



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARVEST PROPERTIES LTD. C/O HUNTER MCLEOD REALTY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: ERP RR

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 32; and
- b) That the landlord repair and maintain the property pursuant to section 33.
- c) Compensation and a rent rebate for repairs not done and to recover the filing fee for this Application.

Service:

The tenant /applicant gave sworn evidence that they personally served the Application for Dispute Resolution on September 30, 2014 at the office of the landlord. I find the tenant's evidence credible; I find the documents were legally served.

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

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act? Are they entitled to orders that the landlord do necessary repairs and to compensation and rent rebate for repairs not done?

### **Background and Evidence**

Only the tenants attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in December 2012 and was renewed on a fixed term tenancy agreement in December 2013 and rent is \$1085 per month.

The tenant described issues in the unit caused by water ingress. He said the living room ceiling leaked since the end of May 2014 and it only stopped in the past four days; he said after he filed his Application, the landlord did some repairs outside and maybe stopped roof leaks. However, he described the living room ceiling as concrete with a popcorn finish and he said the constant leaking has left it cracked and yellowed and very unsightly. He said that during the four and a half months of the ceiling leak, he was

emptying seven pails of water a day. This was a hard work and very uncomfortable as the living room is his bedroom. He thinks there is mould under the yellowed popcorn.

He said also the North windows facing the balcony had water ingress since they rented in 2012. All of this water ingress has caused the hardwood floor to lift and become wobbly which is a hazard. He requests that the landlord be ordered to do the necessary repairs and that the tenants get compensation and/or a rent rebate for the lack of repair for many months and until the problems are resolved. On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

I find sections 32 and 33 of the Act sets out the obligations of the landlord to repair and maintain the rented premises as follows:

*32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...*

*(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

*33 (1) In this section, "emergency repairs" means repairs that are*

*(a) urgent,*

*(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*

*(c) made for the purpose of repairing*

*(i) major leaks in pipes or the roof,*

I find the weight of the evidence is that the landlord has done neither emergency or regular repairs on this unit. While the evidence indicates the landlord began repairing leaks to the exterior of the building after it leaking for four and a half months, they have not addressed the necessary repairs to this unit or the problems caused to the tenants by their lack of repair. I find this has seriously infringed the peaceful enjoyment of the tenants contrary to section 28. The landlord is ordered to do the necessary repairs as set out below and to provide the necessary compensation.

I find the weight of the evidence is that the tenants suffered extreme hardship from the lack of repair, emptying up to 7 buckets a water a day and living in miserable circumstances with the floor and ceiling both reacting to the water flow. I find the

tenants entitled to a rent rebate of \$100 per month for lack of repair to the ceiling and \$100 per month for the floor from June to October, 2014 (totals \$1,000 to date). I find them also entitled to a rebate for the water ingress from the windows; however, as there is insufficient evidence that the necessity for this repair was obvious to the landlord or that it caused problems other than some water sporadically on the floor, I find them entitled to a lesser rent rebate of \$10 a month for the 20 months since the inception of the tenancy (or \$200). Rebates granted to the end of October total \$1,200.00

**Conclusion:**

The tenants are granted a rent rebate of \$1200 to the end of October and recovery of the \$50 filing fee which means they owe no rent for November 2014 and will have a credit in their rental account of \$165 in addition to other credits set out below towards their rent for December 2014.

**I HEREBY ORDER THAT THE LANDLORD DO REPAIRS AS FOLLOWS AND REDUCE RENT AS FOLLOWS UNTIL THE ORDERED REPAIRS ARE DONE:**

**I HEREBY ORDER THE LANDLORD:**

- (1) To strip the living room ceiling of the popcorn finish, inspect it for mould, repair as necessary and repaint it. I order that the tenant may reduce their rent by \$100 a month for every month until this repair is done.**
- (2) To repair or replace the hardwood floor to correct the water damage to it and to inspect for mould while doing so. I order that the tenant may reduce their rent by a further \$100 a month for every month until this repair is done.**
- (3) To replace or repair the North facing windows to the balcony to prevent any ingress of water. As the landlord now has notice of this problem, I order that the tenant may reduce their rent by \$50 a month for every month until this repair is done.**

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 22, 2014

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Residential Tenancy Branch

