



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MEE HOI COMPANY LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNDC, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent who is an employee and caretaker of the residential property. The agent confirmed he had authority to act, but stated that the landlord denied any liability.

The tenant testified that her co-tenant personally served the agent with the dispute resolution package on 21 March 2015. The agent acknowledged receiving this evidence. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

Preliminary Issue – Tenant's Request to Amend Application

At the hearing the tenant asked to amend her application to include the correct legal names for the landlord. The tenant had named the agent as the landlord in this dispute. While the agent qualifies as the “landlord” for the purposes of the definition in section 1 of the Act, the legal entity responsible for any orders from this type of application would be the corporate landlord. The agent stated that the landlord was fully aware of the tenant’s application and consented to the amendment.

I allowed this amendment—pursuant to paragraph 64(3)(c)—as the agent appeared before me and confirmed that he had authority to act on behalf of the landlord. The landlord understood that this application was its responsibility. Accordingly, there is no undue prejudice to the landlord in allowing this amendment.

The tenant stated that the repairs to the shower had been completed as of 15 April 2015. I asked the tenant if she wished to withdraw her request for an order for emergency repairs and repairs to the rental unit. The tenant confirmed that she wished to withdraw these components of her application as no repairs remained outstanding.

I allowed this amendment—pursuant to paragraph 64(3)(c)—as there is no prejudice to the landlord in doing so.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around it are set out below.

This tenancy began 1 October 2014. Monthly rent of \$965.00 is due on the first. The tenant occupies the rental unit with her co-tenant. There is a written tenancy agreement with an addendum. I was not provided with a copy of this agreement. The agent testified that the addendum contains a clause that the tenant will not change the fixtures in the apartment.

The rental unit is forty years old. The agent testified that the shower plumbing was the original pipework. The rental unit is a two bedroom and one bath unit. The bathroom contains a bath with a shower.

The tenant testified that there were two problems with the shower: (1) the water pressure was insufficient to use as a shower; and (2) the hot and cold water would not mix so as to create a suitable temperature of water for showering.

The tenant noticed the problems at night on 26 November 2014. The tenant testified that she did not call the agent until the next morning. The agent testified that the tenant contacted him on 5 December 2014.

The tenant testified that the lack of water pressure made the shower impossible to use for its given purpose. The agent testified that there may have not been enough water to take a shower, but that he could not say. The tenant testified that the agent came to look at the shower and found that the showerhead portion of the pipes had disconnected from the pipes leading into the main plumbing system. The agent confirmed this. The tenant testified that one week later the agent had the showerhead portion of the pipe reattached. The tenant testified that the plumber that came in the first week of December said that the shower needed a new diverter. The agent testified that in mid-December the tenant reported that the water pressure was still insufficient. The tenant testified that in the second week of January the agent found a new part and installed it; however, the tenant testified that the problems persisted.

The tenant testified that a leak developed in the piping between her bedroom and the bathroom. This leak caused the bathroom to flood. When this flood occurred all the pipes were fixed. The tenant testified that when these repairs occurred the plumber found a piece of pipe in the pipe that had been lodged near the shower. The tenant testified that this piece of pipe was blocking the water flow. The tenant testified that this solved the issue. The agent confirmed this.

The tenant testified that when the plumber came in early December, he said that the problem would be fixed if they replaced the shower piping within the wall. The tenant testified that she agreed to this, but that these repairs did not occur until the flood.

The agent testified that the tenants called him approximately two or three times regarding the shower issues. The tenant testified that she telephoned him approximately two times, but that both she and her co-tenant would also tell him about the issue when she ran into him in the hallway of the residential property. The tenant testified that two days after the diverter was installed in January, her co-tenant told the agent that the shower issues were continuing. The tenant estimated that she or her co-tenant approached the agent in the halls three or four times.

