



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, RR, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for the landlord to make repairs to the unit, site or property; for an Order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord stated that he had sent in late evidence which had not been received by the arbitrator before this hearing commenced and has not been considered in this decision. A great deal of evidence has been provided for this hearing, I have considered the relevant evidence and based my decision on this.

The tenants withdraw their application for emergency repairs, and repairs as they have vacated the rental unit.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provide?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2014 although the tenants moved into the unit on March 25, 2014. This was a fixed term tenancy until June 30, 2014 and then reverted to a month to month tenancy. Rent for this unit was \$2,000.00 a month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$2,000.00 prior to the start of the tenancy.

PH testified that at the start of the tenancy they had an agreement with the landlord that the tenants would complete some repairs to the deck as the deck was unsafe. The agreement was that the landlord would open an account at the Home Depot for the tenant to get the materials to use on the deck and the tenant would provide the labour the cost of which would either be paid back to the tenant or deducted from the tenants' rent. The tenant testified that the work to replace the deck took the tenant, who is a contractor, three and a half weeks, the old deck was dismantled and removed to the dump and a new deck erected. This has also increased the value of the landlord's house. The tenant testified that a deck of this nature would have cost the landlord in labour costs in the region of \$7,000.00; however, as they had agreed a flat rate of \$4,500.00 the tenant seeks to recover this from the landlord as the landlord has not taken it off the rent.

The tenants testified that the landlord overcharged the tenants the security deposit at the start of the tenancy. The landlord charged them an amount of \$2,000.00 for half the first and last month's rent. The tenants seek to recover \$1,000.00 from the landlord.

The tenant testified that the unit suffered from areas of black mould and damp which rendered areas of the unit unlivable. The tenants' young daughter's play room, and bedroom could not be used as they made their daughter ill. The downstairs bathroom also had a water leak which had created more black mould. The landlord had not removed all his belongings from the unit and was still using the basement storage room and hallway. This reduced the tenants' use of these areas. The backyard was full of junk that the landlord had not removed. There was an old oven, other equipment, a pile of wood and a motor home left on the driveway for seven months. PH testified that these areas are still unusable seven and a half months later and the tenants seek a rent reduction of \$1,000.00 a month for the loss of these areas for nearly eight months.

The tenant testified that the dishwasher had leaked before the tenant moved into the unit and this had expanded the wooden subfloor in the kitchen and caused the linoleum to split. There was more black mould under the linoleum and the kitchen smelt of mould and was unsanitary and unsafe. The landlord came into the home with another person and used a strong chemical which the tenant thinks was peroxide to try to get rid of the mould. The landlord also cut out one section of the flooring but left the other section covered in mould and simply covered it up with new flooring. When the landlord came to make repairs he put the tenants dining room furniture outside and it was left there even though it start to rain and CN had to bring it back into the house. CN testified that the landlord did not cover the tenants belongings when they started their work or move appliances and the landlord even put his dirty shoes up on the counter top where the tenants prepare food and left his tools laying around where the tenants' young child could get at them.

PH testified that in May they saw the roof was leaking and water was pouring into the unit. They informed the landlord and the landlord said he already knew about it and

would get to it. This should have been repaired before the tenants moved in if the landlord already knew about it. PH testified that this all contributed to a loss of quiet enjoyment of the unit for the tenants and they seek compensation of \$3,000.00 this also includes a period of a week and a half for the cost incurred by the tenants for eating out during the week as they could not prepare food in the kitchen.

The tenant CN testified that both she and their daughter suffered from health issues due to the mould in the unit. The tenant had laryngitis and asthma attacks, repertory problems and low energy. The tenant and their daughter had to go to the doctors and had four rounds of antibiotics and two puffers for breathing issues. The tenant CN testified that she was working at two jobs both as a waitress in different restaurants. CN testified that she was let go from her jobs as she could not speak due to her illness and seeks to recover a loss of earnings from the landlord of \$4,000.00 for six weeks. CN testified that they also seek to recover the cost of medication of \$300.00.

The tenants seek a further \$3,000.00 for pain and suffering over six weeks the tenant CN was ill and had to leave the home and stay with friends due to the unhealthy living conditions. The tenants testified that the house was formally a Grow Up and the landlord should have disclosed this to the tenants prior to the tenants signing a lease agreement. The tenants testified that they tried to contact the landlord by phone to discuss the problems in the unit but the landlord did not respond or return their calls. On September 17, 2014 the tenants wrote to the landlord and outlined the problems in the unit. This letter was sent after the tenants realized that the carpets and kitchen and bathroom had mould and the roof was leaking.

