



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this fixed term tenancy started on February 01, 2010. Rent for this unit is \$1,850.00 per month and is due on the first day of each month in advance.

The tenant testifies that the landlord had to replace two solariums in his unit. The tenant states the landlord originally told the tenant that this work would take one to two days per unit. The tenant states the work actually took five weeks to complete. The tenant testifies he has had to live with this disruption through the best summer month and he was unable to enjoy his decks because of the work. The tenant states the value of his tenancy was therefore reduced for this period.

The tenant states due to this work he has also lost quiet enjoyment of his rental unit. The tenant states his furniture from the solariums had to be piled up in the rest of the living space and he had workers in his unit. The tenant states the workers were supposed to keep the sliding doors closed to reduce the level of dust entering the rest of his unit however everything in his unit was covered in dust and the carpets were left dirty. The tenant seeks to recover the equivalent of one month's rent for the inconvenience, mess, loss of quiet enjoyment and the reduction in the value of his tenancy to the sum of \$1,850.00.

The tenant also seeks to recover carpet and chesterfield cleaning costs. The tenant originally applied for carpet cleaning and had estimated this to be \$150.00. The tenant seeks to amend this portion of his claim to \$296.61 as this is the amount he was charged for cleaning the carpets and chesterfields. (Receipt provided in evidence). The tenant agrees the landlord did pay the tenant's cleaning lady \$75.00 to clean his unit.

The tenant testifies that the old solariums had been leaking throughout his tenancy. They appeared to have been repaired many times but continued to leak and this caused mould and dry rot in the solarium areas. The tenant testifies he was not informed of the solariums history of leaking prior to his tenancy. The tenant testifies that his desk which is a light oak was damaged by these leaks and there was also damage to the tenant's credenza set. The water damage has taken the finish from the furniture and the tenant states he has estimated the repair costs to be \$350.00. As this work has not yet been carried out the tenant states there is no invoice or receipt for the repair work.

The landlord testifies that after the tenant informed them that the solariums were leaking they acted accordingly and sent their handyman to fix the leaks. The windows were re-caulked at this time. The landlord testifies they later determined that this re-caulking was unsuccessful so the landlord made the decision to replace both solariums. The landlord states this work would not have taken as long as it did but after the work started they discovered the dry rot. This dry rot also had to be dealt with to protect the tenant's living space and the property from further damage. The landlord states they were not negligent in carrying out these repairs and have upgraded both solariums to enhance the tenancy, to protect the tenant's rights under the Act and to protect the landlord's investment in the building.

The landlord disputes the tenant's claims that he was disrupted by the workers. The workers were able to use a ladder to enter the solariums and did not have to continually enter the rest of the tenants unit. The landlord testifies as the tenant wanted to be at the unit to let workers in and out this extended the length of the job. The tenant went on vacation for a week during this period and the landlord ensured they were available to let the workers in and out. The landlord testifies that the invoice from the company carrying out this repair shows the landlords incurred additional costs because of these delays.

The tenant disputes the landlord's testimony and states he was only late to meet with the workers on the first day and states he was comfortable with the workers accessing his unit. The tenant states he only had concerns when he went on vacation for the week and did not want people roaming around his unit while he was away.

The landlord testifies that the workers became frustrated with the tenant. The landlord states this was not a smooth process as the workers found it difficult to get product into the unit. The landlord testifies that overall the tenant's living space has been greatly improved with the upgraded solariums.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have considered the tenants arguments that the value of his tenancy was reduced for the five weeks that the work went on replacing the solariums and dealing with the dry rot. I refer the parties to the Residential Tenancy Act establish tenants rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment however it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises; and 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 or completing renovations.

While I accept that these repairs were necessary to preserve the tenants use of the solariums and the landlords have upgraded the solariums to enhance the rental unit and thus the tenancy. The fact remains that the tenant did suffer some inconvenience in having to lose the use of these solariums and part of his rental unit for five weeks. However the tenant agrees he was on vacation for one week out of that period and the tenant did not lose all the use of his rental unit due to these repairs.

I am satisfied that the landlord did act expediently in dealing with these repairs and replacements and am satisfied that they could not have foreseen the added complication of finding the dry rot which extended the repair time. However the tenant did suffer some inconvenience and loss to the value of his tenancy during this period and should be reimbursed accordingly. I find however that the tenants claim to recover the equivalent of one month's rent to be excessive and I therefore limit the tenants claim to **\$500.00** and the tenant will receive a monetary award pursuant to s.67 of the Act.

With regard to the tenants claim to recover the cost of carpet and chesterfield cleaning; I accept the tenants testimony that the carpets and chesterfield were left dusty and the carpets had dirt tracked on them; I therefore find in this matter that it should not be the tenants responsibility to pay to have the carpets and chesterfield cleaned. Consequently I uphold the tenants claim for cleaning costs of **\$296.61** and the tenant will receive a monetary award pursuant to s.67 of the Act.

With regard to the tenants claim for repairs to the desk and credenza set. In this matter the tenant has sent in some photographic evidence of some water marks on the desk not has failed to meet the burden of proof as to an actual amount required to rectify the damage and I am not satisfied that the tenant has meet the burden of proof as to water damage caused to the credenza set. Consequently this section of the tenants claim is dismissed without leave to reapply.

As the tenant has been partially successful with his claim I find the tenant is entitled to recover half his filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the tenant for the following amount:

Compensation	\$500.00
<b>Subtotal</b>	<b>\$796.61</b>
Plus filing fee	\$25.00

<b>Total amount due to the tenant</b>	<b>\$821.61</b>
---------------------------------------	-----------------

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$821.61**. The order must be served on the respondent and is enforceable through the Provincial Court 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: December 15, 2011.

---

Residential Tenancy Branch