



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNSD, MNDC, OLC

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order for the Landlord's compliance - Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The tenancy is over. A previous Decision dated July 13, 2015 found that the Landlord was entitled to rent for December 30, 2014 on the basis of an inadequate notice to end the tenancy by the Tenant. This Decision also found the Landlord entitled to retention of security deposit and ordered its retention in partial satisfaction of the entitlement. This Decision was confirmed by Review Hearing Decision dated October 21, 2015. None of the Decisions dealt with the matter of a leak and damage to the unit.

Section 77 of the Act provides that a decision or an order of the director is final and binding on the parties. As the matter of the security deposit was dealt with in a previous Decision I find that the matter may no longer be subject to dispute and I dismiss the Tenant's claim for return of the security deposit. As none of the previous Decisions have dealt with the matter of a leak in the unit I find that I may deal with the claim for compensation.

As the claim for an order for landlord's compliance is only relevant to an ongoing tenancy, I dismiss this claim.

### Issue(s) to be Decided

Is the Tenant entitled to compensation in relation to a leak?

### Background and Evidence

The following are undisputed facts: The tenancy started on July 1, 2014. Rent of \$1,200.00 was payable monthly. The Tenant reported a leak on October 27, 2014. Between November 5 and 9, 2014, the Tenant was informed by the Landlord that repairs for mold and the leak were going to be made and that the Tenant should move out for those repairs. The Tenant moved out of the unit and the Landlord reimbursed the Tenant \$480.00 for the period November 9 to 15, 2014.

The Tenant states that the unit was uninhabitable prior to November 9, 2014 and was still not ready to be inhabited on November 15, 2014. The Tenant states that the renovation people told the Tenant that repairs would not be completed until the end of January 2015. The Tenant states that the kitchen and dining room were not useable as the counter tops had still not been replaced other than with a piece of plywood, there were no floors and mold was still present. The Tenant states that the expected loss of use of the kitchen for Christmas preparation was significant. The Tenant did not move back into the unit and moved her remaining belongings out November 30, 2014. The Tenant claims \$800.00.

The Landlord agrees that the unit was not useable to the full extent after November 15, 2014. The Landlord states that there was still no dishwasher and the kitchen was not fully restored but that the emergency repairs were completed and the unit was habitable. The Landlord agrees that the counters were replaced with a piece of plywood and states that most of the cabinetry was still there. The Landlord states that since the Tenant was not going to be in the unit the Landlord did not pursue a more timely completion date for the repairs and that had the Tenant been in the unit the repairs would likely have been done sometime in December 2014. The Landlord states that the unit was habitable prior to the start of the renovations.

#### Analysis

Section 7 of the Act provides that if a landlord or tenant does not comply their tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. Without supporting evidence to the contrary I accept the Landlord's plausible evidence that the unit was habitable for the period before the renovations started and after the emergency repairs were completed. However, based on the undisputed evidence that the Tenant did not have full use of the kitchen after November 15, 2014, I find that the Tenant has substantiated a loss under the tenancy agreement. Based on the undisputed description of the repairs remaining to the kitchen and accepting the Tenant's greater loss in relation to the Tenant's holiday season I find that the Tenant is entitled to **\$540.00**. I base this amount on a proportionate loss of 1/4 of the rent paid and payable for the period November 15 to December 31, 2014. ( $\$960 + \$1,200.00 = \$2,160 / 4 = \$540.00$ )

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$540.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 21, 2016

