



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ERP RR MNDC

Introduction

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

- a) For a rebate of rent for repairs not done in a timely way;
- b) Compensation for having to live elsewhere while the unit was uninhabitable and for damage to property; and
- c) To recover filing fees.

Service:

The tenant /applicant gave evidence that they served the Application for Dispute Resolution and evidence and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities they are entitled to a rent rebate and compensation for the suffered consequences of repairs/maintenance not done in a timely way and also for damage to their property?

Background and Evidence

Both parties 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 July 2005 and it is now a month to month tenancy. The landlord had served some Notices of Rent Increase and then cancelled them as they were in error so the tenant was unsure of her rental amount. The landlord said the rent is now \$1058 per month and the tenant has a credit on her account.

The tenant claims as follows:

\$9,000: for 9 months rent from January 2013 to September 2013 as the unit was uninhabitable due to ceiling repair work.

\$400: for a TV stand destroyed by the ceiling collapsing

\$100: for damage to the TV (scratches that devalued it. It cost \$1,043.55 in January 2011 (invoice provided).

\$150: for food spoilage due to having no working refrigerator for one month.

The tenant said that in December 2012 her ceiling came down; her rent at that time was \$1020 per month. She said she informed the building manager by telephone when alarming cracks developed in November, then called again when it was falling as per the landlord's written instructions in the lobby. The building manager did not remember the date she was informed but said she was called and reported it to the property manager. The tenant said that contractors came to repair the ceiling but it was a terrible mess with plastic sheets over doorways, her furniture having to be moved constantly and dust everywhere causing her serious health issues as she has asthma and breathing complications. She submitted medical evidence concerning this. She said the ceiling eventually was repaired and it held for a few weeks; she went on holiday in March to April 2013 and the ceiling collapsed again while she was gone. Her daughter observed and reported this and requested it be fixed before her mother returned because of the health issues. However, it was not fixed until September 2013 and the tenant pointed to some evidence that said the contractors were waiting for some dry days to do roof repair first.

The landlord said they had had some different property managers so did not have evidence of some conversations in the past. She said that the first report of the ceiling collapse to the Restoration Company is dated February 6, 2013 and it took 5 weeks to do the repairs as documented by the Restoration company invoices. They said there are no letters complaining of the unit being uninhabitable in her file and this Application was the first claim she made on it. They said they took steps to address the issues and paid the contractors. The landlord queried the tenant's photographs as she said the contractors by contract must clean up every day, she does not know when the photographs were taken and the tenant never said at the time she could not live there or they would have tried to accommodate her in some way as they do on their other sites.

The tenant said the problem is that the landlord does not respond in a timely manner. She has the pictures to show how her unit looked during the restoration; the landlord has provided no pictures or other evidence to show the contractors cleaned up each day and she asserts they did not. Her daughter said it was an enormous job to move around furniture and the unit was like a storage locker. As an illustration of failure of the landlord to respond, she said the Restoration Company damaged her carpet, she called the landlord twice with no results, then called the Restoration Company and they came out and handled a repair right away.

She said she has insurance but if she claimed \$400 for the TV stand, her deductible would mean that she received nothing. She said she claimed \$100 for scratches on her TV from the ceiling falling; she is not replacing her \$1,000+ TV but the scratches have devalued it.

The tenant claims \$150 for loss of food. The landlord said the tenant called to report her refrigerator was not cold enough on October 14, 2013, a repair person attended on October 15, 2013, he said the compressor may be gone and a new refrigerator should be ordered. They ordered one on October 17, 2013 and it was delivered October 25, 2013. The landlord pointed out that the tenant never communicated that it was an emergency and her food was spoiling; they were only told 'it was not cold enough' and the technician reported the same. They said they acted in a responsible manner and had the refrigerator replaced with a new one as soon as possible.

Included with the evidence are photographs, invoices from repair companies, communications on rent increases and cancellations, statements of the parties, letters to and from the landlord and Notices from the landlord.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The onus of proof is on the tenant applicant to prove on a balance of probabilities that the landlord did not do necessary repairs in a timely fashion contrary to sections 32 and 33 of the Act and that her unit was uninhabitable for a significant amount of time during repair. The onus is on her also to prove that she suffered damage caused by the landlord and the cost to cure the damage.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act or tenancy agreement, the non compliant party must compensate the other for damage or loss that results. I find the weight of the evidence is that this building had significant water issues. Included in the evidence is a Notice dated March 2012 advising of water damage and in July 2, 2013, a Notice advising of roof repairs. I find the weight of the evidence is that the tenant reported her living room ceiling was cracking on November 23, 2012 and on December 6, 2012 that the situation had worsened. I find that on December 10, 2012, her living room ceiling collapsed and damaged her new TV and stand and she was told that nothing could be done until the roof was fixed when the weather improved. The manager encouraged her to contact the landlord and she did.

