



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RR

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for a monetary Order for compensation for loss and an order to reduce rent for that compensation.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the Landlord requested that the application be amended to remove the second person named as a Tenant this person is not a Party to the tenancy agreement. The Tenant did not object to this amendment. Given the tenancy agreement does not include the second person as a Tenant and considering that the Tenant does not object, the application is amended to remove the second person.

### Issue(s) to be Decided

Is the Tenant entitled to reduce rent for the monetary amount claimed?

### Background and Evidence

The tenancy began on October 2, 2008. Rent of \$781.00 is payable monthly. The Parties agree that the Tenant’s apartment unit was flooded from a roof leak in mid January 2012 and that the Landlord immediately responded with final repairs made to the unit on February 14, 2012.

The Tenant states that on the day of the flood, the water was coming down fast in the living room and bedroom and that the Tenant had to quickly move heavy furniture away from the water flow that included water from a light fixture. The Tenant states that work was also done to set out as many containers as possible to catch the water. The Tenant states that as a result of the flood, the Tenant was unable to live in the unit for a total of three days and was unable to use a third of the living space or turn on lights for the duration of the repairs. The Tenant states that household articles were damaged by the flood and that the Tenant spent time cleaning and moving items. The Tenant submitted a written breakdown of the claim for a total of \$534.07.

The Tenant states that the unit flooded twice earlier in 2009 and spring of 2010. The Tenant states that on these occasions the unit was repaired with paint but that this time it was too severe. The Tenant argues that the Landlord should have made earlier repairs.

The Landlord states that the Tenants are required by the tenancy agreement to carry insurance and that the Landlord is not responsible for the losses being claimed. The relevant portion sets out the following: "The Tenant shall carry all risk insurance for the contents of their unit as well as for any liability that may occur to their guests or the building." The Landlord submitted the contractor's written account of the damages and repairs made to the roof and the unit. The Landlord argues that the amount being claimed by the Tenant is excessive.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that efforts were made to mitigate the damage or loss. Given the evidence of the Parties that the unit flooded in mid January 2012 due to a roof leak and given the undisputed evidence of the Tenant that two previous floods occurred in the unit, I find that the Tenant has substantiated

that the Landlord failed to provide repair or maintenance to the roof causing the Tenant's unit to be flooded. Although the Landlord argues that the Tenant is required to carry insurance, without determining this point, I find that the clause in the tenancy agreement only relates to insurance for tenant liability and therefore is not a consideration where the Landlord is at fault.

Given the breakdown of times and repair events provided by the Tenant and the Landlord's contractor, I find that the Tenant has substantiated a loss of use of the unit completely for three days and in relation to reduced living space for a period of approximately one month. I also accept that the Tenant spent some time cleaning up after the flood. I find that the Tenant reasonably mitigated the losses by carrying out work to move furnishings away from the damage. Given the lack of receipts for the losses claimed for household articles, I find that the Tenant has not substantiated the losses claimed and I dismiss this part of the claim. Given these facts and findings, I find that the Tenant is entitled to reasonable compensation of \$440.00 and I order the Tenant to reduce either April or May 2012 rent by this amount.

### Conclusion

I Order the Tenant to reduce rent payable by \$400.00 for either April or May 2012.

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: March 21, 2012.

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Residential Tenancy Branch