



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC, RP

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and an order instructing the landlords to make repairs to the unit, site or property. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is located within a 2 story house. There are 2 rental units in the upper portion of the house, and 2 rental units in the lower portion of the house. The subject unit is 1 of the 2 units located in the lower portion of the house.

Pursuant to a written tenancy agreement, tenancy began on October 01, 2010. Monthly rent of \$550.00 is due and payable in advance on the first day of each month. A security deposit of \$275.00 was collected at the start of tenancy.

It was determined on February 26, 2015 that the hot water tank in the unit had ruptured. In the result, water spilled onto the floor and spread within the unit. It appears that rooms most immediately affected were the bedroom and kitchen. The landlord's insurance adjuster inspected the unit on February 27, 2015, and the hot water tank was replaced. A dehumidifier was brought into the unit on February 28, 2015, and damp carpet was removed from the kitchen and bedroom. Within days, many of the tenant's belongings were removed from the unit and put into storage bins rented by the landlord and temporarily stored on the property. The tenant relocated to a room and board situation while restoration work was undertaken. Contractors began restoration work in the unit on March 04, 2015. The tenant moved back into the unit again on May 15,

2015, at which time an accounting of costs was completed between the parties, as follows:

\$275.00: rent due for the latter ½ month of May

**MINUS**

\$54.25: 3 days of non-occupancy on February 26, 27 & 28

\$100.00: amount agreed to by the parties for tenant's moving costs

\$120.75: balance paid for May rent.

The tenant claims she is entitled to additional compensation for damage / loss of some of her possessions as a result of water damage. Evidence submitted includes a listing of some of the items said to be either damaged or discarded, along with a cost estimate of loss in each instance. Further, the tenant claims that damage would have been less had the landlord acted in a more timely manner to have standing water removed from the unit. The tenant has also claimed that it cost more to reside elsewhere while restoration work was being completed, however, the landlord notes that receipts reflecting the tenant's cost during this time include both room and board. The landlord also takes the position that remedial action was undertaken in a timely fashion, documents that he paid an insurance deductible of \$1,000.00, and acknowledges that the entire circumstance "has been stressful for both parties."

Analysis

At the outset, the attention of the parties is drawn to the following particular sections of the Act:

Section 28: **Protection of tenant's right to quiet enjoyment**

Section 29: **Landlord's right to enter rental unit restricted**

Section 33: **Emergency repairs**

Based on the testimony of the parties and the documentary evidence which includes, but is not limited to, photographs, receipts, and written / text communications between the parties, my findings are set out below.

I find that through no fault of either party, a failed water tank led to flooding in the unit. I find on balance that the landlord undertook to mitigate the damage / loss by commencing remedial action in a timely manner. The tenant received a reimbursement of rent from the landlord for the 3 day period in February when she was unable to

occupy her unit. Further, the tenant did not pay rent to the landlord for the following 2 ½ months while restoration work was being completed. I note that while the tenant incurred costs elsewhere for room and board, there is insufficient evidence before me to make a direct comparison between those costs and rent she would have paid had she been able to continue to reside in the unit during the period in question. I find that the landlord had no direct control over the pace of the restoration work which was completed by qualified tradespeople. Additionally, while I find that some of the tenant's belongings were damaged and, in some cases, likely discarded, there is only nominal evidence before me in relation to the actual cost of this damage and loss.

Residential Tenancy Policy Guideline # 6 speaks to the "Right to Quiet Enjoyment," in part as follows:

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.

Residential Tenancy Policy Guideline # 16 speaks to "Claims in Damages" and provides in part as follows:

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his / her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Having carefully considered the circumstances surrounding this dispute, I find that the tenant has established entitlement to compensation in the limited amount of **\$450.00**. I find that this compensation reflects damage / loss of certain of the tenant's possessions arising from water damage, in addition to a general breach of the tenant's right to quiet enjoyment of the premises, as well as inconvenience, disruption and distress from being required to relocate temporarily for a period of 2½ months.

Conclusion

I hereby **ORDER** that the tenant may withhold **\$450.00** from the next regular payment of monthly rent.

As restoration and repairs have now been completed, the tenant's application for an order instructing the landlord to make repairs to the unit, site or property is hereby dismissed. This notwithstanding, the parties are encouraged to speak directly with each other as soon as possible in regard to some apparent disagreement about the status and functioning of locks at the front and back entrance to the unit.

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: June 17, 2015

---

Residential Tenancy Branch