The tenants testified that the landlord had asked the tenants to remodel the whole house but to start first with the deck. When the landlord did not pay for the tenants labour on the deck the tenants declined to do anymore work in the house. The tenants testified that they have now rented another home.

The tenants seek to recover \$54.05 for the costs incurred to develop photographs used as evidence for this hearing and \$30.00 in parking costs incurred when parked outside the RTB office.

The tenants withdraw their claim for emergency repairs and repairs as they intend to vacate the unit on December 01, 2014.

The tenants seek the \$8,000.00 detailed in their claim as a rent reduction for the loss of the use of the rooms and their \$100.00 filing fee.

The landlord testified that the deck had been worked on two years prior to this tenancy and there were only two weak spots on the deck. When the landlord spoke to the tenants, PH agreed to do the repairs. The landlord agreed to provide the materials for this work and that is why the account was set up for the tenant at Home Depot. The tenant agreed to supply the labour for this work and nothing was agreed in writing that the tenant would receive recompense for the work or a rent reduction. The tenant never provided the landlord with an invoice for any work completed. The tenant replaced the whole deck when this was not necessary.

The landlord agreed that he did overcharge the tenants \$1,000.00 for their security deposit as the landlord was not aware of the half a month's rent rule for security deposits. The tenants had time to review the house and were allowed to move in on March 25, 2014 even though the landlord had scheduled work to take place in the house for that period. If the tenants had moved in on April 1, 2014 then some of this work would have been done. It was discussed that any work would have to be done around their living arrangements. The work was scaled down due to the tenants' occupancy and the tenants agreed that the work could be scheduled later.

The landlord testified that it was CN who asked the landlord to give the tenants an eviction notice so they could get some help paying the rent. CN also asked the landlord how to get rid of bedbugs found in the unit and when the landlord was going to

compensate the tenants for the work done on the deck. The landlord testified that it was on September 16, 2014 that the tenant sent the landlord an email outlining the health issues CN and her daughter were having. The landlord testified that he was not ignoring the tenants and there was communication between them. Over the next three days the landlord was busy so he later called CN and CN was adamant that the landlord resolve the bedbug issues and the tenants wanted to give notice to end the tenancy.

The landlord testified that he called the tenant back and informed the tenants that WM would investigate the problems in the unit. WM attended at the unit and found the dishwasher was leaking and this had caused damage to the subfloor. The bathroom downstairs was also leaking and there was a problem with the grout. There was bedbugs found in one room and the roof leak could not be confirmed.

The landlord testified that on September 24 or 25 he sent an email to CN and requested the balance of rent for September and to arrange a time to complete the work that had been postponed due to the tenants' early occupancy. The landlord testified that he returned to town and started the work between September 27 and October 05. This involved removing the damaged subfloor in the kitchen and laying new linoleum in the kitchen and diner. A new dishwasher and facets were installed and the shower curtain was lowered to prevent water leakage when the shower was used. The tiling was replaced and the caulking renewed in the shower. Rollers were repaired on the patio door and a minor repair was done to a cabinet door. The landlord testified that he did remove some of his furniture and asked the tenants if they wanted to keep any of the furniture and then remove it later; the roof leak was located and a repair made; areas of mould were sprayed with Hydrogen Peroxide; new drywall was put in the closet and the mould affected drywall was removed; the gutters were cleaned and the tenants were given a compound to kill the bedbugs.

The landlord testified that on October 15 to 16 he received another email from CN informing the landlord that the downstairs shower was still leaking. The tenants had also ripped up the carpets in the bedroom and bathroom. The landlord testified that he was not in the area between October 15 and November 08 due to work and did not see the

registered mail from the tenants. When the landlord did see it on November 08 he returned to the unit to deal with the issues raised by the tenants.

The landlord testified that he did not need to notify the tenants that the house had previously been a Grow Up as this occurred in 2006/07. The City had placed a no occupancy order on the house, all the work had to be done in the house to make it fit for occupation and the City passed it for occupation.

The landlord agreed that he did not pull back carpets to look at the condition of the flooring as the roof only leaked when it rained. The carpets had been examined prior to the tenants moving in and had been cleaned at that time. The carpets were 30 years old and had been shampooed regularly over this time which may have caused the discoloration o the floor and this was not necessarily mould.

The landlord testified that they did investigate the tenants' concerns in September and felt they did a satisfactory job in dealing with the tenants' concerns. The landlord therefore disputes the tenants' entire claim and contests the tenants' photographic evidence. The landlord testified that he is still prepared to do various things in the house such as replacing the bedroom carpets, replacing the flooring in the bathroom and investigate the shower. The landlord sought the tenants' permission to finish the work required.

