



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened in response to an application filed by the tenants seeking:

1. The cost of emergency repairs;
2. A monetary award for money owed or compensation for damage or loss in the sum of \$6,400.00;
3. An Order that the landlord comply with the Act;
4. An Order that the landlord make emergency repairs for health and safety reasons;
5. An Order that the landlord make repairs to the unit;
6. An Order that the landlord provide services or facilities required by law; and
7. An Order to recover the filing fee paid for this application.

### Issue(s) to be Decided

Have the tenants met the burden of proving they are entitled to the claims sought?

### Background and Evidence

The tenants say they moved into the building on April 18, 2011. On May 7, 2011, July 16, 2011 and July 21, 2011 there were leaks in coming from a lighting fixture in the living/dining room area of the rental unit. The tenant say they promptly notified the landlord and the landlord sent a restoration company however no plumber. The tenants say they have lost the use of 200 square feet of their 800 square foot suite. The tenants say they have lost the use of the rental unit, that it smells and that the liquid leaking into the rental unit is the colour of "Coke". They are very concerned about the impact of this on the health of their newborn child, their 4 year old and themselves. The tenants say the landlord knew there was a leak issue in the building and did not inform the tenants at the outset.

The tenants are seeking to recover 4 months of their rent (4 x \$1,600.00 = \$6,400.00). Alternatively the tenants seek compensation for loss of quiet enjoyment, damages and

aggravated damages for failure of the landlord to address the problems in a timely fashion and for their failure to repair the suite.

The landlord testified that the rental unit is housed within a strata-titled building. There have been three leaks as stated by the tenants. As the leaks are coming from the common area of the building the strata council is dealing with the problem. The landlord says a restoration company attended right away to deal with each leak as it occurred. Each time a leak occurred it was attended to and believed to be repaired until another leak happened. The leaks appear to be all repaired now so the landlord will be attending to final repairs inside the rental unit within the next few weeks. The landlord says the restoration contractors are plumbers, etc. The landlord says she has attended the rental unit and the area involved is a 3' x 2' area in the dining room and a small closet. The landlord says she noticed no odours when she attended the rental unit. The landlord says the tenants are already receiving a \$200.00 per month rental discount for the loss of use of this space.

### Analysis

There is no disagreement that leaking has occurred and that there have been damages to the rental unit. In fact the landlord has provided the tenants with a \$200.00 rental reduction to compensate them for the problem. Both parties agree that the landlord's contractors have taken steps but the tenants appear to believe that the steps taken are too slow or a plumber should have been hired rather than a restoration company.

With respect to the area of loss within the rental unit the testimony of the parties is conflicting. The tenants say they have lost the use of 200 of their 800 square feet. The landlord says the area involved is much smaller. However, the onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the tenants have failed to prove the dimensions of the area affected and, in fact, from the photographs they have presented I find the area is more probably the smaller size the landlord has stated rather than the larger size the tenants' have stated. Further, I find there is insufficient evidence to suggest that the tenants have lost the entire use of their rental unit such that they should be refunded their entire rent or relocated. In that respect I find that a rental reduction as has been afforded to them tenants of \$200.00 per month until the repairs are complete is a fair reduction in their rent for the loss of use of that area and the loss of quiet enjoyment they have endured as a result of the steps being taken to remediate the problems and make repairs.

With respect to the tenants' claim for aggravated damages an arbitrator may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour. I find insufficient evidence to allow me to determine that the landlord has behaved in any manner that might have caused distress or humiliation. The landlords is taking steps to make repairs and the landlord has provided the with a rental reduction for the loss of the use of the damaged area and I find this to be sufficient. This claim is therefore dismissed.

With respect to the tenants' claim for the cost of emergency repairs, I find they have not submitted sufficient evidence to show what emergency repairs they undertook or how much those repairs cost. This claim is therefore dismissed.

As the landlords are undertaking repairs I see no reason to Order them to do so. Nor do I see any need to order them to comply with the Act. As to services or facilities not provided as required by law, I find that there is insufficient evidence to allow me to determine what facilities are not being provided which are required by law. These claims are also therefore dismissed.

As the tenants have failed in their claims I decline to award recovery of the \$50.00 filing fee.

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: September 22, 2011.

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Residential Tenancy Branch