



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RP

### Introduction

This hearing convened as a result of the Tenants Application for Dispute Resolution seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, as well as an Order that the Landlord make repairs to the rental unit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Is the Tenant entitled to an Order that the Landlord make repairs to the rental unit?

### Background and Evidence

The Landlord testified that the tenancy began September 1, 2012. Monthly rent was payable in the amount of \$625.00 however the Tenant only paid \$620.00. The Landlord confirmed he had not raised the rent in two years, nor had he taken any issue with the fact the Tenant pays less than the contracted monthly rent of \$625.00.

TENANT'S EVIDENCE

The Tenant testified that his rental unit, and in particular his bedroom, sit directly on a “flooded musty bedrock”, which has made the bedroom inhabitable. He further stated that he suffers compromised immunity and that he believed that the Landlord wants him to get sick so he will move out and the Landlord can raise the rent. The Tenant stated that he has brought his concerns about his bedroom condition to the Landlord’s attention and although the Landlord attended his unit in 2014, he has not repaired his unit.

The Tenant testified that there was a flood in his rental unit in November 2013 as a result of a faulty faucet where his bathroom sink is located. The bathroom is next to his bedroom such that the flood caused water damage to his bedroom. He testified that he was in hospital at the time of the flood. The Tenant further testified that the faucet is connected to all the other units such that if the water is turned on in another unit, it will start leaking. The Tenant believes that the solution is to install a new valve on the faucet.

The Tenant submitted that the flood water has not been removed from his unit as it sits on concrete and as a consequence is musty and moldy. He further stated that the carpets are the original carpets from the 1960’s and that they have never been cleaned. He stated that they smell like urine and cigarettes and confirmed he does not smoke.

The Tenant further submitted that he has done renovations to the rental unit, including installing a new sink and toilet, and that the Landlord agreed to these renovations and in fact provided the Tenant with a second hand toilet to replace the one previously in the rental unit.

In summary, the Tenant submitted that the problems with his rental unit originate from a flood in November of 2013 and the existence of a leaking faucet in his bathroom both of which deposit water on bedrock causing a musty smell and mold, and that the carpets have never been cleaned or replaced.

When asked if he had requested moisture or mold testing of the unit the Tenant replied that he had not.

The Tenant claimed the sum of \$558.00 which he said represented half a month's rent as well as the cost of the clothes and box spring he says he threw out as a consequence of the flood in November of 2013.

### LANDLORD'S EVIDENCE

The Landlord testified that he has been in the rental business for 40 years. He stated that the occupant who lived in the rental unit prior to the Tenant was a non-smoker who left the rental unit, as well as the carpets, in immaculate shape. The Landlord further testified that the carpets were cleaned immediately before the Tenant moved into the rental unit.

The Landlord stated that he did an inspection of the Tenant's rental unit in August of 2013 at which time he noticed the Tenant had performed renovations to the bathroom.

The Landlord testified that he performed a further suite inspection on September 5, 2014 and at that time did not observe any evidence of moisture in the rental unit. He described the rental unit as "shabby", in "disarray" and without adequate space to walk as there were clothes and vehicle parts all over the floor. He stated that the Tenant had removed the baseboards and painted a window black. He further stated that the Tenant had removed the carpet and underlay and that the underlay was now on top of the carpet.

In direct response to questions regarding the Tenant's claim that the rental unit flooded in November 2013, the Landlord testified that the Tenant never brought any such claims to his attention at the time, and that the first he heard of this was when the Tenant brought it up with another tenant at some point in August of 2014. The Landlord submitted that shortly thereafter and in September 2014 when he performed a suite inspection, there simply was no evidence of water damage or deterioration. The Landlord submitted that there was no evidence that any such flooding occurred.

The Landlord confirmed that he did discuss the Tenant's concerns with the faucet, but denied the Tenant's claim that all the other units' lines are connected to his bathroom faucet; rather, the Landlord testified that there is a regulating valve in the Tenant's kitchen and that he did caution the Tenant about adjusting or otherwise tampering with that valve/faucet as he was concerned the Tenant would break the seal.

The Landlord testified that the Tenant gave notice to end the tenancy effective August 30, 2014.

TENANT'S REPLY EVIDENCE

In response to the Landlord's submissions, the Tenant testified as follows:

- The bedroom is empty of any belongings and is spotless.
- The Carpet is rolled up, not under the underlay as claimed by the Landlord.
- The baseboards have not been removed.
- Only half of the screen door has been painted black.
- He gave notice, but does not want to move now.

Analysis

The Tenant sought monetary relief pursuant to section 67 of the Act, which provides that compensation can be ordered for damage or loss which results from a party not complying with this Act.

I find that the Tenant has failed to establish that a flood occurred in his rental unit in November of 2013. The Tenant failed to submit any corroborating evidence of mold or moisture.

I accept the Landlord's testimony that the first he became aware of the Tenant's claim that such a flood occurred was in August of 2014 when the Tenant raised this with another occupant. Had such a flood occurred, it would have been reasonable for the Tenant to bring this to the Landlord's attention at the time the flood allegedly occurred.

I accept the Landlord's evidence that he did not observe evidence of a flood in September of 2014 when he performed a suite inspection.

While the Tenant's Notice to End Tenancy was not before me, the parties agreed that the Tenant had given notice to vacate the rental unit by September 30, 2014. The Tenant cannot unilaterally withdraw a Notice to End Tenancy. Accordingly, it is not necessary to make an order that the Landlord make repairs to the unit as requested by the Tenant.

The Landlord confirmed the carpets had not been replaced for some time, and also testified as to the condition the rental unit was in when he performed his suite inspection in early September 2014. As such, the Landlord was cautioned as to his responsibility pursuant to section 32 of the Act and in particular his responsibility for ensuring that rental units and property meet “health, safety and housing standards” and are reasonably suitable for occupation. *Residential Tenancy Policy Guideline 1. Landlord & Tenant—Responsibility for Residential Premises: Carpets*, provides that a Landlord is expected to provide the Tenant with clean carpets in a reasonable state of repair at the beginning of the tenancy. Further, *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements* provides for 10 years as the useful life in years for carpets.

### Conclusion

The Tenant’s Application for a Monetary Order is dismissed. As the Tenant gave notice to vacate the rental unit by September 30, 2014, the Tenant’s application that the Landlord make repairs to the unit is also 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: October 24, 2014

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Residential Tenancy Branch

