



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RP, RR

### Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for compliance; Orders for repairs; and, authorization to reduce rent payable. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Procedural and Preliminary Matters

At the commencement of the hearing the landlord requested an adjournment. The landlord submitted that she needed more time to gather documentary evidence and obtain the services of an Advocate since the tenant had one present at the hearing. The tenant objected to the landlord's request and wanted to proceed. I further explored the landlord's reasons for seeking an adjournment. I determined that the tenant's application and water line repairs had been made several weeks before this hearing. After hearing from the landlord, I informed the landlord that most parties are self-represented for these proceedings and that I found her very capable of expressing and communicating her position thus far. I was also satisfied the landlord was sufficiently prepared to provide verbal testimony such as the type of repair work performed and approximate dates. I found the landlord's failure to provide available documentary evidence in the weeks leading up to this hearing an insufficient basis to grant an adjournment as provided in the Rules of Procedure and I denied the landlord's request.

The tenant indicated several matters of dispute on the Application for Dispute Resolution. I explained to the parties that under the Rules of Procedure I may dismiss unrelated disputes contained in a single application. During the hearing the tenant indicated that the portions of his Application that pertained to monetary compensation for a water leak, overpaid rent, and a rent reduction were the most urgent issues to

determine. I have only considered these portions of the tenant's Application for Dispute Resolution in this decision and the remainder of the issues raised in the Application for Dispute Resolution are dismissed with leave to reapply.

### Issue(s) to be Decided

1. Has the tenant established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Is there a basis to grant the tenant a reduction of future rent payable?

### Background and Evidence

The rental unit is a two bedroom basement suite with the landlord residing in the upper living unit. The parties executed a written tenancy agreement for a tenancy set to commence July 1, 2008. The parties were in dispute as to the amount of rent payable reflected on the tenancy agreement. Neither party provided me a copy of the tenancy agreement. Nevertheless, both parties agreed that the tenant had been paying rent of \$950.00 since the beginning of the tenancy until the rent was increased to \$1,013.50 in January 2013 pursuant to a Notice of Rent Increase.

Below, I have summarized the respective parties' positions with respect to the tenant's monetary claim and request for rent reduction.

### **Rent overpayment**

The landlord submitted that she had a copy of the written tenancy agreement in front of her during the hearing. The landlord stated that it is a standard tenancy agreement that is produced by the Residential Tenancy Branch and that it states the monthly rent of \$950.00 is payable on the 1<sup>st</sup> day of every month.

The tenant submitted that he could no longer find a copy of his tenancy agreement but that he recalls that it states the monthly rent was \$900.00. The tenant provided a copy of two cancelled cheques given to the landlord for June 2008: one in the amount of \$900.00 and the second in the amount of \$50.00. The tenant suggested that I rely upon the two cancelled cheques in determining that the tenancy agreement provides that rent was set at \$900.00 per month. The tenant explained that the cheque for \$50.00 was given because the landlord required an additional \$50.00 since his daughter was moving in with him.

The landlord acknowledged that she had discussion about rent being \$900.00 when the tenant viewed the rental unit but when the tenant informed the landlord that his daughter would be living in with him the agreed upon rent was set at \$950.00 and is reflected as such in the written tenancy agreement they both signed.

The tenant was of the position the since his daughter has moved out he should no longer be required to pay the extra amount to the landlord. The tenant calculates that his rent should be reduced by \$53.50 (taking into account the rent increase in January 2013) until such time he finds a replacement roommate.

The landlord submitted that the she has not authorized the tenant to have a roommate. I asked the landlord whether the tenancy agreement she had in front of her had any term prohibiting the tenant from having a roommate or another occupant reside with him to which she stated it did not.

### **Compensation: Water leak**

The tenant provided a timeline for a sequence of events involving a water leak and subsequent repair activities. The landlord indicated she was largely in agreement with the dates put forth by the tenant. As such, I have relied upon the dates provided by the tenant.

On July 12, 2013 water was noticed on the floor of the common laundry room and on July 14, 2013 he and the landlord had a conversation about it. The tenant noticed wet flooring in his north bedroom on July 17, 2013. The landlord had a contractor and a plumber attend the property on July 17 and 18, 2013 for the purpose of investigating the source of the water ingress. After some investigating it was determined that the cause of the water problem is a broken water line running between the house and the city's water main. The water escaping from the water line eventually saturated the ground and made its way into the basement level by seeping through a crack in the concrete floor.

