



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by her agent, PM ( the "tenant"). The landlord, RS ( the "landlord") primarily spoke for both co-landlords.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with copies of the tenant's application and evidence and the tenant was served with the landlords' evidentiary materials.

At the outset of the hearing the parties testified that they have reached an agreement regarding the continuation of the tenancy and the tenant is no longer seeking to dispute the landlord's 1 Month Notice. The tenant withdrew most of her application save for the portion requesting a monetary award for damages or loss pursuant to section 67 and recovery of the filing fee pursuant to section 72.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in November, 2013. The monthly rent is currently \$1,577.00 payable on the first of each month. A security deposit of \$750.00 was paid at the start of the tenancy and is still held by the landlords.

The rental unit is a detached single family home with three bedrooms. The tenant testified that in September, 2016 they noticed holes in the ceiling of one bedroom and accompanying leaks. The tenant also said that there appears to be animals living in the ceiling, the parties presume that it is squirrels that have chewed their way into the building.

The tenant testified that because of the hole, the leaks and the squirrels living in the ceiling they were unable to use the bedroom from September to the date of the hearing. The tenant said the bedroom was their child's bedroom and they needed to make alternate sleeping arrangements because of the condition of the rental unit. The tenant seeks a monetary award reducing the past rent paid. The tenant suggests an amount of \$2,700.00, the equivalent of \$300.00 for a period of 9 months. \$300.00 is approximately 20% of the monthly rent.

The landlord testified that they were unaware that the room could not be utilized. The landlord said that to the best of their knowledge the bedroom is in use as it still contains furniture, clothes and belongings. The landlord said that they had discussed the best way to deal with the squirrel invasion with the tenant and agreed that work would be done in the spring. The landlord said that the holes in the ceiling appear to be caused by something poking upwards and believe they were caused by the tenant.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*,

which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that there is insufficient evidence to determine on a balance of probabilities that there has been a loss caused by the landlords for which the tenant is entitled to compensation. While I accept the undisputed evidence of the parties that the ceiling of the bedroom has some holes I find there is insufficient evidence to determine the source of the holes. Furthermore, I find that there is insufficient evidence that the tenant reported the severity of the problem to the landlords during the months that the holes were present. If the tenant was unable to use one of their three bedrooms, a loss that the tenant claims a 20% rent reduction for, it would be reasonable to expect that there would be more documentation or correspondence raising it as a pressing issue. I find that there is little documentary evidence to show that the holes were reported to the landlords in a manner that conveyed the seriousness of the situation. Furthermore, I find that there is insufficient evidence to show that the tenant suffered damage or loss. The tenant provided little evidence of the arrangements that were required as a result of losing one of the bedrooms, little evidence to show how the damage was so severe that the bedroom could not be used, nor evidence to show the impact this had on the tenant's daily lifestyle. Consequently, I dismiss the tenant's application.

As the tenant's application was unsuccessful they are not entitled to recover the filing fee for this application.

#### Conclusion

The tenant's claim for a monetary award and recovery of filing fees is dismissed. The remaining balance of the tenant's application was withdrawn.

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, 2017

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Residential Tenancy Branch