



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP RP RR MNDC

### Introduction

This hearing dealt with the tenant's application for repairs, emergency repairs, monetary compensation for damage or loss under the Act, regulation or tenancy agreement and a reduction in rent. The hearing was first convened on December 16, 2011, then adjourned and reconvened on January 9, 2012. On both dates, the landlord, the tenant and an advocate for the tenant participated in the teleconference hearing.

The tenant moved out of the rental unit on or about December 20, 2011. I therefore dismissed the portions of the tenant's application regarding repairs and emergency repairs, and only considered the monetary portion of the tenant's application.

The landlord submitted evidence that she did not serve on the tenant. I therefore did not admit or consider that evidence. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began in November 2011. The rental unit is a single-family dwelling. There was no written tenancy agreement. The tenant was to pay \$950 in rent for the month of November 2011 and \$1500 for the month of December 2011.

### *Tenant's Evidence*

The tenant and her family moved into the rental unit on November 11, 2011. The unit required immediate repairs, as there were holes in several windows, the hardwood flooring required repairs and carpet was to be laid down in bedrooms. There were no

curtains or blinds, and there were nails sticking out everywhere. The landlord's agent told the tenant that all of the necessary repairs would be done within a few days, but they were never done. The tenant submitted evidence that the landlord had applied to rezone the property, tear down the rental unit, and build new townhouses. The tenant stated that this evidence shows that the landlord never had any intention of doing any repairs or renovations to the rental unit.

Because the upstairs portion of the rental unit was in poor condition, the tenant put most of her children's clothing and other belongings in the basement. On November 16, 2011 sewage started spewing out of the basement toilet and bathtub. The tenant informed the landlord of the problem on November 16, 2011, but the landlord did not come to the rental unit to repair the plumbing until November 24, 2011. Raw sewage continued to flow from the tub and toilet until that time.

The sewage destroyed most of the tenant's personal belongings that were in the basement. Further, the rental unit became unliveable because the landlord did not properly clean up. The odour from the sewage was nauseating, and the tenant's children got sick. A health inspector told the tenant that there were health risks and the tenant should move out. The tenant moved out of the rental unit on December 20, 2011.

The tenant has claimed recovery of 100 percent of her rent of \$950 for November 2011 and \$1500 for December 2011, based on the extremely poor condition of the rental unit. The tenant has also claimed \$1500 for replacement of three queen-sized mattresses and box springs; \$450 for bedding and towels; \$1000 for clothing of the tenants' three children; and \$500 for moving costs.

### *Landlord's Response*

The tenant insisted on moving into the rental unit before it was ready. The tenant said that she was okay with the unfinished conditions.

The tenant did not inform the landlord of the problem with the sewage until the landlord attended at the rental unit to pick up the rent, either on November 22 or 24, 2011. The landlord cleaned up on November 24, 2011.

The landlord did not believe that the tenant should receive a full rent abatement, because she was still able to use 50 percent of the house.

The landlord acknowledged that there may have been some water damage to one bed, but she did not believe that three beds were damaged. The landlord offered to give the

tenant 10 towels to replace the tenant's towels that were destroyed, but the tenant said she didn't need them. The landlord did see some of the tenant's damaged clothes and towels, but she does not know how many items were damaged or how much compensation the tenant should receive for those items. The landlord stated that the tenant ought to have had insurance to cover her personal possessions.

The landlord cleaned up the rental unit on December 19, 2011.

The landlord did not know how much compensation the tenant should receive for moving expenses.

### Analysis

Upon consideration of the relevant evidence, I find as follows.

The tenant used most or all of the rental unit for the first five days of the tenancy, and continued to use at least part of the rental unit until December 20, 2011. However, I accept the tenant's evidence that most of the rental unit was not liveable after the sewage began leaking. I accept the tenant's evidence as credible that she informed the landlord of the issue on November 16, 2011. The landlord did not dispute that the tenant could not have used the basement; nor did she dispute the tenant's evidence that the rental unit became too unhealthy to inhabit. The landlord did not clean up after the sewage leak until December 19, 2011. I also accept the tenant's evidence that the condition of the rental unit was such that the tenant had to move out. The landlord's failure to immediately address the health risks amounts to a fundamental breach of the tenancy agreement. I find that the tenancy ended on December 20, 2011, due to the landlord's breach of the tenancy agreement. The tenant is not responsible for any rent after December 20, 2011.

I therefore find that the tenant is entitled to an abatement of 80 percent of her rent from November 16, 2011 to November 30, 2011, in the amount of \$570 (calculated as 80 percent of \$712.50, 15 days at \$47.50 per day); an 80 percent abatement of rent for December 1 to 20, 2011 in the amount of \$774.24 (calculated as 80 percent of \$967.80, 20 days at \$48.39 per day); recovery of 100 percent of rent for December 21 through 31, 2011 in the amount of \$532.50; and \$500 for moving costs, as claimed.

In regard to the tenant's claim for her damaged possessions, I find as follows. The tenant did not establish which items were immediately damaged, and which items were damaged due to the landlord's inaction. The tenant did not provide sufficient evidence to establish that the initial leak resulted though any fault of the landlord; therefore, the

landlord cannot be held responsible for any items that were damaged immediately. Furthermore, once the tenant was aware of the leak, she could have moved her possessions out of the basement to avoid damage. Based on the tenant's photographs of the rental unit, I do not accept that conditions in the upper portion of the rental unit were so poor that it was impossible for the tenant to have moved at least some of her possessions onto the upper floor. However, the landlord acknowledged that the tenants' towels were damaged, as well as some of the clothing and at least one of the beds. I therefore find it reasonable to compensate the tenant for one mattress and box spring, in the amount of \$500 and \$450 for bedding and towels.

### Conclusion

The tenant is entitled to monetary compensation totalling \$3326.74. I grant the tenant an order under section 67 for the balance due of \$3326.74. This order may be filed in the Small Claims Court 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: January 12, 2012.

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Residential Tenancy Branch