Drywall removal in the tenant's north bedroom commenced July 22, 2013 and more was removed on July 27, 2013. The landlord's original contractor was supposed to start work on replacing the water line at the end of July 2013 or early August 2013; however, that did not happen and the landlord found another contractor who replaced the water line servicing the house on August 14 and 15, 2013.

Restorative work in the affected areas of the rental unit commenced August 22, 2013. The painting of the tenant's north bedroom was completed September 5, 2013 and the tenant was able to regain use of that bedroom that day.

The tenant requested compensation equivalent to his monthly rent for three months. The tenant explained that the water ingress affected his use of the rental unit for three calendar months.

The tenant submitted that not only did he have to remove the contents of his north bedroom but that the contents had to be stored elsewhere throughout his unit; thereby, impacting his use and enjoyment of the remainder of the rental unit.

The tenant was of the position the landlord's efforts to stop the ingress of water were insufficient as he was of the opinion she should have shut off the water supply to the house entirely immediately after the water ingress was discovered. The tenant was also of the position that the time it took to repair the water line was excessive.

In an attempt to ascertain how fast or how much water was entering the rental unit while waiting for the repair to be made I asked the tenant how often he had to mop the water off the floor in the bedroom. The tenant was rather evasive in responding to this question. When I heard from the landlord, the landlord stated that it was she that was mopping up the water that seeped into the tenant's north bedroom. The landlord was of the position the water ingress was akin to a slow leak and that she mopped up the wet floor in the tenant's bedroom once per day or every other day. The landlord submitted that turning off the water supply entirely would have caused more inconvenience and loss.

The landlord was of the position the tenant's monetary claim related to the water ingress was excessive but the landlord was agreeable to compensating the tenant something for his loss of use of the one bedroom. The landlord submitted that she had offered the tenant storage space in the garage but that he did not take advantage of the offer. The tenant acknowledged that the landlord had mentioned storage space to him but since the landlord rented the garage to a third party he did not see how this was possible. The tenant acknowledged that he did not enquire further with the landlord about storage options.

The landlord acknowledged that quite some time passed before the property was restored but explained time was needed to investigate the source of the water leak, wait for her contractor to be available, and when her contractor informed her he would be able to do the job she had to source out and obtain quote from other contractors. The landlord determined it would be prudent to replace the entire line rather than just a section of the old line to avoid future leaks.

The tenant provided specific figures as to the square footage of the north bedroom, the south bedroom and the rental unit as a whole. The tenant explained his calculations were based on the inside measurements of the rooms in the rental unit. The landlord thought the tenant's determination of the total square footage of the rental unit is smaller than it actually is but the landlord was unable to provide a more accurate figure than a rough estimate based upon the square footage of the upper floor.

### **Rent reduction: garbage disposal**

The tenant is seeking a rent reduction of \$5.00 per month because the size of the garbage can and frequency of garbage pickup has been reduced. The tenant acknowledged that, to date, he has not had any problem disposing of his garbage but submitted he may have difficulty in the future.

The landlord explained that the city went from picking up their garbage weekly to bi-weekly, over which she has no control. The landlord acknowledged the current garbage can is smaller than the old one they used to have but explained the old one went missing. She requested a new garbage can from the city but they provided her with a smaller can since the city also implemented the organic waste program. The landlord stated that a larger can is on order and is expected in the very near future.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the issues before me.

### **Rent overpayment**

The Act requires that a tenant pay rent in accordance with their tenancy agreement whether or not the landlord violates the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act permits a landlord to increase the rent in accordance with the Act and the tenant must pay the increased rent where the increase is compliant. At issue in this case is the amount of rent payable as reflected in the tenancy agreement.

It is undisputed that a written tenancy agreement exists for this tenancy. Accordingly, rent payable by the tenant is the amount indicated on the tenancy agreement until such time it is increased in a manner that complies with the Act.

