



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      MNDC ERP RP FF

### Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to service of the application and evidence on file.

The parties advised this tenancy ended on January 31, 2018 so the only outstanding issue in this application is the tenant's application for monetary compensation for loss.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for loss?

### Background and Evidence

The tenancy began on September 1, 2014 and ended on January 31, 2018. The monthly rent as per the agreement was \$1132.00 per month.

The tenant is claiming compensation equivalent to 5 month's rent as a result of being inconvenienced by leaks and black mould on the rental unit. The tenant testified that on October 20, 2017 he noticed a musty smell coming from under the kitchen sink. It was discovered that there was a slow leak in a pipe in the wall in between the kitchen and living room. Three big holes were cut in the wall in order to do the repairs. Due to

respiratory problems he vacated the premises while the living room wall was being replaced. The tenant testified that the entire place was blanketed by drywall dust. The tenant submitted some pictures in support of dust settled in various places. The tenant testified that there was some e-mail exchanges back and forth with the landlord and they eventually did clean the place. After this first incident, he moved back into the rental unit on November 4, 2017.

Then on November 20, 2017, the tenant was advised that there was another leak in the bathroom area. The landlord had cut a hole in one of the bathroom walls and the wall was wet. With the approval of the landlord, the tenant then cut a small hole in the bottom of an adjacent closet for air to circulate and allow the area to dry. At this time, the tenant testified that he became concerned with asbestos and he confronted the landlord on whether the contractor doing the repair work had obtained a "Notice of Project". The tenant testified that according to WorksafeBC a Notice of Project is required to be posted in the building. On November 26, 2017, the tenant hand delivered a letter to the landlord requesting that all repair work be done in accordance to WorksafeBC standards. The tenant testified that he then prevented the landlord from entering the rental unit and continuing any repair work. The tenant testified that he again vacated the rental unit and went and lived with his girlfriend. He did not stay in the rental unit after this and is seeking compensation for the entire period from November 26, 2017 until he ended his tenancy on January 31, 2018.

The landlord's agent testified that the tenant has not provided proof of any medical condition. In regards to the first incident of the leak requiring repairs in October 2017, the landlord argues that this incident was not part of the tenant's claim that he put forward. The landlord argues that the tenant only put a claim forward for the second incident in November 2017. The landlord acknowledged that the tenant left for a week or two.

With respect to the November 2017 incident, the landlord's agent testified that the drywall opening in the bathroom wall was cut out while the tenant was not present. The area was cleaned up properly before he returned. The hole cut by the tenant in the adjacent closet was not approved. The landlord suggests it doesn't make sense that the tenant was concerned about asbestos yet he took it upon himself to cut a hole in the drywall. The landlord's agent further testified that on two separate occasions the landlord attempted to gain access to the rental unit to carry out the required repairs but both times the tenant denied the landlord access.

The landlord's agent submits that industry standards are followed for drywall patch work and there are no special requirements in regards to asbestos for patchwork. The

landlord's agent argues that the tenant had the full opportunity to continue to reside in the rental unit while the repair work for the November leak was done. The landlord's agent testified that the site was safe to occupy and it was the tenant's own choice to not stay there. The landlord submitted pictures of the repair work required in the bathroom. The landlord's agent further submits that the Notice of Project referred to by the tenant is not required for drywall patchwork and it is only a requirement for employees or contractors performing the work, not the tenants.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

*Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment"* provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation 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.

With respect to the first incident in October 2017, I do not accept the landlord's argument that this incident was not included in the tenant's claim for compensation. I find the tenant's original application pertaining to repairs was in regards to the second November 2017 incident however the application for monetary compensation covers both incidents. Although the tenant did not provide a specific breakdown of the 5 months of compensation sought, I find the claim covered both incidents as evidenced by the supporting documentation submitted by the tenant. Other than arguing that this was not part of the claim, the landlord did not present any testimony in dispute of this part of the tenant's claim.

I accept the tenant's claim that he suffered a loss of use of the rental unit while the repair work and subsequent clean-up work was performed after the October 2017 incident. I accept the tenant's testimony that he did not have use of the rental unit from October 20, 2017 to November 4, 2017. I find that the nature of the work, and the fact that it encompassed the entire living room and kitchen area, rendered the rental unit uninhabitable during this period.

I award the tenant \$551.43 as compensation for loss for this 15 day period calculated as follows:

October 2017 loss:  $\$1132.00 / \text{month} / 31 \text{ days} = \$36.52/\text{day} \times 12 \text{ days (October 20-31)}$   
= \$438.24.

November 2017 loss:  $\$1132.00 / \text{month} / 30 \text{ days} = \$37.73/\text{day} \times 3 \text{ days (November 1-3)}$   
= \$113.19.

With respect to the second incident in November 2017, I find the tenant has provided insufficient evidence that the rental use was uninhabitable for this period. The hole in the bathroom wall appears to be in a small isolated area. The secondary hole in the closet area was cut out by the tenant himself. The tenant has provided insufficient evidence that this made the rental unit uninhabitable due to respiratory problems which he alleges is exacerbated by asbestos. The tenant did not provide any medical evidence in support of such. I find the tenant left the rental unit by his own initiative and his claim for compensation for this period is dismissed.

As the tenant was only remotely successful in this application, I find that the tenant is not entitled to recover the filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$551.43. Should the landlord 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.

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: June 8, 2018

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Residential Tenancy Branch