



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M'akola Housing Group of Societies  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, MNDC, OLC, ERP, RP, RR, O

### Introduction

This hearing dealt with an application by the tenants disputing a rent increase and seeking a monetary order and orders compelling the landlord to comply with the Act and perform repairs and an order permitting them to reduce their rent. Both parties participated in the conference call hearing.

### Issues to be Decided

Are the tenants entitled to a monetary order as claimed?  
Has the landlord imposed an illegal rent increase?  
Should the landlord be ordered to comply with the Act and perform repairs?  
Should the tenants be permitted to reduce their rent?

### Background and Evidence

The parties agreed that on or about March 27, 2015, the tenants moved into a unit managed by the landlord (the "First Unit") and that the First Unit was not suitable for habitation. At the landlord's expense, the tenants moved to a second unit (the "Rental Unit") on April 18. The tenants acknowledged at the hearing that they had been fully compensated for all losses they experienced while living in the First Unit.

At the hearing, the landlord agreed to a number of repair requests which are outlined in the Analysis section of this decision. In addition to the agreed upon repairs, the tenants seek an order compelling the landlord to immediately repair the leak in the area immediately adjacent to the front door of the Rental Unit. The landlord acknowledged that there is a leak and testified that the Rental Unit is one of 4 townhouses in the building and that they have been told by the plumbers they have retained to inspect the leak that if because the plumbing is so old, even if the leak is repaired it will likely cause pressure on another area of the piping and another leak will develop. The landlord

testified that they are in the process of arranging for a plumbing retrofit but that it will take time as they have to secure funding, work cooperatively with stakeholders and secure tradespersons to perform the plumbing and associated drywall repairs.

The tenants seek compensation for the period of time in which they have resided in the Rental Unit. They seek to recover all rent paid during their almost 4 months of tenancy in addition to \$2,000.00 for each of the 3 occupants as they claim their requests for repairs have been ignored, they have had no quiet enjoyment of the Rental Unit and they have suffered serious health effects from their exposure to mold in the First Unit. They also claim to have been exposed to mold in the Rental Unit as a result of the aforementioned leak.

The tenants claim that the landlord has illegally increased their rent. The parties agreed that when the tenants moved into the First Unit, they were given a monthly \$49.00 heat subsidy which was to compensate them for the cost of paying for electricity to heat the First Unit. When the tenants moved into the Rental Unit, the landlord stopped offering the heat subsidy. The landlord explained that the Rental Unit is located in a building heated by hot water and the landlord pays for the costs associated with heating the Rental Unit. The tenants did not dispute that their heat was provided in a different manner but believed that the subsidy should continue as it was part of their original agreement. The tenants further argued that their rent has fluctuated because the landlord demands a quarterly rent review as their rent is subsidized and the landlord needs to know changes in the source and amount of income the tenants receive. The tenants acknowledged that they should be subject to rent review, but argued that it occurred too frequently.

### Analysis

The repairs the landlord agreed to perform are as follows:

- The landlord will arrange to have the seals around the bathtub replaced and will ask the plumber to check the bathroom with a moisture meter to determine whether there is excessive moisture in that room.
- The gutters will be cleaned.
- The landlord will arrange to have an electrician inspect the unit to determine why electrical breakers keep tripping.

In reviewing the evidence, I accept the landlord's testimony that the plumbing problem in the area by the front door requires a much more significant repair than a simple stopping of the current leak. The tenants are entitled to an order that the landlord repair that leak as I find that the tenants are entitled to plumbing which is not compromised

and are losing the use of part of their living space because of the leak. However, as the landlord is contemplating a plumbing retrofit, I am unwilling to set a date by which the repair must be completed as I expect it will take some time to arrange for work of that magnitude. Instead, I find it appropriate to order that the tenants be permitted to reduce their rent until the leak has stopped and the drywall and ceiling are repaired. I find that the affected area is a very small portion of the rental unit and I find that the tenants will be adequately compensated by withholding 5% of their rent contribution until such time as the leak has stopped and the drywall and ceiling are repaired. This rent reduction will compensate the tenants for loss of quiet enjoyment as well as loss of part of their living area. For the sake of clarity, the tenancy agreement states market rent is \$1,200.00. The tenants are *not* entitled to withhold 5% of \$1,200.00. Rather, if their portion of the rent is \$668.00, they are entitled to withhold 5% of \$668.00 each month which amounts to \$33.40.

