



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNRT, MNSD, FFT

### Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), for compensation for losses or other money owed, for compensation for the cost of emergency repairs, and for the return of their filing fee. The matter was set for a conference call.

Both the Landlord and the Tenants attended the March 22, 2019 hearing and were each affirmed to be truthful in their testimony. During that hearing, the Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlords and the Tenants testified that they received each others documentary evidence that I have before me.

However, only the Landlord attend the May 17, 2019 hearing. The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

As the Tenants did not attend the reconvened hearing, on May 17, 2019, service of the Notice of Dispute Resolution Hearing documents was considered. As this hearing was scheduled due to the adjournment of the previous hearing and the Notice of Dispute Resolution Hearing documents had been served by the Residential Tenancy Branch to the Tenants on March 25, 2019, I find that the Tenants had been duly notified of the Notice of Hearing in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter - *Res Judicata*

During the hearing, it was brought to this Arbitrator's attention that these parties have had two previous Dispute Resolution hearing with the Residential Tenancy Branch. The parties testified that during one of the hearings a decision been rendered regarding the security deposit for this tenancy. Both the Landlord and the Tenant provided the previous file number for the two hearing to this arbitrator; those file numbers are recorded on the style of cause page of this decision.

*Res judicata* is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have reviewed the previous decisions and the application that I have before me in these proceedings, and I find that a previous Arbitrator had already made a determination regarding the security deposit for this tenancy. I find that the principle of *res judicata* bars me from considering if the Tenants' request, in this application, for the return of double their security deposit. I will proceed in this hearing on the Tenants' remaining requests, for compensation for loss of quiet enjoyment and compensation for the cost of emergency repairs.

### Preliminary Matter - Questions by the Arbitrator

During the hearing, this arbitrator asked the Tenant N.B. several questions regarding the Tenants' claim. The Tenant N.B. became upset and objected to this Arbitrator, asking him questions. The Tenant N.B. questioned this arbitrator right to ask him questions that would test the testimony and evidence submitted to these proceedings regarding his claim. The Tenants were advised that the Rules of Procedure allow an Arbitrator to question a party or a witness. Section 7.23 of the Residential Tenancy Branch Rules of Procedure reads as follows:

#### **7.23 Questions by the arbitrator**

The arbitrator may ask questions of a party or witness if necessary:

- to determine the relevancy or sufficiency of evidence;
- to assess the credibility of a party or a witness; or
- to otherwise assist the arbitrator in reaching a decision

The Tenant N.B. remained resistant to answering the questions posed by this Arbitrator during these proceedings.

At the end of the adjourned proceeding, on March 22, 2019, this arbitrator gave the parties to this dispute three questions and advised them that answers to these questions were required at the beginning of the reconvened hearing on May 17, 2019. The parties were advised that no additional documentary evidence would be permitted for either party; however, they were advised to attend the reconvened hearing prepared to answer the questions.

#### Preliminary Matter – May 17, 2019 Hearing

The reconvene hearing was scheduled for May 17, 2019. The line remained open while the phone system was monitored for fifteen minutes, and the only participant who called into the hearing was the Landlord. 7.1 and 7.3 of the Rules of Procedure provide as follows:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenants failed to attend the reconvened hearing at the scheduled time, and I have previously found that the Tenants had been duly served with the Notice of Hearing documents. I find it appropriate to conduct the remainder of this dispute resolution hearing in their absence.

#### Issues to be Decided

- Are the Tenants entitled to losses or other money owed?
- Are the Tenants entitled compensation for the cost of emergency repairs?
- Are the Tenants entitled to the return for their filing fee for this application?

### Background and Evidence

Both parties testified that the tenancy began on August 1, 2014, as a one-year fixed term tenancy, that rolled into a month to month tenancy after the initial fixed term ended. Rent in the amount of \$1,755.00 was to be paid by the first day of each month and the Tenants had paid an 825.00 security deposit at the outset of this tenancy. The parties agreed that the Tenants moved out of the rental unit as of July 31, 2018. The Tenants submitted a copy of the residential tenancy agreement into documentary evidence.

Both parties agreed that there had been two previous hearings regarding this tenancy and that during one of those hearings the Landlord had been ordered to return the security deposit to the Tenants. The Parties also agreed that the Landlord had returned the security deposit to the Tenants. The Landlord submitted a copy of the monetary order issued to them, and a copy of the cheque she sent for the returned security deposit into documentary evidence.

The Tenants testified that they are requesting \$200.00 for the recovery of their cost for emergency repairs and \$900.00 in compensation due to the loss of quiet enjoyment.

The Tenants testified that the roof of the rental unit had needed to be repaired and that they had to purchase and install a tarp to cover the leak in the roof until it was repaired, at the cost of \$200.00. The Tenants submitted a copy of the invoice for the purchase and installation of the tarp into documentary evidence.

The Landlord testified that there would have been no need for the tarp had the Tenants allowed the Landlord access to the rental property to conduct the needed repairs to the roof. The Landlord testified that as soon as the Tenant advised her of the leak, she attend the property and arranged for a contractor to install a new roof. However, when the contractor she hired attempted to attend the property to do the work, the Tenants had refused to allow the contractor access and made them leave.

The Tenants agreed that they had refused to allow the contractor access and testified that they had refused the contractor access as their request for compensation for loss of quiet enjoyment during the repair period had not been agreed to by the Landlord. The Tenants testified that they had requested \$100.00 a day in compensation from the Landlord and that they would not allow the repair work to be completed until the negotiations with the Landlord for compensation for loss of quiet enjoyment were completed.

