



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, ERP, OLC, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs and emergency repairs, for a monetary order for money owed or compensation for damage or loss, for an order requiring the landlord to comply with the Act and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to orders for the landlord's compliance with the Act, for repairs and emergency repairs, a monetary order and to recover the filing fee?

### Background and Evidence

The undisputed evidence shows that this tenancy began on July 1, 2008, the current monthly rent is \$942.00 and the tenant paid a security deposit of \$466.00 at the beginning of the tenancy.

In addition to seeking an order requiring the landlord to comply with the Act and to make repairs and emergency repairs, the tenant's monetary claim is in the amount of \$5000.00.

When questioned, the tenant said that she concluded this amount would be in compensation for 5 months of rent, or one month of rent for each year of the tenancy.

In explanation, the tenant submitted that she has been dealing with constant disruptions of a leaking ceiling. The tenant said that when she first noticed a leak in her ceiling early in the tenancy, she notified the landlord, at which point the landlord hired a contractor to address the problem.

The tenant submitted that the repair was only temporary, lasting approximately 6 months, at which time she noticed another leak.

The tenant said that the above series of events repeated itself every 6 months, until recently she discovered water in a light fixture during the Christmas holidays, creating a fire hazard. Additionally, a part of her ceiling has broken loose.

The tenant submits that she is now afraid of mould spores creating a health hazard.

When questioned, the tenant said she never filed for arbitration during the first 4 ½ years of the tenancy as she was always assured the problem with the leaking roof would be fixed.

The tenant's relevant evidence included photographs of the light fixture and the hole in the ceiling and notices from the landlord regarding a suite inspection to check on the leaks in the ceiling.

In response, the landlord said that a roofer was hired each time the tenant lodged a complaint and the leak was fixed; however in response to the latest complaint regarding the light fixture, the landlord hired a roofing company to replace the entire roof over the multi-unit residential property.

The landlord said that the roofing company has inspected the roof and will be replacing it in 3-4 weeks after the rainy season has concluded. As evidence of this statement, the landlord submitted the signed contract for the replacement.

The landlord's additional relevant evidence included work orders and invoices.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

*Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.*

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Where a tenant requests repairs, the landlord must be afforded a reasonable amount of time to take sufficient action.

In weighing the evidence of both parties, I cannot conclude that the landlord was negligent or violated the Act regarding their requirements of addressing the ceiling leak. I find the landlord acted reasonably and promptly when contacted of the leaks in the tenant's ceiling, and that the problem was corrected for many months. When contacted again, the evidence shows that the landlord acted promptly to make repairs.

I find the evidence also shows that when the tenant notified the landlord of the most recent, more serious problem of water in her light fixture and a hole in her ceiling, the landlord hired a roofing company to replace the roof.

Due to the above, I find the landlord has complied with the Act by taking reasonable measures to address the tenant's repair requests each time they were notified.

As to the issue of mould, I find, as the burden of proof rests with the applicant, the tenant has failed to establish that there was mould present in the rental unit, such as through a mould assessment report or air quality reports.

As to the issue of monetary compensation, the tenant failed to include particulars with her application by providing a detailed calculation. Even given the tenant's verbal account, 5 months of rent does not equal \$5000.00. Additionally, the tenant failed to prove that she took reasonable steps to minimize her loss by filing an application for dispute resolution earlier than after 4 ½ years after any alleged issue occurred.

Due to all of the above, I find the tenant has failed to establish any damage or loss resulting from the landlord's failure to provide or maintain the rental unit in a manner that makes it suitable for occupation by a tenant or that she is entitled to an order requiring the landlord to comply with the Act or orders to the landlord to make repairs and emergency repairs.

As a result I dismiss her application. As I have dismissed her application, I also dismiss her request for recovery of the filing fee.

I find that should the landlord fail to expeditiously fully repair or replace the roof as submitted that it would be and to repair the ceiling and light fixture in the rental unit after the roof is replaced, the tenant is at liberty to file another application for dispute resolution seeking monetary compensation or orders for repairs.

### Conclusion

The tenant's application is dismissed.

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: February 04, 2013

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Residential Tenancy Branch