I was satisfied that the landlord was reading from the tenancy agreement during the hearing and that it stipulates the agreed upon rent is \$950.00 per month. I found the two cancelled cheques and the tenant's disputed testimony did not persuade me that the tenancy agreement indicates rent is \$900.00. I accept the landlord's testimony that the written tenancy agreement is silent with respect to roommates or other occupants. Therefore, I find the tenant has not established an entitlement to reduce rent until such time he finds a roommate or that he has otherwise overpaid his rent.

As the landlord was informed at the hearing, since the tenancy agreement is silent with respect to the tenant having a roommate the landlord cannot now prohibit the tenant from having a roommate. The Act does permit a landlord to end a tenancy where the tenant has permitted an unreasonable number of people to occupy the rental unit. However, having heard the rental unit is two bedrooms it is unlikely that two occupants, including the tenant, would be considered unreasonable. Alternatively, if the parties wish to change their tenancy agreement to add terms about roommates and rent corresponding to the number of occupants the parties are at liberty to do so. Any changes to a tenancy agreement must be done by mutual agreement and in writing.

As stated to the tenant during the hearing, if the tenant finds his copy of the tenancy agreement and it indicates the monthly rent is anything other than \$950.00 he is at liberty to file an Application for Review Consideration under the ground of fraud. It is important to note that there are time limits for filing an Application for Review.

In an effort to defuse this dispute over the amount of rent payable, I ORDER the landlord to show the tenant the original tenancy agreement she has in her possession and provide the tenant with another copy of it. The landlord has one week after receiving this decision to comply with this order.

### **Compensation: Water leak**

A tenant may be awarded compensation for a claim in tort and/or a breach of contract. In order to award the tenant compensation under a claim in tort I must be satisfied the landlord acted negligently in response to the water line breakage.

In relying upon the tenant's timeline, I accept that the landlord was aware of a problem with water entering the basement in mid-July and in mid-August 2013 the entire water line was replaced. I find the tenant's submission that the entire water supply should have been shut off immediately to be unrealistic when I consider that in doing so the occupants of the entire building would be without water for essential daily activities such as cooking, bathing, flushing toilets, etc. while leaving the water supply connected

resulted in water seeping into one bedroom in the rental unit which was managed by periodic mopping by the landlord. While four weeks is a fairly lengthy period of time, I accept that replacing a water line is a significant repair and I find the landlord's explanation for the delay in accomplishing this repair to be within a reasonable range and not the result of negligence. Therefore, I make no award to the tenant under the law of tort.

Residential Tenancy Policy Guideline 16 provides information with respect to claims in damages. With respect to claims for breach of contract the policy guideline provides, in part:

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

As the tenant in this case suffered a loss of use of the north bedroom I find the tenant entitled to compensation due to a breach of contract on part of the landlord. I find that a reasonable award reflects the area of the north bedroom. I have not included other areas of the rental unit that were used to store the contents of the north bedroom in determining an award for the tenant as I accept that the landlord offered the tenant storage space and the tenant did not pursue that option.

I accept that the tenant measured the inside areas of the rental unit and that his measurements are reasonably accurate in the absence of other more accurate figures from the landlord. I accept that the tenant's ability to use and enjoy the north bedroom was significantly impacted starting with the removal of drywall. Therefore, I calculate the tenant's award starting at July 22, 2013.

In light of the above, I grant the tenant a rent abatement calculated as follows:

\$32.70 (per diem rent: \$1,013.50 / 31 days in July and August)  
x 46 days (July 22 – September 5, 2013)  
x 157/586 (sq. feet of bedroom/unit)  
\$403.00 (rounded)

The tenant is authorized to reduce a future rent payment by \$403.00 in satisfaction of this award.

**Rent reduction: garbage disposal**

Having heard the tenant has not suffered an inability to dispose of his garbage and the landlord has a larger garbage can that is expected to be delivered in the very near future, I consider this issue resolved at this time. Therefore, I make no award for a rent reduction.

Conclusion

The tenant has been awarded a rent abatement of \$403.00 for a water leak that he may deduct from a future month's rent payment. The tenant's assertion that rent has been or is being overpaid has been dismissed. The tenant's request for a rent reduction for reduced garbage disposal service has been denied. The remainder of the issues raised in the tenant's Application for Dispute Resolution have been dismissed with leave to reapply.

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: October 04, 2013

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Residential Tenancy Branch



