



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

MNDC, RR, OLC, FF

### Introduction

This hearing was convened in response to an application filed by the tenant on March 11, 2013 seeking Orders under the Residential Tenancy Act (the Act) as follows:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement – devaluation of the tenancy / loss of quiet enjoyment - Section 67
- An Order for the landlord to comply with the Act – Section 62
- Allow tenant to reduce rent – Section 62
- To recover the filing fee from the landlord for this application (\$50) – Section 72

Both parties participated in the hearing and provided testimony. As well, the landlord acknowledged receiving the evidence of the tenant prior to the hearing.

### Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

The burden of proving loss rests on the claimant tenant.

### Background and Evidence

The relevant evidence in this matter is as follows. There is no written tenancy agreement in this matter. The applicant (the tenant) entered an existing tenancy by 3 other tenants as the 4<sup>th</sup> sublet of the tenancy and paid their portion of rent to the existing primary tenant of the rental unit – *the applicant tenant's landlord* - having a tenancy agreement with the landlord in this matter. The agreed evidence in this matter is that the landlord came to know of the applicant's status as an additional sublet / room-mate starting November 01, 2010 when the tenant began paying their rent directly to the landlord and the landlord accepted the rent. **Therefore, I make a preliminary finding** that the relevant tenancy period (the tenancy period) of this matter started November 01, 2010.

The tenant in this matter testified they did not know exactly what the original agreement with the landlord comprised. The landlord testified that the tenancy agreement for the rental unit was comprised of rent in the amount of \$1300.00 per month plus all utilities. There existed another tenancy downstairs comprising all-inclusive rent. The tenant claims they paid \$775.00 of the shared rent. The tenancy ended March 15, 2011 with the tenant compensated by the landlord for the last month of their occupancy.

The tenant claims that in the tenancy period of November 01, 2010 to March 15, 2011 they paid all the utilities but were not compensated for the portion they purport was owed by the downstairs tenants or the landlord. The landlord re-iterated that the tenancy agreement was that the upstairs tenancy would pay all utilities.

Despite the tenant's claim of an illegal rent increase during the tenancy period, they did not advance any evidence that they were given a rent increase during this period.

The tenant claims that during the tenancy period they experienced a persistent leaking roof at their ceiling, which the landlord did not dispute, and eventually the leaky roof gave rise to demolition of the rental property.

The tenant claims that from December 01, 2010 they paid all of the rent of \$1300.00 as the other sublets vacated, and they were unable to attract other room-mates, which the tenant speculates was due to deficiencies of the rental unit. However, the tenant claims they only tried to find room-mates for 3 weeks prior to Christmas, but did not provide evidence of such.

The tenant claims that the downstairs tenant was abusive and the landlord did not try and resolve the conflict. In addition, the tenant claims the downstairs tenant prevented access to the furnace or breaker room. The landlord did not generally dispute the claim a conflict existed between the tenancies. As well, the parties agreed that the landlord maintained the rental unit address as theirs and that the landlord would come buy and pick up their mail, unannounced. The parties disagreed on the number of times per month. The landlord testified 1 time per month. The tenant testified 4 times per month.

### **Analysis**

On preponderance of the evidence and on the balance of probabilities, I have arrived at the following findings.

I find that the tenant has not proven their claim that the utilities for the residential property were to be shared with the other tenancy of the property. As a result, I prefer the evidence of the landlord – in which the tenancy in this matter was responsible to pay for all utilities. As a result, **I dismiss** the tenant's claim for compensation of shared utilities, **without leave to reapply**.

I find no basis in the tenant's evidence that they were given an illegal rent increase during their tenancy. As a result, **I dismiss** this portion of the tenant's claim, **without leave to reapply**.

I find the tenant has not proven that the landlord's failure to comply with the Act resulted in the tenant's inability to attract room-mates to share the rent, nor that the landlord owes the tenant a duty to do so. As a result, **I dismiss** this portion of the tenant's claim, **without leave to reapply**.

I accept the tenant's undisputed evidence that a leaky roof devalued the tenancy and as such the tenant is owed compensation for that devaluation. I further accept the generally undisputed testimony of both parties, that the tenant experienced a loss of quiet enjoyment as a result of the conduct of the downstairs tenants. And, in addition, I accept the undisputed evidence in finding the tenant was unduly inconvenienced by the landlord's determination to have their mail delivered to the dispute address. As a result of all the above, I find the tenant is entitled to compensation for a devaluation of the tenancy agreement in the amount of 10% of the rent, for the tenancy period of November 01, 2010 to February 15, 2011 in the sum amount of \$455.00 (3.5 months x \$130.00); and, the equivalent compensation for loss of quiet enjoyment in the amount of \$130.00 - for the last month of the tenancy in which the tenant did not pay rent.

As the tenant was, in part, successful in their application, they are entitled to recovery of the filing fee in the amount of \$50.00, for a total of the fractional entitlements in the sum **\$635.00**.

\$455.00  
\$130.00  
\$ 50.00 - filing fee

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**\$635.00**

### **Conclusion**

**I grant** the tenant an Order under Section 67 of the Act for the amount of **\$635.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision and Order is final and binding on both parties.**

*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: June 06, 2013