The tenant testified that she and her co-tenant did not have use of the shower from 26 November 2014 to 15 April 2015. The tenant testified that she and her co-tenant would have to take baths, use the showers in the community centre, or shower at work. The tenant testified that the bath was impractical for her co-tenant who is 1.9m and 113kg. The tenant testified that to wash her hair she would have to hang over the side of the tub and use a cup to rinse. The tenant testified that this was difficult for her because her back was injured in a car accident.

The tenant occupied a one-bedroom unit in the same building for 5.5 years prior to moving into the rental unit. The tenant had purchased a showerhead. The tenant used the shower head in her previous unit. When the tenant moved to the rental unit she replaced the showerhead with the one from the previous unit.

The agent testified that the showerhead was heavier than the stock showerhead. The agent testified that the reason the pipe disconnected was because the threading was broken. The agent submitted that had the tenant not replaced the showerhead, the threading would not have broken in the pipe. The tenant testified that the showerhead is not significantly heavier than the stock showerhead. The tenant testified that she used the showerhead without issue for 5.5 years in her previous apartment.

### Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I find that the landlord was required to maintain the shower as a term of the tenancy agreement (see section 8 of the *Residential Tenancy Regulations Schedule*). I accept the tenant's evidence that the shower required repairs to make it functional. The agent has not provided any evidence that would dispute this and took steps to fix the problems of which the tenant complained. I accept the tenant's submissions that the bath was not an equivalent substitute for a shower.

I reject the agent's submission that the tenant's showerhead caused the damage to the shower. Based on the tenant's testimony, I find that the showerhead was a standard showerhead. By the agent's own testimony this building is approximately forty years old and the plumbing for the shower was original. While *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" (Guideline 40) is not applicable to this sort of application, I do note that the useful life of various plumbing systems is no more than twenty five years. A pursuant to subsection 32(4) of the Act, a tenant is not responsible for making repairs for reasonable wear and tear. I find that the damage to the shower was caused by age, wear and tear, and, accordingly, it was the responsibility of the landlord to repair the damage.

I reject the agent's submission that the tenant was in breach of her tenancy agreement by switching the showerhead. The agent provided testimony that the tenant's tenancy agreement includes a term that the tenant would not change any fixture.

Residential Tenancy Policy Guideline, "1. Landlord & Tenant – Responsibility for Residential Premises" provides a definition of "fixture"

A fixture is defined as a “thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land”.

A showerhead is not annexed in such a way to the shower pipe so as to render it part of the land. I find that the showerhead is not a fixture and is chattel. Accordingly, the tenant was entitled to change the showerhead and not in breach of her tenancy agreement by doing so.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the tenant experienced devaluation in the tenancy because of the outstanding repairs to the shower that the landlord was required to make pursuant to section 32 of the Act. The tenant submits that she is entitled to recover 30% of her rent for the time she was without the use of her shower. I disagree with the tenant’s valuation of the diminishment of the tenancy. The tenant still had use of the bath and the remainder of the rental unit.

In this situation, the assessment of damages is not a precise science; it is not even a calculation. With consideration of the objective service lost and the tenant’s (and co-tenant’s) individual physical difficulty in using the bath for bathing, I value the diminishment of the tenancy as 15%. I find that the tenancy was devalued over the period 27 November 2014 to 15 April 2014.

I find that the tenant failed to mitigate the loss by pursuing the repairs with the landlord more diligently. I find that, as a result of the tenant’s failure to bring the repairs to the landlord’s attention, the repairs were delayed by 2.5 weeks.

Accordingly, the tenant is entitled to an abatement in rent in the amount of \$579.00 calculated on the following basis:

Monthly Rent	\$965.00/mo
x Rent Abatement Percent	15%
x Duration of Abatement	4 mos
<b>Total Abatement</b>	<b>\$579.00</b>

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

I order that the tenant is entitled to reduce her rent in the amount of \$629.00.

#### Conclusion

The tenant is entitled to reduce her future rent in a total amount of \$629.00. By submitting the net amount of rent, the tenant's obligations pursuant to section 26 will be satisfied.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 24, 2015

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Residential Tenancy Branch

