



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act and for the recovery of the filing fee for this proceeding

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by posting it on the Landlord's door on August 1, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Has the Tenant had a loss or damage as specified under the Act and if so how much?
2. Is the Tenant entitled to compensation and if so how much?

### Background and Evidence

This tenancy started in May 2007 as a 1 year fixed term tenancy and renewed on a month to month basis. Rent was \$760.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$355.00 in May of 2007.

The Tenants said they reported a roof leak in their rental unit to the Landlord in November, 2007. As a result of the roof leak the Tenants said they have experienced a loss and damage which they want compensation for. The Tenants said they have made an application for the loss of use and enjoyment of part of the rental unit in the amount of \$4,218.00, damage to personal property in the amount of \$1,035.00, \$100.00 for their labour to clean up the water and to recover the filing fee of \$100.00 for this proceeding.

In November, 2007 the Tenants said they reported the leak in the roof and damage to the ceiling of their rental unit. The Tenants continued to say it was not repaired even when they moved out on January 31, 2011. The Tenants said they contacted the Landlord about the roof and ceiling issue on many occasions. The Tenant said the contacts about the damage were made with the Landlord in November, 2007, December, 2007, January 2008, February, 2008 (three separate times), January, 2009,

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September, 2009, September 2010 and when they moved out in January, 2011. The Tenant said the Landlord agreed to fix the roof and ceiling but never did. As a result the Tenant is claiming 15% of the rent paid from November, 2007 to January, 2011 as compensation for loss of use and enjoyment of the bedroom in the rental unit. The total rent paid in this time period was calculated by the Tenant as \$28,120.00 and the compensation sought is  $\$28,120.00 \times 15\% = \$4,218.00$ . The Tenant said they did not use the bedroom ceiling light as it was dangerous to use because water had leaked into it. The Tenant also said the ceiling and walls of the bedroom were water stained. The Tenant provided photographs to support their claims.

In addition the Tenants said they spent 4 hours cleaning the water up from the leak and they are seeking compensation of \$25.00 per hour or \$100.00 total for their labour.

The Tenants continued to say they had electronic equipment that was damaged by the water leak and they feel the Landlord should be responsible to compensate them for their loss. The Tenants said they lost a hard drive in a computer valued at \$150.00, they had computer repair work done in the amount of \$235.00, they had to replace a cell phone for \$200.00 and their TV worth \$450.00 was damaged beyond repair. The Tenant said they are claiming a total of personal property lost in the amount of \$1,035.00.

In addition the Tenant said they are seeking to recover the filing fee of \$100.00 for this proceeding. The Tenant said their total claim is \$5,453.00.

The Tenants said they believe their claim is fair because the Landlord did not repair the roof or ceiling even though the Tenants repeatedly requested the work to be done. The Tenants provided a witness S.V. to give testimony about her experience with the Landlord. The Witness said that she had damage in her rental unit which the Landlord did not repair and that other tenants in the complex had maintenance issues with the Landlord as well.

The Landlord said that they repaired the roof, but they were not sure of when and were not able to provide any receipts or work orders to show the work was done. The Landlord said their policy is to do repairs as soon as they are aware of any problem in the rental complex and they thought the roof had been repaired sometime in December, 2007.

The Tenant said that the roof was not repaired in December and supported this with a letter from himself to the Landlord indicated they agreed to have the roof repairs done on February 26, 2008. The Tenant said the repairs were not done as the Landlord did not issue a work order to the repair company. The Landlord said the roof repairs were done. The Landlord continued to say the repairs to the ceiling of the rental unit were not

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completed because there were access issues with the Tenant and that the Tenant was aggressive towards the Landlord. The Tenant said he gave the Landlord permission to enter his unit to do the repairs when he was away or when he was in the unit.

The Landlord said in closing that they have acted responsibly by repairing the roof and they were unable to repair the ceiling in the rental unit because the Tenants did not cooperate and he was aggressive towards the Landlord, so they could not gain entry to do the repairs. The Landlord said the photographs show some staining on the walls and ceiling, but there was no structural damage or mold issues from the water leak. The building manager said he has inspected the unit and painted it and he said the damage was minor. In addition he said the floors in the unit were not damaged and no water leaked into the unit below. The Landlord continued to say the loss of the Tenants' personal property is covered by tenants insurance and that loss is not the Landlord's responsibility as they were not negligent when the leak originally happened.

The Tenant said in closing that the Landlord had 38 months to repair the roof and ceiling and the Landlord did not, therefore the Tenants believe the Landlord was negligent in their duties as a landlord and are responsible for the Tenants' losses and damages.

## Analysis

Section 32(1) of the Act says that 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 age, character and location of the rental unit makes it suitable for occupation by the tenant.

Although there is contradictory testimony whether the roof was repaired it is apparent from the testimony of both the Landlord and the Tenant that some work was done on the roof because the Tenant only referred to the water leak in November, 2007 as a time when damage was caused and work was done to clean up the water in the rental unit. As well it was agreed by both the parties that repairs to the bedroom in the unit were not done by the Landlord even though the Tenant requested those repairs on many occasions. As a result I find that the Landlord neglected their responsibility to inspect and repair the bedroom in the rental unit. Consequently I find the Tenant has established grounds for compensation and I award the Tenant \$50.00 per month for the 38 months of the tenancy that the bedroom was in disrepair in the amount of \$1,900.00.

In addition I find for the Tenants in their claim for \$100.00 for time and work they did to clean up the original water leak as the Landlord would have this expense no matter who did the clean up.

With respect to the Tenants claim for loss of personal property I find the Tenants have not established grounds to prove the Landlord was negligent in regards to the original roof leak and therefore the Landlord is not responsible for the lost of the Tenant's personal property. If the damage happened as a result of repairs not being done and the Landlord was aware of maintenance problems in the unit then the Landlord would be responsible, but as this was the original leak it is likely that the Landlord had no knowledge of the roof leak prior to it happening and therefore the Landlord was not negligent.

As the Tenants have been successful in this matter, they are also entitled to recover from the Landlord the \$100.00 filing fee for this proceeding. The Tenants will receive a monetary order for the balance owing as following:

Compensation for loss of use and enjoyment:	\$1,900.00
Labour and time worked	\$ 100.00
Recover filing fee	<u>\$ 100.00</u>
Subtotal:	\$2,100.00
 Balance Owing	 \$2,100.00

## Conclusion

A Monetary Order in the amount of \$2,100.00 has been issued to the Tenant. A copy of the Orders must be served on the Landlord; the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Dispute Resolution Officer