The landlord testified that as to the items being stored at the unit; this was discussed with the tenants and the tenants did not disagree with these items being stored there. The landlord testified that he did purchase a new stove prior to the tenants moving in and has kept the old one on the property to use as a backup if required along with the old dishwasher and fridge. The landlord testified that the storage area downstairs was not part of the tenancy and the landlord is willing to move the old appliances kept outside into this indoors storage area.

PH asks the landlord why he felt PH had rebuilt the deck without the landlord's permission when the landlord opened the account for the PH at Home Depot and each time PH went to get materials Home Depot called the landlord to confirm the amounts charged and the materials taken. The landlord responded that the agreement was that the landlord supplied the materials and PH supplied the labour. PH asks the landlord about the discussion about the tenants repairing and renovating the whole house and did the landlord think the tenant would provide his labour without compensation to improve and increase the value of the landlord's house. The landlord responded and testified that PH had mentioned that he was a contractor and no agreement was made for the tenant to go ahead with any other work. The landlord testified that he agreed to put a \$1,000.00 a month into the home and arrangements could be worked out but nothing was finalised regarding this.

The landlord testified that they did take their tools outside and did clean up after they did any work. The landlord testified that they did not take the dining set outside but only a few chairs. CN responded that when they removed the flooring the first time they moved the dining set into another area but the second time when they laid the linoleum the landlord did take the dining set outside.

The landlord testified that the child's bedroom and playroom were still functional rooms and CN had informed the landlord prior to this that they had prior medical issues so the medical bills could relate to those issues. The landlord testified that pain and suffering are subjective and if the tenants felt the home was so unsafe why did they accept or continue with the tenancy.

The landlord calls his witness WM. The witness testified that he assisted the landlord in doing some of the installation for the dishwasher and kitchen facets; the lifting of the damaged floor, and the laying of the new subfloor and linoleum. The witness testified that he only had two occasions to look at the deck when the landlord had opened it up. The witness testified he was present with the landlord and tenant when a reference was made to the landlord providing the materials if the tenant provided the labour. The



witness testified that he has no knowledge of any payment arrangements for the tenant's labour.

The landlord asks the witness if they treated the mould areas with Hydro Peroxide and did this effectively treat the mould. The witness responded that the standard solution was applied two to three times to areas that could carry mould spores. All areas were treated effectively including the kitchen, the baseboards and the dining room. This work was done in late September, 2014.

The landlord asks the witness if the tenants' claim for pain and suffering is legitimate. The witness testified that he notes that the repair work was complicated by the tenants' residency as they had moved in early and had no objections to the landlord doing work.

The landlord was questioned as to what work had been scheduled between March 25 and April 01, 2014. The landlord responded that they had planned to do painting, carpet cleaning and minor repairs.

The tenant questions the witness and asks what the witnesses' relationship is to the landlord. The witness responded that they are brother in laws. The tenant asks the witness if the witness is a mould expert. The witness responded No. The tenant asks the witness if they treated for mould under the fridge or by the patio doors. The witness responded that there are two fridges, the fridge by the stove was clear and the other area was treated three times.

The tenant asked the landlord if the landlord knew about a leak in the roof prior to the tenants moving in. the landlords responded that yes he did

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenants' claim for compensation for damage

or loss I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I will address each section of the tenants' claim accordingly; with regard to the claim for \$4,500.00 in compensation for building the deck. The tenants argued that PH would not have spent three and a half weeks rebuilding the deck and improving the landlord's home without compensation from the landlord for this labour. The landlord argued that the only agreement was for the landlord to provide the materials and PH would provide the labour and the deck did not require a complete rebuild.

While the tenants have provided compelling evidence that shows the deck was rebuilt by the tenant; in this matter the tenants have the burden of proof and must show that an agreement was in place to compensate the tenant for his labour in building the deck. When a tenants' evidence is contradicted by the landlord, the tenants will need to

provide additional corroborating evidence to satisfy the burden of proof. In the absence of a written agreement to show the terms of any financial arrangement regarding the deck; I find the tenants have not met the burden of proof that an agreement was in place for the landlord to compensate the tenant \$4,500.00 for his labour through either a cash amount or by a rent reduction. Consequently, the tenants' claim in compensation for \$4,500.00 is dismissed.

With regard to the tenants' claim that the landlord over charged the tenants by \$1,000.00 for their security deposit; I refer the parties to s. 19 of the *Act* which states:

**Limits on amount of deposits**

*19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.*

*(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.*

Rent for this unit was \$2,000.00 a month and the tenants paid a \$2,000.00 security deposit. Consequently, I uphold the tenants' claim to recover the overpayment of **\$1,000.00** pursuant to s. 19 (2) of the *Act*.

