment for August 2011 in partial satisfaction of the monetary award. The Tenant will receive a Monetary Order for the balance of the compensation awarded to him as follows:

Monetary Award:	\$1,450.00
Less: August 2011 Rent:	<u>(\$550.00)</u>
Balance Owing:	\$900.00

Conclusion

The Tenant's applications for an Order that the Landlord make repairs or emergency repairs are dismissed without leave to reapply. A Monetary Order in the amount of **\$900.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order 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*.

Dated: July 20, 2011.

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Residential Tenancy Branch