



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Southgate Living Ltd.  
and [tenant name suppressed text privacy]

## **DECISION**

### Dispute Codes:

MNDC, ERP, RP, OLC, RR, and FF

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on February 03, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted to the Residential Tenancy Branch with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of the documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit?

Is the Tenant entitled to compensation as a result of the need to make repairs?

Is the Tenant entitled to recover the cost of hiring a "mould expert"?

## Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on November 01, 2016;
- the Tenant pays monthly rent of \$1,575.00;
- on January 03, 2017 there was a leak in the building; and
- water leaked into the corner of the ceiling in the Tenant's bedroom, which impact the ceiling and two walls.

The male Agent for the Landlord stated that:

- the leak was not significant;
- the wall was dried from inside unit 202;
- the wall was dried with a heater and fan while the occupants of unit 202 were not home;
- the insulation in the affected area was replaced;
- the drywall in the Tenant's unit did not need replacing;
- loose drywall joints in the Tenant's unit was taped and mudded;
- the walls in the Tenant's bedroom were sealed and painted;
- the Tenant told him that there was a smell in the bedroom prior after a portion of the room was painted with primer and before the entire bedroom was sealed and painted;
- the repairs took approximately 10 days;
- sometime after the final painting the Tenant told him she did not think the drywall had dried properly and he told her that he believed it had been properly repaired;
- he still believes the wall was properly repaired; and
- the Landlord has no plans to make further repairs to the ceiling/wall.

The Tenant stated that:

- on January 06, 2017 the baseboard in her bedroom was removed;
- on January 07, 2017 the baseboard in her bedroom was replaced;
- on January 10, 2017 the bedroom was sealed and painted;
- there was no mudding and taping in her unit;
- after the unit was painted on January 10, 2017 she informed the Landlord that her bedroom smelled;
- on January 13, 2017 the bedroom was sealed and painted again;
- on January 15, 2017 she told the male Agent for the Landlord that her bedroom still smelled and he told her it would take time for the odour from the sealant to dissipate;
- on January 26, 2017 she told the male Agent for the Landlord that she did not think the drywall in her room had been dried properly and he told her that he believed it had been properly repaired;
- on January 27, 2017 the area impacted by water was inspected by a mould expert; and

- the occupants of unit 202 told her that no heaters were used in their unit to dry the drywall.

The Tenant submitted a copy of a report from a company that describes itself as a “mould expert”. The author of the report declares:

- that there are high moisture readings on east wall and ceiling at the NE corner;
- that the moisture readings are typical of an escape of water;
- that no surface mould was found;
- that conditions are perfect for mould growth within the wall cavity; and
- that wet drywall should be removed.

The Tenant is seeking an Order requiring the Landlord to repair the wall and ceiling that were impacted by the leak, in accordance with the suggestions made by the mould expert.

The Tenant is seeking to recover the cost of hiring the mould expert. The male Agent for the Landlord does not believe the Landlord should pay for the report as the Landlord did not hire the consultant.

The Tenant is seeking a rent reduction for being unable to use her bedroom for ten days, while the repairs were being completed. The male Agent for the Landlord agreed that the Tenant did not use her bedroom for approximately ten days while the room was being repaired.

The male Agent for the Landlord stated that the rental unit is approximately 700 square feet and the bedroom is approximately 115 square feet. The Tenant does not dispute these estimates. The parties agree that this unit has a bedroom, living room, kitchen, and bathroom.

The male Agent for the Landlord thinks \$100.00 is appropriate compensation for being displaced for a period of ten days and the Tenant thinks \$300.00 is appropriate.

### Analysis

On the basis of the report submitted from a company that identifies itself as a “mould expert”, I find that the drywall in the area where the leak occurred has high moisture readings. I find this report is more reliable than the male Agent for the Landlord’s unsubstantiated testimony that the drywall in the area is dry.

On the basis of the aforementioned report I find that there is no evidence of mould in that area, although it is clear that the author of the report concluded that conditions are perfect for mould growth within the wall cavity and that wet drywall should be removed.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing

standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While I accept the evidence shows there is a potential for mould growth in the wall of the rental unit, I find there is no evidence to show that there is currently mould in the rental unit. Even if the report established that there was some mould growth in the unit I would find that the Tenant has failed to establish that the type of mould in the rental unit contravenes health, safety, or housing standards.

As the Tenant has submitted insufficient evidence to establish that the Landlord has failed to comply with section 32(1) of the *Act* in regards to the leak that was repaired, I dismiss the Tenant's application for an Order requiring the Landlord to complete additional repairs.

As the Tenant has submitted insufficient evidence to establish that additional repairs are required, I also dismiss her claim to recover the cost of hiring the mould expert.

Section 28 of the *Act* entitles a tenant to the quiet enjoyment of the rental unit. Residential Tenancy Branch Policy Guideline, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

On the basis of the undisputed evidence I find that the Tenant was unable to use her bedroom for approximately ten days while the damage in the bedroom was being repaired. I find that the loss of use of the bedroom was a breach of the Tenant's right to the quiet enjoyment of her rental unit and I grant her compensation for this breach, in the amount of \$127.02.

In determining the amount of compensation due to the Tenant I calculated that the Tenant lost the use of 1 of 4 rooms in the unit, which reduced the value of the tenancy by approximately 25%, or \$393.75 per month. As the Tenant only lost the use of the bedroom for 10 days in January, I concluded that she was entitled to compensation in the amount of  $10/31 \times 393.75$ , which is \$127.02.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$227.02, which is comprised on \$127.02 for a breach of her right to quiet enjoyment and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount of \$227.02. I authorize the Tenant to reduce one monthly rent payment by \$227.02 in full satisfaction of this monetary claim. In the event that the Tenant does not wish to reduce her rent by \$227.02 this Order may be served upon the Tenant, filed with the Province of British Columbia 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 01, 2017

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Residential Tenancy Branch