



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STARLIGHT INVESTMENTS and DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OLC RR RP FF MNDC

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for December 20, 2017. The hearing was adjourned by consent of all parties due to the lack of time to complete the hearing on the scheduled date.

The adjournment decision dated December 21, 2017 noted the requirements for service of the hearing package and evidence. The landlord's agent acknowledged receipt of all hearing documents, and was ready to proceed with this matter.

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

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for loss or money owed 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; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). The landlord's agent confirmed receipt of the tenants' application and amendment. In accordance with

section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

**Preliminary Issue: Is LM a Tenant?**

The landlords made submissions that the tenant LM should not be considered a tenant, and therefore is not entitled to apply for any monetary compensation for loss of quiet enjoyment during this tenancy. The landlords argued that the tenant LM is not listed as a tenant in the original tenancy agreement signed on September 12, 2009, or any tenancy agreement. The landlord included a copy of the tenancy agreement in their evidence.

The tenant LM responded that he moved in at a later date, in December 2015, after obtaining approval from the apartment manager at the time. The tenant testified that the management has changed since the original tenancy agreement was signed. The tenant submitted that although he did not sign a tenancy agreement, or was named on any tenancy agreement, he did sign an application to rent. The tenant testified that he was not given a copy of his application, and therefore was unable to provide one in his evidence. The tenant testified that since moving in, he has been addressed and recognized as a tenant by the landlords. The tenant included correspondence in his evidence that is addressed to him by the property manager, including documentation from November and December 2016 related to an agreed rent reduction by the landlord. The documentation includes a settlement agreement with the names of both MLH and LM.

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

**"tenancy"** means a tenant's right to possession of a rental unit under a tenancy agreement;

**"tenancy agreement"** means an agreement, **whether written or oral, express or implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

**"tenant"** includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

Although the landlords dispute that LM should not be considered a tenant as he is not named in any tenancy agreement as a tenant, the tenant LM has been residing there since December 2015, for over two years. The tenants provided evidence to support that LM has been addressed and named in important correspondence, such as the settlement agreement. As defined in Section 1 of the *Act*, a tenancy agreement can be written, oral, express or implied. In this case I find that the tenant had moved in six years after the tenancy first began, and when MLH first moved in. It was undisputed that the building management has since changed, and as a result documents may not have been updated or distributed to all parties.

Based on the evidence, I find that LM is a tenant. Although no written tenancy agreement exists where LM is named as a tenant, by addressing LM in official correspondence and documentation such as the settlement agreement, I find that the landlord has implied that LM is a co-tenant in this tenancy. Accordingly I find LM to be a tenant, and is entitled to apply for monetary compensation for losses he may have suffered during this tenancy.

### **Issues**

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2009. The monthly rent is currently \$1,317.84 as of October 1, 2017. The landlords collected a security deposit of \$557.50, which the landlords still hold.

The tenants are seeking monetary compensation in the amount of \$3,883.00 as listed in the table below:

<b>Item</b>	<b>Amount</b>
Compensation for hot water issues	\$545.00
Compensation for faulty intercom	76.00
Compensation for Leaking Windows	787.00
Loss of quiet enjoyment	226.00
Compensation for losses due to balcony repairs and noise	2,126.00
Compensation for mail delivery issues	123.00
<b>Total Monetary Order Requested</b>	<b>\$3,883.00</b>

The tenants testified that they had suffered a significant level of loss of quiet enjoyment due to the renovations that the landlord has undertaking in the building. The tenants testified that the repairs have not been done in a timely manner, and as a result they have suffered not only loss of quiet enjoyment, but a monetary loss as well. The tenants have a home office, and testified that the excessive noise from the jackhammering has suffered a loss of quiet enjoyment, and a monetary loss due to the inability to work from home. The tenants also testified that mail was re-routed, which was a significant inconvenience to them as the post office is 8.7 km away. The tenant testified that the intercom was broken, and they missed two Fedex deliveries as a result. The tenants testified that there were issues with the hot water in the building.

The tenants testified that they had spoken to their neighbours, and that other tenants had been awarded monetary compensation from this landlord for loss of quiet enjoyment. The tenants were not able to provide any witnesses or case numbers for the applications that these tenants referenced. The landlords testified that tenants were successful in their claims, but these claims pertained to another building.

The landlords testified that they have complied with the *Act*, tenancy agreement, and bylaws during the renovations. The landlords testified that they responded to issues with the intercom immediately, and have not failed in their obligations to repair and maintain. The landlords acknowledged that there was an issue with the hot water in the building, and had offered the tenants a \$100.00 rent reduction, which the tenants did not

accept. The landlords did not dispute the fact that the mail was re-routed, but not stopped, and that the tenants were not denied this service.

The landlords testified that the renovations were a necessity, and that the delay was due to a stop work order for inspections and discussions, but that they had resumed as soon as possible in May 2017. The landlords testified that the repairs were done only during the day, and that the suite was rented as a residence, and not for commercial purposes. The landlords testified that they had fulfilled their obligations to repair and maintain, and the tenants have not supported that they had suffered any tangible losses due to the landlords' failure to comply with the *Act* and tenancy agreement.

In addition to the monetary claim, the tenants also requested repairs to the balcony doors. The tenants testified that the balcony doors leaked when pressure washed, or during heavy rain. The landlords responded they had only received one formal request for repairs in April of 2017, and the leak was repaired in June of 2017.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 27(1) and 28 of the *Act* outlines the landlord's obligations in relation to restricting services or facilities, as well as the tenant's right to quiet enjoyment.

### **Terminating or restricting services or facilities**

**27** (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance...

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have considered the testimony of both parties, and while the tenant had provided testimony to support that he had experienced stress and extreme discomfort as part of the repairs during this tenancy, the tenant did not provide sufficient evidence to establish that the landlords failed to fulfill their obligations as required by sections 27 and 28(1) of the *Act* as stated above.

I accept the facts as submitted by the landlords: that the building is in need of repairs, and that the landlords had to take the necessary steps to maintain the property in a state of repair as required by section 32 of the *Act*. I find that the inconvenience and stress that the tenants faced is the result of the landlords' necessary steps to fulfill their obligations, rather than their failure to fulfill their obligations, as required by section 32 of the *Act*.

The tenants testified that they had spoken to neighbours who were successful in their monetary claims, involving the same landlord and similar renovations. The landlords confirmed that tenants were given monetary compensation, but these tenants resided in a different building than this one. Although the cases involve the same landlord, and a neighbouring building, I find that their success of these applicants, in the absence of witness or expert testimony or supporting documents, do not support that fact that the landlords have failed in their obligations for this tenancy.

Although I find that the tenants' expectations of this tenancy were not met, I find there is insufficient evidence for me to make a finding that the landlords had failed to meet their obligations. I find that the repairs were undertaken by the landlords in order to fulfill their obligations under section 32 of the *Act*. Furthermore, I find that the tenants have not proven that they had suffered a monetary loss due to the landlords' failure to comply with the *Act*. The landlords did offer the tenants a \$100.00 rent reduction in 2016 for the lack of hot water. On this basis, I am dismissing the tenants' entire monetary claim with the exception of \$100.00 for the hot water issue.

The tenants also requested an order for repairs and for the landlords to comply with the *Act*. I find that the tenants have not provided sufficient evidence to support that the landlords have failed in their obligations under the *Act*, tenancy agreement, or regulation, and accordingly this portion of the tenants' application is also dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

**Conclusion**

I find that the tenants are entitled to \$100.00 for the hot water issue. I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlords must be served with **this Order** as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portion of the tenants' monetary 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: April 20, 2018

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Residential Tenancy Branch