With regard to the tenants' claim for compensation of \$3,000.00 for a loss of quiet enjoyment due to work required in the kitchen and due to the leaking roof; upon consideration of the evidence before me I find this tenancy started in April, 2014 and the landlord agreed that he was aware that the roof required repair. However, the landlord did not complete this work prior to or immediately after the tenants took occupation of the unit. Furthermore, I find the tenants suffered as a result of the dishwasher leaking and this subsequently caused damp and mould in the kitchen floor which was not

addressed in a timely manner. The landlord argued that had the tenants not moved into the unit before the start date of the tenancy then remedial work which was scheduled to take place during that week was put off; however, I the landlords testimony he also state that the work that had been scheduled for that week was painting, carpet cleaning and minor repairs. If this was the work that had been scheduled it would not have addressed the more serious issues of the leaks in the kitchen the mould, the roof leak and the leaking shower. I refer the parties to s. 32 (1) of the *Act* which states:

**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.*

Furthermore s. 32(5) states

*(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.*

Tenants have an entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment “promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord’s actions that rendered the premises unfit for occupancy for the purposes for which they were leased. It is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises; however, a tenant may be entitled to

reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In determining the amount by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation and the degree to which the tenants have been unable to use the premises or had reduced use of part of the premises, and the length of time over which the situation has existed. While I find the landlord made some effort to remedy the repairs, I am not satisfied that these were completed in a timely manner or that in fact they should have been completed before the landlord rented the unit. I have considered the tenants' claim for \$3,000.00 and find this amount reflects the reduced value of the tenancy and I therefore uphold the tenants claim for **\$3,000.00** in compensation.

With regard to the tenants' claim of \$4,000.00 for a loss of earning for six weeks; the tenants must provide corroborating documentation to show what the CN's average earnings would have been for this period and evidence to show that CN had been laid off from work due to her illness and that this illness was caused through the landlord's actions or neglect. While I am satisfied that the tenant's health issues were likely to have been affected by the damp and mould shown in the tenants' evidence I have no evidence of CN's work or her earnings for that period. Therefore, find the tenants have not met the burden of proof in this matter and this section of the tenants' claim is dismissed.

With regard to the tenants claim for the cost of medication; the tenant testified that both the female tenant and their daughter had to have courses of antibiotics and puffers. The tenant has the burden of proof to show this medication was required and the actual cost for the medication. There is insufficient evidence to support the tenants' claim in this matter and this section of the tenants' claim is therefore dismissed.

With regard to the tenants' claim to recover \$3,000.00 for pain and suffering; I find this section of the tenants' claim falls under the section as detailed above for a loss of quiet enjoyment. I am not therefore prepared to deal with a further claim of \$3,000.00 which falls under the same context and therefore this section of the tenants' claim is dismissed.

With regard to the tenants' claim for the costs incurred to process their photographic evidence; there is no provision under the *Act* for costs incurred by a party in the preparation of evidence. This section of the tenants' claim for \$54.05 is therefore dismissed.

With regard to the tenants' claim for costs incurred to park outside the Residential Tenancy Office. There is no provision under the *Act* for an award of this nature to be granted. The only costs that are recoverable are the filing fee. This section of the tenants' claim for \$30.00 is therefore dismissed.

With regard to the tenants' claim for a rent reduction of \$1,000.00 a month for eight months, I have considered the evidence before me and find the tenants' evidence to be compelling concerning the condition of the rental unit, the mould issues which prevented the tenants fully using the play room; their daughter's bedroom; the downstairs bathroom; the kitchen; and the storage space used by the landlord both inside and outside for the storage of appliances and other items in the yard that reduced the value of the tenancy. I find the overall space the tenants could safely occupy was reduced due to the problems in these areas which affected the tenants' health, safety and wellbeing. I therefore find the tenants are entitled to a rent reduction from April to October. As the landlord did complete some of these repairs within this time frame I have taken into consideration that not all these areas were unusable during this entire period. I further find the tenants have entered into a new lease agreement at a different address starting on November 01, 2014. I therefore limit the tenants' claim to \$1,000.00 a month for the first five months and \$750.00 for the remaining two months to a total amount of **\$6,500.00.**

As the tenants claim has some merit I find the tenants are entitled to recover the **\$100.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Overpayment for the security deposit	\$1,000.00
Loss of quiet enjoyment	\$3,000.00
Rent reduction	\$6,500.00
Filing fee	\$100.00
Total amount due to the tenants	\$10,600.00

### Conclusion

I HEREBY FIND in partial favor of tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$10,600.00**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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: November 21, 2014

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Residential Tenancy Branch

