



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNDC, FF*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of quiet enjoyment and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was represented by their agent.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*. The tenant agreed that he had not sent to the landlord, a copy of the photographs that he had filed into evidence, and therefore this part of the tenant's evidence was not used in the making of this decision.

I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started 2012. The monthly rent is \$2,049.10. The rental unit is a two-bedroom apartment located in an apartment complex. There are two bathrooms. The master bathroom has a tub while the other bathroom has a stand-up shower.

The tenant testified that his claim for compensation consisted of two parts. In his written submission, the tenant provided the periods for which his claim is for, as follows:

1. January 2018 to September 2018
2. January 2019 - ongoing

The tenant stated that starting in January 2018 the landlord initiated some maintenance upgrades to the building plumbing and workers came into the rental unit to cut open walls in the living room, kitchen and washroom. The tenant stated that this work disrupted his everyday life for approximately 18 weeks. The tenant agreed that he had full use of the two washrooms, bedrooms, kitchen and living room. The tenant stated that the living room wall that housed television cables was opened up and therefore he did not have the use of his television for the duration of the work.

The landlord testified that sometime in October 2017, the need to do major upgrades to the plumbing was identified. The occupants of the building were all notified of the impending work. In his written submission the landlord provided a schedule of the days that the work was done inside the rental unit. As per this schedule the first day of work was May 30, 2018 and the last day was July 20, 2018. The workers worked inside the rental unit on 14 days during this period and provided proper notice, each time, prior to entering the rental unit.

The landlord stated that the tenant did not make any complaints or requests for compensation for the work done in 2018 until he filed this application on April 17, 2019.

The parties agreed that in November 2018, there was major flooding which impacted several units in the building. The restoration company attended, and it was determined that the restoration work was extensive and required city permits. The landlord stated that the workers removed a toilet in the master washroom and at the tenant's request they put it back after they had removed tiles. The tenant made this request as he stated that for medical purposes, he needed the use of two toilets at all times.

In January 2019, the situation was assessed and moisture was found in the tub surround. The landlord started work which involved the tub thereby making it unavailable for use. The tenant stated that the work has stalled and that as of the date of this hearing, the tub was still not available for use. The landlord stated that the delay was due to the problems associated with acquiring the required permits to do the work. The landlord offered the tenant \$200.00 off his rent starting January 2019 and ongoing till the work is completed.

On April 17, 2019, the tenant filed this application claiming a 50% rent reduction for the period of March 2018 to September 2018 in the total amount of \$6,896.05 (part 1 of the claim). The tenant has also claimed \$3,073.65 as a rent reduction for the period of January 2019 to March 2019 and also wants a 50% reduction of rent starting April 2019 until the work is completed (part 2 of the claim). The tenant agreed that he has already received \$200.00 off his rent for the months of January, February and March 2019.

The tenant stated that he needs the use of the tub for his religious practice of cleansing. He stated that his primary need is for running water and a sitting facility so that he could cleanse himself prior to his prayers. The tenant explained it was a cultural practice and without the tub he was unable to participate.

The landlord stated that at the time the work started the tenant requested that the toilet be put back for medical reasons but did not mention anything about religious reasons. The landlord accommodated the tenant's request and had the toilet re installed. The landlord stated that he only found out about the claim for compensation for the loss of quiet enjoyment in 2018 (part 1 of claim) and the tenant's religious need for the tub when the tenant served him with the notice of this hearing.

The landlord made an offer to the tenant in the amount of one month's rent for the inconvenience endured while the work was ongoing, and the tenant rejected the offer.

During the hearing, issues regarding the tenant's need for running water and a seat while using the running water were discussed. The landlord agreed to install a watering wand attached to the toilet seat for use by the tenant. The landlord also agreed to continue to provide the tenant with a \$200.00 rent reduction for the duration of the work.

### **Analysis**

Based on the testimony of both parties and the documents filed into evidence I find that the tenant has applied for compensation for the loss of quiet enjoyment for two periods of time during which the restoration/repair work was ongoing.

#### **1. January 2018 to September 2018**

During the hearing the tenant stated that the work was ongoing for the period of early March 2018 to end July 2018. This contradicts his written submission which states that the work was carried out during the period of January 2018 to September 2018.

The landlord filed a report from the plumber with the dates that the work was carried out in the rental unit. Based on this report, I find that the work was done in the apartment on 14 days during the period of May 30, 2018 to July 30, 2018. The tenant was provided with proper notice prior to each date of the work.

In order to prove an action for a breach of the covenant of quiet enjoyment and an entitlement to compensation, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control.

In this case, I find that the landlord carried out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. However in order to carry out this duty, the landlord inconvenienced the tenant by opening up walls and working inside the rental unit on 14 days

*Residential Tenancy Policy Guideline# 22* states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that a breach of contract occurred resulting in inconvenience to the tenant and a reduction of the value of the tenancy. Therefore I find that the tenant is entitled to compensation for the period that the work was ongoing.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for inconvenience even if the landlord made every effort to minimize disruption to the tenant.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that he was inconvenienced by the ongoing work inside the rental unit. Therefore I find that the tenant is entitled to nominal damages.

Since the tenant continued to occupy the entire rental unit during the period of the work and had the use of every room, I find it appropriate to award the tenant \$400.00 as a minimal award for the inconvenience suffered during these times.

2. January 2019 to date

The tenant testified that a major flood took place in November 2018 and the restoration work started in January 2019. The landlord offered the tenant a rent rebate of \$200.00 per month which started in January 2019 and will continue till the work is complete. As mentioned above it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. In this case the landlord is simply carrying out repairs to the building which is dependent of the issuance of permits. I find that the tenant is already receiving a rent reduction of \$200.00 per month which I find is adequate compensation for the loss of the use of the tub and for the inconvenience associated with the restoration work.

The landlord has also agreed to install a watering wand in the toilet to assist the tenant in the performance of his religious rituals. Since the tenant has proven a portion of his claim, I award the tenant the recovery of the filing fee of \$100.00. Overall the tenant has established a claim of \$500.00. The tenant may make a one-time deduction of \$500.00 off a future rent.

**Conclusion**

- The landlord will continue to provide a \$200.00 rent reduction until the work is complete.
- The landlord will install a watering wand to the toilet seat in the rental unit.
- The tenant may make a one-time deduction of \$500.00 off a future rent.

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: July 19, 2019

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Residential Tenancy Branch