



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            RR, FF

### Introduction

This hearing dealt with an application by the tenant seeking an order to allow a tenant to reduce rent for repairs, services or facilities agree upon but not provided and an order to recover the filing fee. Both parties participated in the conference call hearing. Both parties confirmed that they exchanged each other's' evidence. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

### Background and Evidence

The tenant gave the following testimony:

The tenancy began on or about September 1, 2014 and is ongoing. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.00. The tenant stated that a leak occurred on December 9, 2014. The tenant stated that water had come gushing out of the living room ceiling near the light fixture. The tenant stated that she informed the landlord immediately. The tenant stated two subsequent leaks occurred on January 23, 2015 and February 5, 2015. The tenant stated that each time she notified the landlord immediately.

The tenant stated that the contractor did not start repairs until February 7, 2015. The tenant stated that repairs were completed on March 13, 2015. The tenant stated that she was told the repairs would only take a few days but ended up being over a month. The tenant stated that she had to live without much of her unit as much of the living room was blocked off with plastic to avoid having the dust go throughout the unit.

The tenant stated that it was extremely stressful in dealing with this issue and that it was compounded by the fact that she had surgery on February 18, 2015. The tenant stated that she holds no ill will towards the landlords but feels that some compensation is justified. The tenant advised that the leak has been resolved and that she seeks one month's rent as compensation for "having to live in a construction zone".

The landlords gave the following testimony. The landlords stated that they did all they could possibly do under the circumstances. The landlords stated that this unit is in a stratified building. The landlords stated that the ingress of water was a result of another unit. The landlords stated that as a 3<sup>rd</sup> party was responsible, the issue would fall under the Strata's insurance. The landlords stated that they wanted the issue resolved as soon as possible however the matter had to go to strata council for approval and that it took two months to get the final approval to commence repairs.

The landlords stated that they felt badly for the tenant but felt their "hands were tied because of Strata". The landlords stated that they already provided \$80.00 of compensation to the tenant. The landlords stated that the amount the tenant is seeking is excessive and that an appropriate amount should be \$100.00.

### Analysis

Section 67 of the Act states that 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 all four of 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 the matter before me it is clear that a leak occurred through no fault of the tenant or the landlord, however the tenant was inconvenienced by this string of events. I fully accept that the

landlords were subject to the Strata process and were making all attempts to address the matter as quickly as possible.

However, the time to repair the hole in the ceiling was unacceptable. The time it took the contractor (36 days) to repair a moderate sized hole in a living room ceiling of a 760 square foot suite is excessive. An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I find that a nominal award is warranted in this matter and that the appropriate amount be \$250.00.

The tenant is also entitled to the recovery of the \$50.00 filing fee.

#### Conclusion

The tenant is entitled to \$300.00 compensation. The tenant is entitled to a one time reduction of \$300.00 on her next rental payment.

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 11, 2015

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Residential Tenancy Branch

