



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing originally convened on December 3, 2020 and was adjourned to February 18, 2021. This decision should be read in conjunction with the December 3, 2020 Interim Decision. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he received the tenant's application for dispute resolution at his place of work. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

### Issue

Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

### Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in June of 2017 and is currently ongoing. Monthly rent in the amount of \$1,700.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord.

The tenant testified that on March 9, 2019 he noticed that the carpet in the den of the subject rental property was completely soaked with water. The tenant testified that he immediately attempted to get in contact with the landlord who sent someone to turn off the water. The tenant testified that later that evening the landlord attended and ripped out the carpet and underlay and had a commercial dryer set up shortly thereafter.

The tenant testified that after repeated requests for the landlord to replace the carpeting and repair the den, the carpeting was finally replaced on January 28, 2020. The tenant testified that during that time the den was not usable. The tenant's application for dispute resolution states that the tenant is seeking compensation for loss of use of the den in the amount of \$1,800.00 at a rate of \$200.00 per month for nine months. The tenant testified that he is seeking \$150.00 per month for nine months for a total of \$1,350.00, not the \$200.00 per month stated in the application for dispute resolution. The tenant testified that he is seeking \$150.00 per month because that is a reasonable amount.

The landlord testified that he doesn't have the dates of the flood and repair and so will "go with what the tenant said". The landlord testified that the subject rental property is 1,122 square feet and that the den is 77 square feet. This testimony was not disputed by the tenant. The landlord testified that prior to this application for dispute resolution the tenant was only seeking compensation for 7.5 months of loss of use of the den and that the landlord calculated that loss as follows:

$$\text{\$1,700.00 (rent) / 1,122 (square feet of the rental property) = \$1.52 (cost per square foot)}$$
$$\text{\$1.52 (cost per square foot) X 77 (square feet of den) = \$117.00 (monthly loss)}$$
$$\text{\$117.00 (monthly loss) X 7.5 (months den not repaired) = \$877.50}$$

The landlord testified that he offered the tenant \$700.00 which is \$177.50 less than the above calculation because it took time to get the strata approval for the floor repair and that he should be allowed some time to make the repair. The landlord testified that the above calculation does not reduce the rental rate to compensate for the cost of parking,

the storage locker, swimming pool and hot tub when calculating the cost per square foot.

### Analysis

Section 67 of the *Act* states:

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 65(1)(f) of the *Act* states:

**65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Section 32(1) of the *Act* states:

**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 tenant's undisputed testimony that the flood occurred on March 9, 2019 and that the floor was not repaired until January 28, 2020.

Based on the evidence of both parties, I find that the landlord breached section 32 of the *Act* by taking over 10 months to repair the den of the subject rental property after

the flood. I find that the tenant suffered a loss in the value of this tenancy as a result. Pursuant to section 67 of the *Act*, I find that the tenant is entitled to compensation for the reduction in value of the tenancy.

I find that the tenant's estimation of the monthly value of that loss in the amount of \$150.00 per month is not based on any calculation other than what the tenant feels is "reasonable". In this regard, I prefer the calculation provided by the landlord which is based on the square footage of the subject rental property. I note that no other calculation was provided by either party. I accept the landlord's undisputed testimony that the subject rental property is 1,122 square feet and that the den is 77 square feet.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to a one time rent reduction in the amount of \$117.00 per month for the nine months claimed by the tenant, for a total of \$1,053.00, in accordance with section 65(1)(f) of the *Act*.

### Conclusion

Pursuant to section 67 and 72 of the *Act*, I find that the tenant is entitled to a one time rent reduction in the amount of \$1,053.00.

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 18, 2021

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Residential Tenancy Branch