



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**MNDC, MNSD, FF**

### **Introduction**

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence submitted.

### **Preliminary Matter**

The tenant named a second party as a respondent. The landlord said that party is not the landlord. The tenant agreed that the 2<sup>nd</sup> respondent was not indicated as a landlord on the tenancy agreement he had signed. Therefore, the application was amended to remove the 2<sup>nd</sup> respondent, D.C.D.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation in the sum of \$2,480.00 as compensation for damage or loss under the Act?

Is the tenant entitled to filing fee costs?

### **Background and Evidence**

The tenant has lived in this multi-unit building for 7 years. Rent is \$1,240.00 per month, due on the first day of each month.

On December 24, 2012, the tenant immediately reported a leak from the upper unit and by December 27, 2012 the tenant's carpet had been lifted, fans had been placed in the unit and repairs had begun.

On December 28, 2012 a hole was cut in the ceiling, and the damaged drywall was removed. The ceiling and wall required dry wall mud, repeated sanding and drying and then the ceiling needed to be stippled. All work was completed by the landlord's maintenance person, with the exception of the stippling. The landlord said there was a delay in having the stipple applied as they had to hire a specialist company to complete this work.

The tenant submitted a copy of a January 2, 2013 email sent to the landlord indicating he wanted the repair completed in a professional and timely manner. The tenant supplied a copy of a January 22, 2013 letter to the landlord in which he tenant explained he found the repair work to be sporadic, that he had been patient and that he had put up with having his belongings covered in dust. The tenant requested compensation equivalent to 2 month's rent.

On January 28, 2013 the tenant applied for dispute resolution. On January 30, 2013 the repairs were completed.

The tenant submitted photographs of his unit that showed his belongings covered in a fine drywall dust.

The landlord said the tenant could be difficult so she tried not to overly engage with the tenant. The landlord referenced the behaviour of the tenant's daughter and the fact that monthly inspections had determined the tenant's unit was not clean. The landlord confirmed that the repair was the result of a malfunctioning dishwasher in the unit above the tenant and that the tenant was not offered any cleaning service to assist him in removing the drywall dust.

The tenant did not make an insurance claim as his deductible is \$1,500.00. He has claimed due to the length of time it took to complete repairs and the inconvenience this caused.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to the compensation claimed by the tenant.

There was no dispute that damage was caused to the unit and that the leak was not the fault of the tenant. There was also no dispute that repairs were initiated within what I find was a reasonable period of time. However, by the beginning of January the tenant was growing impatient and by January 22, 2013 he had written the landlord a 2<sup>nd</sup> letter complaining of the delay in completing the repairs.

The landlord did take steps to maintain the property and the repair was completed in just over a 1 month period of time. The tenant submitted that this period of time was too lengthy and resulted in a loss of his enjoyment of the rental unit, which is contemplated in section 28 of the Act.

The tenant did provide the landlord with notice, in early January, that he wanted the repairs completed in a professional and timely manner. I have considered the length of time it took the landlord to complete such a repair and find, on the balance of probabilities, that the landlord could have completed the sanding and prep work within a shorter period of time, at which point the unit could have been cleaned, restored to a semblance of order, to await the stipple and final painting.

I find that the monetary claim made by the tenant was, in relation to the level of loss experienced, excessive. The tenant claimed the equivalent of 2 month's rent, for a loss of quiet enjoyment that spanned just over 4 weeks. I have found that the tenant did experience a loss of use of part of the unit and that he was sufficiently inconvenienced to the point where nominal compensation would have been reasonable for the period of time beyond what was realistic for the repairs that were required. The landlord confirmed that the unit was in a state of repair for over 4 weeks and that they made no offer to provide the tenant with any compensation or cleaning service, in an attempt to mitigate the impact of what I find was a prolonged repair.

Any matters related to the tenant's daughter or the cleanliness of his unit in the past was not relevant to the claim made by the tenant. Further, as the tenant's claim is in relation to a simple loss of quiet enjoyment I find he was not required to seek a remedy via his insurer.

Therefore, I find that the tenant is entitled to nominal compensation in the sum of \$150.00 plus the \$50.00 filing fee. This is in recognition of the loss of quiet enjoyment the tenant experienced beyond the period of time during which this level of repair could have been reasonably expected to be completed. Therefore, tenant is entitled to deduct the total; \$200.00, from the next month's rent due.

The balance of the tenant's claim is dismissed.

Conclusion

The tenant is entitled to nominal compensation in the sum of \$150.00 plus the \$50.00 filing fee.

The tenant may deduct \$200.00 from the next month's rent owed.

The balance of the tenant's claim 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: April 22, 2013

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Residential Tenancy Branch