



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1075504 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

ERP MNDCT OLC RR

### Introduction

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

- An order that the landlord complete emergency repairs to the rental unit pursuant to section 33;
- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- A reduction in rent for services or facilities required but not provided pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent.

The landlord confirmed receipt of the tenant's application but disputed that they had been served with the evidence. The tenant confirmed that they were not able to serve their evidence on the landlord. The landlord testified that they had not served any evidence on the tenant. Based on the testimonies I find that the landlord was served with the tenant's application in accordance with section 89 of the Act. I find that the landlord was not served with the tenant's documentary evidence in accordance with the Act and therefore, as it would be contrary to the principles of procedural fairness, will not be considered.

Issue(s) to be Decided

Should the landlord be ordered to make repairs to the rental suite?

Is the tenant entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a reduction in rent?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began about 2 years ago and ended on January 31, 2019. The monthly rent at the end of the tenancy was \$850.00 payable on the first of each month.

In November, 2018 the rental building suffered structural damage causing a ceiling to collapse. As a result the living area was exposed to insulation materials as well as the elements. The tenant also testified that there was considerable leakage into the suite.

There was a previous hearing under the file number on the first page of this decision. In that application the tenant was seeking an order for the landlord to perform emergency repairs, and to comply with the Act by providing required services and facilities. As a result of that hearing the parties entered into a settlement agreement on the following terms:

1. Both parties agreed to abide by section 29 of the *Act*, the landlord agreed to provide at least 24 hours' written notice, and the tenant agreed to provide access to the rental unit whether he is present or not, for the following:
  - a. the landlord, at its own cost, agreed to have certified, licensed professionals inspect the ceiling collapse and resulting asbestos and mold, the window frames, the leaking bathroom tiles and walls, and the roof, and repair or replace if recommended by the professionals, by January 25, 2019;
  - b. the landlord, at its own cost, agreed to remove the old stove from the rental unit and replace it with a new or used stove that is in proper, working condition, by January 11, 2019;

The parties agree that the landlord complied with term 1.b. of the settlement agreement and replaced an old stove by the due date. The parties agree that the landlord did not perform the inspection or work required under term 1.a. of the agreement.

The landlord testified that while they originally intended to perform the inspection and work they were informed that the tenant was ending the tenancy at the end of January and therefore chose to delay the work until the suite was vacant.

The tenant now seeks a monetary award of \$2,550.00 representing the full refund of the monthly rent for the period of November 2018 to January 31, 2019. While the tenant resided in the rental suite for the duration of that time they testify that the quality of the tenancy was dramatically reduced due to the condition of the suite.

The tenant also seeks a monetary award of \$2,550.00 for the landlord's failure to complete the repairs agreed to in the settlement and the costs of moving incurred as a result. The tenant also seeks damages for loss of quiet enjoyment.

### Analysis

As this tenancy has ended, and as the repairs were the subject of a previous hearing, I find that it is unnecessary to make a finding on the portion of the application seeking an order for emergency repairs.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

This section, in conjunction with section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

The parties agree that the landlord did not complete the repairs as required under the settlement agreement of December 28, 2018. The landlord submits that they felt there was no urgency to complete the repairs as the tenancy was ending. I do not find the landlord's submission to be persuasive. The terms of the settlement agreement do not specify that the tenancy was to be ongoing or that it was open to either party to extend the deadline for the work to be completed. It was simply agreed that the landlord would complete repairs by January 25, 2019. The landlord failed to do so.

I accept the tenant's evidence that the condition of the rental unit caused some negative impact on the value of the tenancy. However, I find that there is insufficient evidence to support the full amount claimed. The tenant continued to reside in the suite and while they experienced some discomfort, there is little evidence that their daily lifestyle was impacted due to the state of the building. While the landlord testified that the damage to the rental unit is minor, I find that it is reasonable to assume that a collapsed ceiling, even if it were not a large size, would have some negative impact on the quality of a tenancy. The tenant also testified that the damage exposed them to the insulation materials and there was water seepage throughout the rental suite. Based on the foregoing, I find that an appropriate monetary award for the loss of value of the tenancy is \$150.00, approximately 5% of the value of the monthly tenancy for the 3 months during which the damage was an ongoing issue.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment as a result of the action or negligence of the

landlords. I find that the tenant has met their evidentiary burden to show that there has been some loss as a result of the landlord's failure to perform repairs in a timely manner.

While the tenant suggests an amount of \$2,550.00 is appropriate, I do not find that there is sufficient evidence to justify a monetary award for that amount. While the landlord's failure to perform repairs in a reasonable timeframe in accordance with the provisions of the settlement led to some impact on the tenant's right to quiet enjoyment I find that there is little evidence that it was significant. Based on the totality of the evidence I find that a monetary award in the amount of \$150.00 is appropriate for the loss of quiet enjoyment.

While the tenant claims other losses including expenses for moving and the difference in the monthly rent being paid for the new tenancy they have entered, I do not find that these are damages that flow from the landlord's breach and therefore dismiss this portion of the tenant's application.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$300.00. The tenant is provided with the Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with the Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 25, 2019

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Residential Tenancy Branch