



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, OLC, FFT

### Introduction

On February 7, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- to allow the Tenant to deduct the cost of repairs, services, or facilities from the rent.
- For an order that the Landlord comply with the Act, Regulations or tenancy agreement.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Landlord and Tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The documentary evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Issues to be Decided

- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the Tenant moved into the rental unit on April 1, 2013 as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$988.00 was due on the first day of each month. A security deposit of \$475.00 was paid by the Tenant to the Landlord.

The parties testified that the Tenant moved out of the rental unit on March 15, 2020 after applying for dispute resolution and prior to this hearing.

The Tenant applied for a rent reduction due to the Landlords' failure to provide and maintain the rental unit resulting in a loss of value in the tenancy.

The Tenant is seeking compensation in the amount of \$5,000.00 which is calculated at \$200.00 per month for a 25-month period starting January 2018. The Tenant stated that while she lived in the rental unit for four years, she is only seeking compensation for the last two years.

The Tenant testified that the Landlord was first made aware of the leak in the roof back in September 2016.

The Tenant referred to a Decision from a previous hearing that the parties attended where an Arbitrator found that the Landlord had four years to repair a leak in the roof and found that the delay was unreasonable.

The Tenant testified that the leaking roof caused her stress to the degree that she stopped having company over. She testified that she had to empty buckets that captured the water and clean up floors. She testified that water was pooling around light fixtures and she had to cut power to the kitchen. She testified that she was worried about the risk of fire and the presence of mold being a health risk. She testified that there is a deck above the kitchen, and the Landlord put plastic over the deck.

The Tenant testified that she had to contact the Landlord for updates because the Landlord never reached out to her.

The Tenant provided documentary evidence consisting of emails and text messages that document her dealings with the Landlord from 2016 onwards. The Tenant provided photographs of the interior of the rental unit showing the condition and state of repair of the ceiling, window frames, and wall.

In reply, the Landlord testified that the Landlord repaired the leaks over the years. He testified that the main damage occurred in January 2020. The Landlord testified that the leak happened due to heavy rainfall in January 2020. The Landlord testified that the repair of the roof was delayed due to the heavy rains. The Landlord testified that the Tenant's photograph showing the stain on the ceiling was from January 2020. He testified that there is was no evidence of mold.

The Landlord testified that the rental unit had an appraisal in December 2018 which indicated minor cosmetic damage. The Landlord provided a copy of the appraisal.

The Landlord mentioned that they issued a notice to end tenancy to the Tenant in July 2018, and the Tenant responded by asking to remain in the unit. The Landlord testified that the Tenant made no mention that she was concerned about leaks. The tenancy continued.

The Landlord testified that they were not informed of any major issue related to guests or health concerns until January 2020.

The Landlord testified that over the years of the tenancy they complied with the Tenant's requests for the replacement of appliances and they did their best to deal with leaks.

The Landlord had a witness present who testified that the Tenant often contacted her for tenancy related issues such as utilities and appliances and never brought up issues or concerns regarding leaks.

The Landlord testified that they have not repaired the roof, but have covered it with vinyl, and they have not re-rented the unit.

The Tenant replied that the issues related to the leaks were occurring for far longer than January 2020.

### Analysis

Section 32 of the Act states that 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 33 of the Act states that “emergency repairs” means repairs that are:

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

Section 65(1) of the Act provides, if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment provides the following information:

*A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has 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.*

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

I have reviewed that Landlords evidence and I note that the Landlord replied to the Tenants concern on January 20, 2020 and stated they would do their best to get the deck fixed as soon as possible. I also note that that the Landlord sent emails to roofing

companies in late January and early February 2020 looking for estimates for repair of the deck.

I have reviewed the appraisal from December 2018 and give it very little weight. The appraisal document indicates that the appraiser assumes there is only minor cosmetic damage and the document provides that it is not a building inspection.

I have reviewed the Tenant's documentary evidence and I find that the Tenant first reported the issue of a leak in the kitchen roof and the need to use buckets for water back in September 2016. I find that the Tenant continued to report the problem to the Landlord in 2017; 2018; 2019; and 2020. I find that the Landlord's failure to deal with the water leak is a breach of section 32 of the Act and the breach impacted the Tenant's enjoyment of the rental unit. I accept that the Tenant had to deal with emptying buckets and cleaning up water. I also accept that the water leak caused staining which is visually unappealing. I also accept that having to deal with the water leak and the Landlords failure to properly repair the leak beginning back in 2016 caused ongoing stress to the Tenant.

I find that the Tenant suffered a loss of value in the tenancy. The Tenant did not get the full value of the rental unit that she was paying for. I find that the Landlord is responsible to compensate the Tenant for the loss of enjoyment experienced by the Tenant.

I have considered whether compensation in the amount of \$200.00 per month for a two years period is reasonable compensation. I find that it was not raining for the entire two-year period and the Tenant was not emptying buckets and cleaning up water for the entire period. However, I find that the Tenant had to deal with the staining of the ceiling and damage to the window frames and stress and delay of not having the repairs completed. I find that the amount of \$5,000.00 amounts to \$6.85 per day for a two-year period. Based on the above, I find it is reasonable to award a lesser amount of \$5.00 per day for the two-year period. I grant the Tenant the amount of \$3,650.00 which is \$5.00 per day for 730 days.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlords to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$3,750.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

### Conclusion

The Tenant's application is successful. The Landlords breached the Act and the Tenant suffered a loss of value in the tenancy.

I order the Landlord to pay compensation in the amount of \$3,750.00 to the Tenant.

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 22, 2020

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Residential Tenancy Branch