



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUARIUS APTS. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, RP, RR, FF

### Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; orders for compliance and repairs; and, authorization to reduce future 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.

### Issue(s) to be Decided

1. Has the tenant established an entitlement under the Act to monetary compensation for the amounts claimed?
2. Is it necessary to issue orders for compliance or repairs to the landlord?
3. Is the tenant authorized to reduce future rent payable?

### Background and Evidence

The tenant has been residing in the rental unit for over 10 years and is currently required to pay rent of \$842.00 every month.

Below, I have summarized the tenant's claims against the landlord and the landlord's responses.

### **Loss of Use of Balcony**

The tenant submitted that scaffolding was erected at the building in late December 2013 or early January 2014 to facilitate balcony repairs which passed the final inspection on May 28, 2014. During the repair period the tenant was unable to access the balcony or open his sliding glass door more than a couple of inches. For the last month, his balcony canopy was covered in plastic that flapped in the wind and created a noise

disturbance. Further, the canopy was supported by 2x4's that the tenant was unaccustomed to and found to be a nuisance.

The tenant is claiming compensation of \$300.00 [calculated as 50.00 per month for six months] for his loss of use.

The landlord described the significant balcony repairs that included: removing the decking, repairing joists, installing new flooring and railings. The landlord submitted that scaffolding was erected in front of the tenant's unit between January 27 and February 4, 2014. In mid-February 2014 the sliding doors had to be blocked for safety reasons so that tenants could not access the work areas. Full access to the balcony was returned to the tenant on April 29, 2014 although there were issues with the after-market canopy that necessitated the supporting 2x4's and plastic on a temporary basis.

The landlord was of the position that compensation of \$50.00 per month for loss of use of the balcony is excessive given:

- Tenants were given notice about the balcony repairs.
- The landlord responded to advise the tenant of progress whenever he enquired.
- The rental unit is approximately 600 square feet and the balcony is approximately 60 square feet and the outdoor area should be considered less valuable than the interior square footage. The landlord estimated that the value of the balcony is 2% of the rent.

### **Loss of plants**

The tenant is seeking compensation of \$100.00 for approximately 30 plants that he had to remove from the balcony. The tenant submitted that he either gave the plants away to friends or threw them in the garbage. The tenant explained that he could not bring them indoors as it would be too hot for the outdoor plants to survive. The tenant also stated he could not retrieve the plants he gave to his friends.

The landlord submitted that advance notice was given to every tenant and posted in all the common areas requiring tenants to remove their personal possessions from the balconies well before the repairs commenced.

## **Sink Repair**

The tenant is seeking compensation of \$100.00 as he is of the position the landlord took too long to respond to his complaint about a slow draining bathroom sink.

The tenant submitted that his bathroom sink periodically drains slowly. In the past the landlord has been quick to respond when he reports a slow drain; however, the last time he reported a slow drain he waited 8 days before the repairman attended his unit.

The landlord acknowledged that cut backs have resulted in longer waits for minor repairs, which this was considered since the drain was still operational. The landlord submitted that a report of the slow draining sink was received on a Thursday and considering the weekend and the availability of the repairman, the repair was made the following week. The landlord does not consider the wait for this type of repair to be unreasonable.

## **False accusation**

The tenant requested \$100.00 from the landlord to penalize the landlord for making certain statements in a letter addressed to him that he considers false.

As punitive awards are not granted under the Act, I did not consider this portion of the tenant's claim further and I dismissed it summarily.

## **Analysis**

Upon consideration of everything before me, I provide the following findings and reasons.

## **Loss of Use of Balcony**

Residential Tenancy Policy Guideline 16: *Claims in Damages* provides policy statements with respect to claims one party may make against the other under the Act. Below, I have provided a portion of the policy guideline that deals with breach of contract and compensation for a breach.

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.

[my emphasis added]

In this case, it is undeniable that the tenant suffered a loss of use of the balcony while it was undergoing repairs. I was provided different dates from the parties as to when the tenant was prevented from using the balcony; however, I find I prefer the landlord's submissions as to the relevant dates as the landlord was very clear and obviously retrieving dates from various documents in her possession whereas the tenant largely provided vague estimates from memory.

From the time the sliding doors to the balcony were adjusted to prevent access to the balcony until such time access was restored, I find the tenant entitled to compensation for loss of use even though I am satisfied the loss of use was not the result of negligence on part of the landlord, as explained in the policy guideline referred to above. Although the balcony was awaiting final inspection on May 28, 2014, I heard from the tenant that he was able to access and use the balcony after April 29, 2014 and I find the 2x4's and plastic covering that remained not sufficiently significant to consider these items to constitute a breach of contract. Therefore, I limit the tenant's award to the months of February, March and April 2014.

With respect to the amount of compensation the tenant claimed, at \$50.00 per month, the landlord was of the position this was excessive and suggested the value of the deck is closer to 2% or \$17.00 (rounded). I find the landlord's position as to the value of the balcony space to be unreasonably low. If the interior space and the exterior space were valued equally, the area lost to the tenant would be valued at approximately \$82.00 [\$842.00 x 10%]. But, in this case, the tenant is seeking only \$50.00 per month and I find this approximation reflects a discount for the area being an exterior space. I further find a value of \$50.00 more in keeping with the difference in value of a unit with a balcony and one without.

In light of all of the above, I award the tenant the sum of \$150.00 for loss of use of the balcony for the months of February, March and April 2014.

### **Loss of plants**

I make no award for loss of plants as the tenant did not satisfy me that he suffered a loss of \$100.00 due to any violation or negligence on the landlord's part and because the tenant has already been compensated for loss of use of the space where the plants were located.

### **Sink repair**

A tenant must expect that from time to time he will require repairs in the rental unit. The tenant is expected to notify the landlord that repairs are required and the landlord is expected to respond in a manner that is reasonable in the circumstances.

In this case, the tenant complained of a slow draining sink. I find that a wait of 8 days is not unreasonable in that case. While the tenant may have been accustomed to speedier responses from the landlord in the past, that gold-level service does not become the standard that the landlord is bound to meet indefinitely. Rather, the landlord's standard is that of "reasonableness". Having found the landlord responded to the tenant's complaint reasonably I make no award for compensation to the tenant for 8 days he experienced a slow draining sink.

### **Filing fee**

In recognition of the tenant's partial success in this claim, I award the tenant recovery of a portion of the filing fee, or \$12.50.

### **Monetary Award**

The tenant has been awarded compensation totalling \$162.50 that I authorize him to deduct from rent otherwise payable to the landlord.

### **Orders for compliance**

I was not provided sufficient evidence to suggest it is necessary to issue orders to the landlord to comply with the Act, regulations or tenancy agreement and I make no such orders with this decision.

### **Rent reduction**

As the balcony repairs have since been completed, I make no award for a future rent reduction.

### **Conclusion**

The tenant has been awarded compensation of \$162.50 that he may deduct from rent otherwise payable to the landlord. I have dismissed the balance of the tenant's claims.

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: July 17, 2014

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Residential Tenancy Branch

