



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, FF, (RR)

### Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to make emergency repairs for health or safety reasons, for repairs to the unit, site or property, to allow the tenant to reduce rent for repairs services or facilities agreed upon but not provided and recovery of the filing fee.

Both tenants attended the hearing by conference call and gave testimony. The landlord attended the hearing by conference call and gave testimony. The landlord has confirmed receipt of the tenant's documentary evidence package. The landlord states that he filed a late evidence package at 10:30am on the date of the hearing approximately 2 ½ hours before the hearing. The tenant confirmed receiving the landlord's late documentary evidence.

I find in reviewing the landlord's late evidence that the tenant would not be prejudiced if it was accepted. The tenant did not dispute any of the contents of the landlord's late documentary evidence. The documentary evidence is made up of 8 pages of written submissions which the landlord was able to read out in his direct testimony during the hearing and 10 pages of emails exchanged to and from the tenants. The landlord's late evidence is accepted for this hearing.

During the hearing the tenants withdrew their request to be allowed to reduce rent. As such, no further action is required for this portion of the claim.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss?

Is the tenant entitled to an order for emergency repairs?

Is the tenant entitled to an order for repairs?

### Background and Evidence

Neither party has submitted a copy a signed tenancy agreement, but state that a signed tenancy exists and that the monthly rent is \$1,695.00.

The tenant states that the foundation has been leaking heavily since September 2014. Every time it rains the tenants need to vacuum water for about hour on each occasion. The tenants seek a reduction in rent and to be compensated for the rent they have already paid by 1/3. The tenant has clarified that they are seeking \$565.00 per month for 5 months which is equal to 1/3 of the monthly rent for the last 5 months. The tenant confirmed that the amount claimed of \$2,796.75 was an estimate and that their calculations are wrong and should have been \$2,825.00, but are aware that their application is limited to the amount indicated on their application. The landlord has confirmed their understanding of the tenant's claim.

The tenant has clarified that they are only seeking compensation of \$2,796.75 and the repair of the leaking foundation.

The tenants seek compensation of \$2,796.75 as they have lost the use of the basement which is equal to 1/3 of the rental property. Both parties agreed that the rental property is approximately 2100 sq. ft and that the basement comprises of approximately 1/3 of the square footage for 700 sq. ft.

The tenant states that water was found flooding the basement in August of 2014 which the landlord was informed. The tenant states that the landlord was again contacted by emailed on September 22, 2014 notifying the landlord of the water when no action was taken. The tenant states that the landlord commenced work on the foundation. Water clean up was started on October 29, 2014. A sealant for the exterior foundation was put on in early December. The tenant states that the last contact with the landlord was on December 22, 2014 by email notifying the landlord that the leak had started again. The tenant relies on a submitted copies email exchanges between the two parties and 16 photographs showing the basement area during flooding.

The landlord disputes the tenant's claims stating that the tenant has provided no evidence of loss or damage as claimed. The landlord states that the pictures submitted by the tenants only show a small area in the basement which was wet and that there was no evidence of flooding. The landlord describes the picture of the basement as an

unfinished storage area and that the affected area shown in the tenant's pictures show approximately  $\frac{1}{4}$  of the basement floor wet and not flooded as claimed by the tenant. The landlord states that the tenant has characterized the water ingress as "flooding" instead of a leak.

The landlord states that upon being notified the landlord exercised due care by trying to retain a contractor to resolve the issue for the 57year old building and that reasonable efforts were immediately made to get a professional to deal with the leak. The landlord states that a company was retained and that drainage work was conducted. The landlord states that representatives of the company never indicated a "flood", rather they witnessed shallow pooling of water in the northeast corner of the unfinished basement.

The landlord states that the pictures of the tenant do not accurately reflect the ongoing issues of the leak, but of one day. The landlord also states that the pictures do not show flooding, but a small puddle in the corner of the unfinished basement.

The landlord states that the tenant was given the direct contact information for the company to notify them of any further water issues as confirmed by the tenant in their documentary evidence. The landlord states that as of December 22, 2014 no further reports of water issues were made to the company or to the landlord.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord was negligent and caused the damage/loss.

Based upon the testimony and evidence of both parties I find that the tenant has failed to establish a claim for monetary order.

The tenants have not provided sufficient evidence to satisfy me that any actual loss of use has occurred. The area in question is part of an unfinished basement shown in the tenant's submitted photographs showing an area used for storage with a small pool of water for a portion of the floor. It is clear that an inconvenience has occurred, but the tenant has not provided sufficient evidence of an amount required for compensation only stating that it would be equal to 1/3 of the overall rent based upon the square footage. The landlord has provided sufficient evidence to satisfy me that work has been carried out to address water issue and were not negligent in dealing with the issue. As such, the tenant's monetary claim is dismissed.

As for the tenant's request for an order for emergency repairs, I find that the tenant has failed to provide sufficient evidence to satisfy me that there is an ongoing water issue in relation to this dispute application. The tenant relies on an email dated December 22, 2014 notifying the landlord, but the tenant has not provided any further evidence of a continued water issue. The tenant's request for emergency repairs is dismissed.

### Conclusion

The tenant's application is 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: February 17, 2015

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Residential Tenancy Branch