The tenants are also entitled to a rebate of 5% of the rent paid for the months of June, July and August as they experienced the leak during those months. The tenants were charged \$668.00 in rent for the month of June and \$595.00 for each of the months of July and August. They are entitled to a rebate of \$92.90 for those months and I order the landlord to pay the tenants \$92.90. The tenants may reduce their September rental payment by this amount.

The tenants have already been compensated for all issues related to the First Unit and for their move, so the only claim for compensation other than the claim related to the leak which has been addressed above is the tenants' claim for the return of all rent paid to the landlord and \$2,000.00 per person for loss of quiet enjoyment.

Most of the issues between the parties arose in relation to the issues from the First Unit and the landlord's delay in delivering the promised compensation. While there does not appear to be a reason for the landlord having delayed delivering the promised compensation to the tenants for several months, I am not persuaded that the tenants experienced any actual hardship as a result. The landlord paid for their move and also relieved them of a rental payment in May and at the hearing, the tenants acknowledged that this was full compensation, although they bitterly argued for more compensation in April and throughout May. As the landlord did not promise a date by which the entire amount of compensation would be received and as the tenants received most of their compensation by May 1, I find that the landlord has not been negligent or breached the Act or agreement in any way with respect to the delay.

The tenants claim that the area where the current leak is located is rife with mold and rot and provided photographs of that area. It appears that there is some mold in the area. The tenants claim that this mold exposure is wreaking havoc with their health, but

did not provide any medical evidence which directly attributes any health issues to mold exposure. Nor have they provided expert evidence showing that the type of mold to which they have been exposed is toxic or beyond acceptable levels. In the absence of such evidence, I am unable to find that the tenants are entitled to any compensation simply because there is mold in the home. The tenants are obligated to take reasonable steps to minimize their losses and as they provided no evidence to show that they made any attempt to clean the affected areas I am not persuaded that they have taken reasonable steps as required. I encourage the parties to work cooperatively to determine what cleaning can be performed in the area to alleviate the tenants' concern about mold exposure.

I find that there has been a significant communication problem between the parties. While the landlord has maintained cordial responses to the tenants' repeated demands, the landlord has not effectively communicated how they are addressing the tenants' requests for repairs. To facilitate an effective landlord/tenant relationship, the landlords should respond in writing to each of the tenants' requests and should clearly outline to the tenants whether the repairs will be effected, why they will not be performed if the landlord determines that repairs are not required and when they will be performed if the landlord is prepared to do the repairs.

While the tenants have experienced some frustration with the landlords' failure to respond quickly and fully to their requests, I find that compensation is not warranted as for the most part, with the exception of the aforementioned leak, the repairs required for the Rental Unit are relatively minor in nature and more of an annoyance than a proven health hazard.

I find that the tenants are not entitled to any compensation other than the \$92.90 awarded for the inconvenience of the leak and I dismiss the balance of their compensation claim.

With respect to the tenants' allegation that the landlord has illegally increased their rent, I find that no illegal rent increase has taken place. The parties agreed that the heat subsidy was put into place because the tenants paid for their own heat at the First Unit and I find that the landlord is under no obligation to continue to offer the subsidy when the tenants no longer pay for their heat at the Rental Unit. The tenancy agreement specifically states that if the tenant is eligible to receive a rent subsidy, they agree to complete declarations regarding their income from time to time as required by the landlord. The tenants are benefitting from the subsidy and when their income increases, they enjoy that increase immediately. There is no reason why their rent should not be adjusted as soon as reasonably possible in order to reflect any increase. The same holds true when the tenants experience a decrease in income. The tenants

should continue to provide information as requested by the landlord should they wish to continue to receive the subsidy.

I note that at the hearing, the tenants complained that BC Hydro was pursuing them for electrical costs at the First Unit and the landlord offered to contact BC Hydro to advise them that the tenants were not responsible for any charges incurred after April 18.

### Conclusion

The landlord will perform repairs as outlined above and is ordered to diligently pursue the repair of the leak near the front door. Until such time as that leak is repaired and the drywall and ceiling restored, the tenants may withhold 5% of their rent contribution. The remainder of the tenants' claim 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: August 14, 2015

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Residential Tenancy Branch

