



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, what is presently a month-to-month tenancy began in May 2011. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected.

Leaking occurred in the ceiling of several rooms within the unit on June 16, 2012. It is understood that mitigation began on June 16, 2012, and that after repairs were completed the tenant was able to take full possession of the unit by August 31, 2012.

Commencing from the time when leaking was discovered until the time when repairs were completed, the tenant experienced various degrees of inconvenience and disruption. The tenant has not claimed that the landlord failed to respond and / or remedy the problem in a timely manner. The tenant testified that he did not reside in the unit on a full time basis during the period of time at issue. The landlord disputes the tenant's claim that the unit was uninhabitable while mitigation and repairs were underway. While the landlord does not dispute the tenant's experience of inconvenience and disruption, the parties were unable to agree on what might constitute fair and reasonable compensation.

## Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference

Residential Tenancy Policy Guideline # 6 also addresses "Right to Quiet Enjoyment."

Further, Residential Tenancy Policy Guideline # 22 addresses "Termination or Restriction of a Service or Facility," and provides in part:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

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Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

Based on the documentary evidence and testimony of the parties, I find that through no fault of either party, the tenant suffered a breach of the right to quiet enjoyment, in addition to experiencing a restricted use of the unit limited to the period from June 16 to

August 31, 2012. However, I find that there is insufficient evidence that the tenant was required to relocate to alternate accommodation on a full time basis during the period in question. In the result, I find that the tenant has established entitlement to compensation in the amount of \$1,540.00, which is calculated on the basis of \$20.00 per day for 77 days:

June 16 - 30: 15 days; July 1 - 31: 31 days; August 1 - 31: 31 days

Accordingly, I hereby order that the tenant may withhold specific amounts from future regular payment of rent as follows:

October:

Withhold \$1,200.00, such that no rent is due for October

November:

Withhold \$340.00, such that payment of rent is limited to \$860.00.

The tenant has not applied to recover the filing fee for this application.

### Conclusion

I hereby order that the tenant may withhold payment of rent, as set out in detail above.

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 06, 2012.

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Residential Tenancy Branch