She reports that nothing was done for three months. Although the property manager pointed to the Restoration company invoice dated February 6, 2013 as proof of when the damage was reported, I prefer the evidence of the tenant and her daughter who recall clearly the event just before Christmas. The evidence of the resident manager also supports the tenant's evidence as she recalls the tenant calling to report the damage although not the date. I find the weight of the evidence is that the ceiling falling down in her living room caused the tenant health problems and made a portion of her unit uninhabitable. Even after repairs started, I find the resulting mess and debris as illustrated in the photographs continued to make a portion of her unit uninhabitable. I find that from January to March 2013, her living room was uninhabitable and living conditions were significantly reduced in the rest of her unit due to dust, dirt and storage of furniture. In her written statement, she reports "I could not use my living room...the dust aggravated my asthma and made it impossible to take care of my young granddaughter at home". Although she stated in the hearing, she resided with her daughter during this time, I find her written statement does not support this. Although the landlord said she should have informed them that the unit was uninhabitable so they could make other arrangements, I find her evidence credible that she was complaining to the resident manager and there is no evidence that any options were offered to her. I find she is entitled to a rebate of half of each month's rent for January to March 2013 as a significant portion of her home was unusable ($3 \times 1020/2 = \$1530$).

I find the weight of the evidence is that the ceiling collapsed again in April 2013 while she was on holiday and this was reported by telephone according to the landlord's posted procedure. However, I find in June 2013 when she returned, nothing had been done and she had to vacate and stay in her daughter's home until repairs were completed in early September 2013. Again, this was the ceiling in the living room which rendered a portion of her home uninhabitable. I find the tenant entitled to an additional rebate of half of each month's rent from June to end of August 2013 ($3 \times 1020/2 = \$1530$). I decline to award her a rebate of rent for a portion of the unit being uninhabitable while she was absent on vacation. I am mindful that the landlord has rolled back the rent increases which the tenant had objected to. While the landlord objected to the tenant's photographs, I find the tenant was credible in asserting she took them at the time.

In respect to the tenant's claim for \$400 for another TV stand and \$100 for loss of value through scratches on her TV, I find it is true that she agreed on her tenancy agreement to carry insurance for her own property. However, I find the weight of the evidence is that this loss occurred through neglect of maintenance issues which is a breach of section 32 of the Act respecting the obligation of the landlord to repair and maintain the property. I find the weight of the evidence is that significant water damage existed due to lack of roof (or pipe) maintenance in the building and continued while the tenant's

ceiling collapsed. I find it unreasonable to expect the tenant to bear the deductible and possible added costs to her insurance to pay her loss resulting from this lack of maintenance. I find her entitled to recover \$500 as claimed.

Regarding her claim for spoiled food, I find the weight of the evidence is that the landlord did respond promptly to her October 15, 2014 complaint by sending a technician the next day and ordering a new refrigerator which was delivered October 25, 2014. I find the tenant did not make it known to the landlord the urgency of the situation or that her food was spoiling as she said only that it was not 'keeping the food cold enough' and said the same thing to the technician; she used the same words in the hearing today. Therefore I find insufficient evidence to support the tenant's claim against the landlord for spoiled food and dismiss that portion of her claim.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover her filing fee of \$100 for this Application. I understand there is a credit on her rental account due to roll backs of increases; therefore the rebate is applied to future months commencing in May 2015 as ordered below.

Original ceiling collapse: Half of 3 months rent (Jan-March 2013)	1530.00
Second ceiling collapse: Half of 3 months rent (June-Aug 2013)	1530.00
TV Stand and Devalued TV	500.00
Filing fee	100.00
Total Monetary Rebate to Tenant	3660.00

I HEREBY ORDER THAT the tenant is entitled to rebates of rent totalling \$3,660.00. Her current rent is \$1058 per month. I ORDER that the rebate is applied by giving her free rent for 3 months for May, June and July 2015 plus deducting the balance of \$486 from her rent for August, 2015.

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: March 04, 2015

Residential Tenancy Branch

