



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, MNDC

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order allowing a reduction in rent and for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The tenant and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receipt of the tenant's evidence and the fact that the landlord did not provide evidence for the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, photographic, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a reduction in her monthly rent and to monetary compensation?

Should I make orders pursuant to my authority under the Act?

### Background and Evidence

At the beginning of the hearing, both parties confirmed that there was no written tenancy agreement. The tenant then submitted that the tenancy began on December 1, 2013, with a monthly rent of \$850.00, and that she paid a security deposit of \$425.00. The landlord confirmed these statements.

After the tenant had presented her claim, and near the conclusion of the hearing, the landlord stated that there was a written tenancy agreement, but that the tenant had not been provided a copy because she had not asked for a copy.

In support of the portion of her application seeking a reduction in rent, the tenant submitted that in July 2015, the roof over her daughter's bedroom began leaking when shingles had been ripped away in a windstorm. The tenant submitted further that she notified the landlord, which led to roofers attending the rental unit to put in some shingles; however, the roofers came back a week or so later, putting more shingles on the side of the house, but at the spot of the leak in the roof. The tenant submitted further that there are packs of shingles on the roof, which are now covered in snow, with no further repair.

The tenant submitted that the roof is still leaking, which caused water on her daughter's bunk bed and ruination of the mattress. According to the tenant, her daughter is now sleeping on the floor.

The tenant referred to her photographic evidence to support that the moisture has caused damage to the drywall and an infestation of mould.

As to her monetary claim, the tenant claimed \$300.00 for loss of her daughter's mattress and the remaining portion for a notary fee to find out the name of the landlords.

#### *Landlord's response-*

The landlord submitted that the roof repair was begun in November, as the owners had to save enough money to repair the roof, and confirmed that the repair is not complete. The landlord denied that the roof was still leaking or that the tenant's daughter was not using her mattress.

The landlord submitted that the drywall had been repaired, but not yet repainted.

The landlord submitted that the mould was caused by the tenant's failure to use the bathroom fan and window.

#### Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I have reviewed the tenant's photographic evidence and find sufficient evidence that the state rental unit does not comply with the landlords' requirements of the Act in meeting health and housing standards.

For instance, the bathroom ceiling and fan are covered in mould. I do not accept the landlord's position that the tenant is at fault, as the landlord provided no basis for this statement, only supposition, and I find it as likely as not that a leaking roof would add to the dampness in the home.

The undisputed evidence shows that the leaking roof has not yet been repaired and I am not convinced by the landlord's statements that the drywall has been repaired, in light of the tenant's evidence.

Although the tenant has not requested repairs to the rental unit, under section 62(3) of the Act, I make the following orders as I find the landlords have breached several sections of the Act, including section 32. **I ORDER the landlords to:**

- 1. Immediately repair the roof of the rental unit in a good and workmanlike manner and which meets health and safety standards by January 15, 2016;**
- 2. Immediately remediate the mould throughout the rental unit and with proof to the tenant that the remediation complies with health and safety standards by January 15, 2016;**
- 3. Immediately repair any damaged drywall throughout the rental unit with proof to the tenant that the repair complies with health and safety standards by January 15, 2016;**
- 4. Immediately post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the person the tenant is to contact for emergency repairs, as is their requirement under section 33(2); and**
- 5. Immediately provide the tenant with a copy of the signed written tenancy agreement, as per their requirement under section 13(3) of the Act.**

As to the tenant's request for a reduction in her monthly rent, I find the evidence at the hearing substantiated that the landlord's agent was notified of the damaged, leaking roof in July 2015, and as of the date of the hearing, the roof had not been repaired. I further find that the lack of response from the landlords to make the necessary repairs have caused a diminished value of the tenancy for the tenant.

Residential Tenancy Branch Policy Guideline 6 states: *"in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into*

*consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.*

As I have accepted that the landlord's failure to make the necessary repairs have diminished the value of the tenancy, I find it reasonable under the circumstances and I therefore order that the tenant's monthly rent be reduced by \$100.00 per month, effective immediately. The tenant is directed to withhold the amount of \$100.00 from the next rent payment, and if the full rent payment is made to the landlords for January 2016 due to this Decision being made late in December, the landlords are directed and ordered to refund the amount of \$100.00.

I further authorize the tenant to reduce future monthly rent by \$100.00 until such time as the landlords have repaired the roof and drywall and remediated the mould. Beginning January 2016, the tenant's monthly rent is \$750.00. If the landlords have repaired the roof and drywall and remediated the mould by January 15, 2016 as ordered, the tenant's monthly rent for February 2016, is restored to \$850.00.

Additionally, I find the undisputed evidence shows that the tenant has requested that the roof be repaired as of July 2015. I find the diminished value of the tenancy should be granted retroactively for \$100.00 per month from July through December 2015, or a total of \$600.00, due to the landlords' lack of effective, or any response in July 2015.

I therefore order the landlords to compensate the tenant in the amount of \$600.00. To give effect to this monetary award, if the tenant has not paid the monthly rent for January 2016 when this Decision is received, the tenant may deduct \$600.00 from the reduced monthly rent for that month. If the tenant has paid the monthly rent for January 2016, the tenant may withhold \$600.00 from the monthly rent for February 2016, in satisfaction of his monetary award.

If the tenant is not satisfied with the repairs being made and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that they have complied with this Decision in order to have the monthly rent restored.

As to the tenant's monetary claim, I accept that the leak in the roof over the daughter's bed has caused damage to the mattress; however, I find that the tenant submitted insufficient evidence to support that her total claim. I find a reasonable amount for the damaged mattress absent evidence as to the age and condition to be \$50.00. I award the tenant this amount and direct that she reduce the next or a future month's rent payment by \$50.00 in satisfaction. The tenant should notify the landlords when she is making this deduction.

Conclusion

The tenant's application for a reduction in rent and a partial monetary award has been granted, as outlined above.

I have issued orders to the landlord pursuant to section 62(3) of the Act.

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: December 24, 2015

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Residential Tenancy Branch

