



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WOODEN BEAR HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, KT ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord said that she was the co-owner for the landlord company and she had authority to represent it as an agent at this hearing.

This hearing lasted approximately 45 minutes in order to allow both parties to fully present their submissions. At the outset of the hearing, the tenant said that she intended to call a witness so I excluded the witness from the hearing and advised her that she would be telephoned later during the hearing to obtain her testimony. However, the tenant stated later during the hearing that the witness did not have any evidence that would be relevant to this matter and she did not want to call the witness to testify on her behalf. Accordingly, the witness did not testify at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlords' written evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application and the tenant was duly served with the landlords' written evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add the name of the landlord company, as the landlord consented to this amendment. Both parties agreed that the company was the proper landlord for this tenancy as it was named in the tenancy agreement. The two individual landlords named in this application are agents for this company (collectively "landlords" in this decision). The style of cause on the front page of this decision has now been amended to add the name of the landlord company.

### Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2012 and ended on October 11, 2015. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of \$300 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenant seeks a monetary order of \$2,000.00 plus the \$50.00 filing fee for this Application. The tenant seeks compensation for water leaks in the bedroom and living room of her rental unit. The tenant said that she had to vacate the rental unit early and incur moving costs as well as a higher rent to move to a new unit, due to the landlord performing roof repairs at the rental building. The landlord testified that reasonable efforts were made to have the roof repaired twice, when the tenant reported problems. The landlord said that a certified roofer had to be used, so it took longer before the repair could be done.

The tenant stated that she was served with the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 17, 2015 ("2 Month Notice"). The landlord said that the above notice was issued because the unit had to be vacant, as the roof repair personnel requested it. The landlord said that the roof repair

personnel were concerned about the tenant's safety and their own safety walking on the roof, saying it might cave in. The tenant said that the landlords were trying to increase her rent and now charges more rent to a new tenant in the rental unit, while the landlord disputed this as an attempt to raise the tenant's rent.

The landlord said that a rent increase of \$18.70, which was to be implemented in December 2014, was delayed until July 2015, in order to compensate the tenant for the roof repairs and water leaks. The landlord provided a copy of the notice of rent increase. The tenant disputed this compensation, saying that only one to two months of the proposed rent increase were not collected by the landlords.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy 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 landlords 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's Application for a monetary order of \$2,000.00, without leave to reapply.

I find that the tenant failed to meet part 2 of the above test to show that the landlords were negligent in repairing the roof. I find that the landlords made reasonable efforts to have the roof repaired as soon as possible after receiving notice from the tenant. I find that the timing of the roof repair was out of the landlords' control as they required a specialist for this type of roof repair. I find that the landlords offered the tenant alternative living accommodation during this repair, and although the tenant said it was more costly than her usual monthly rent, the tenant did not attempt to communicate this issue to the landlord, ask for a lower rent, or propose a payment arrangement. The landlords issued the 2 Month Notice to have the unit vacant to complete this repair and the tenant did not dispute this notice, despite the fact that she said it was issued in bad faith and in order to raise her rent.

I also find that the tenant failed to meet part 3 of the above test, as she was unable to provide a specific breakdown for the \$2,000.00 sought. The tenant did not provide documentary evidence such as receipts, invoices or other documents, that she confirmed were in her possession regarding moving costs, to support the above amount sought. I find that the tenant had ample time to prepare for this hearing and to submit relevant evidence prior to the hearing, as her application was filed on October 13, 2015 and the hearing was held on May 2, 2016.

As the tenant was unsuccessful in her Application, I find that she is not entitled to recover the \$50.00 filing fee from the landlord.

#### Security Deposit

As the tenant did not apply to recover her security deposit, I have not dealt with this matter. The parties are cautioned to review sections 38 and 39 of the *Act*, regarding the security deposit.

#### Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: May 03, 2016

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Residential Tenancy Branch