The Landlord testified that she agreed that the Tenants had requested \$100.00 a day in compensation and that she had not agreed to pay the requested amount. The Landlord testified that she did not feel the Tenants were due compensation as the roof repair was just normal maintenance she was required to do as a landlord and that the repair would only take a few days and the Tenants would not be displaced during the repair period.

The Tenant N.B. testified that he worked from home and that he felt that compensation was due to them, as the overall repair would be disturbing to him and his family and to his ability to work from home while the roof was being repaired.

The Tenants testified that they are requesting \$900.00 in compensation for the loss of quiet enjoyment due to the Landlord's interference. The Tenants testified that after they reported the need for the roof to be repaired, that Landlord and/or the Landlord's contractors had attended the rental unit several times and that they found that to be excessive and disturbing to their quiet enjoyment.

This Arbitrator asked the Tenants to testified to details to the disturbances they suffered and to the dates and times of the Landlord accessed the rental unit without notice. The Tenant N.B. testified that during a previous hearing, a different arbitrator had found that the Landlord had entered the rental unit without proper notice and they had been given leave to apply for compensation. The Tenants submitted a copy of the previous decision into documentary evidence.

This Arbitrator advised the Tenants that they would still need to provide evidence and testimony sufficient to prove the Landlord breach during these proceedings to support their claim.

The Tenants testified that the previous decision should be sufficient to prove their claim, the Tenants did not provide testimony or present evidence during these proceedings to the date and times when they claim that the Landlord entered the rental unit without notice.

The Landlord testified that she only attended the rental unit to deal with the needed roof repair and that she would notify the Tenants by before she would attend, the Landlord agreed that the notice was given by email, but testified that email had been the normal way they communicated during the tenancy.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

When considering a request for a monetary award for compensation due to a loss, I must consider sections 7 and 67 of the *Act*. Which states that a party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In determining if the requested compensation is due, I must first determine if the Landlord breached the *Act* during this tenancy. Section 32(1) of the *Act* states the following:

***Landlord and tenant obligations to repair and maintain***

***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.***

I accept the testimony of both parties that the roof of the rental property required repair during this tenancy, that the Tenants had advised the Landlord about the needed repair and that the Landlord had made arrangements for the required repairs to be completed.

I also accept the testimony of both parties that due to a disagreement regarding compensation, the Tenants had refused to allow the Landlord and the Landlord's contractors access to the rental property to complete the needed repairs during their tenancy.

I understand that the Tenants had requested compensation of \$100.00 per day from the Landlord due to the disturbance that would be caused during the repair period and that the Landlord had refused to agree to the amount of compensation requested, resulting in the Tenants refusal to allow the Landlords roof repair contractors on the rental property, to conduct the required repairs.

Where I can understand that having roof repairs completed on a rental unit would have been disturbing to a tenant, I find that the Landlord's responsibility to maintain the rental property, pursuant to section 32 of the *Act*, to be paramount. A landlord not only has the right to make repairs to the rental property; they have an obligation to maintain the rental property.

I accept the Tenants' testimony that they refused to allow the Landlord to repair the roof until the Landlord would agree to their requested amount of compensation. I find that the Tenants refusal to allow the Landlord access to the rental property to conduct repairs not only to be unreasonable but irresponsible.

I cautioned and advised the Tenants during these proceedings that there is no provision under the *Act* that would permit a tenant to restrict the access rights of a landlord to attend the property to effect repairs, simply because the landlord had refused to agree to give them financial compensation. If a landlord and the tenant are unable to agree, in writing, to terms for compensation, the parties are able to file an Application for Dispute Resolution and have an Arbitrator determine if compensation is due, and if so, how much. However, at no point is a tenant allowed to unilaterally decide to restrict a landlord right to access, based on an unproven claim.

In this case, the Tenants have requested to recover \$200.00 in their cost to purchase and install a tarp to protect the leaking roof while they negotiated compensation with the Landlord. I find that the need for the tarp was caused by the Tenants refusal to allow the Landlords to make the required repairs, not by the Landlord's refusal to make the repair. I find that the Tenants did not mitigate their losses when they refused to allow the Landlord and the Landlord's repair person access to the rental property, which created the requirement for a tarp to be installed. Therefore, I dismiss the Tenants' claim for the

recovery of \$200.00 for the trap, as I find that there would have been no requirement for the trap had the Tenants allowed the Landlord to conduct the roof repairs as the Landlord had planned.

As for the Tenants claim for \$900.00 in compensation due to loss of quiet enjoyment, for the Landlord's interference by attending the rental unit to conduct repairs. I acknowledge the Tenants' testimony that they received a decision during a previous proceeding that they believed should have been sufficient to prove their claim in these proceedings. However, section 64(2) of the Act states the following;

**Dispute resolution proceedings generally**

**64** (2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Pursuant to section 64(2), find that I am not bound by the findings of another arbitrator decision, and I will base my decision on the testimony and the documentary evidence that was presented to me during these proceedings, pursuant to section 7.4 of the rules of procedure.

I have reviewed the testimony and documentary evidence before me, presented during these proceedings, and I find that there is insufficient evidence to satisfy me, that the Landlord had breached the *Act* during their attempts to make repairs to the roof of the rental property. Therefore, I decline to award the Tenants the requested amount of \$900.00 in loss of quiet enjoyment.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to the return of their filing fee.

Conclusion

I dismiss the Tenants' claim in its entirety, 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: May 28, 2019