



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 21, 2020 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that they did not receive the Tenant’s evidence. The Tenant acknowledged their evidence was not served on the Landlord.

The Tenant was required to serve their evidence on the Landlord pursuant to rules 3.1 and 3.14 of the Rules. Given the Tenant did not serve their evidence on the Landlord, I heard the parties on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Landlord submitted that the evidence should be excluded because they did not receive it and so could not prepare. The Tenant submitted that the evidence are facts and are true. The Tenant stated that they were mistaken about having to send the evidence to the Landlord. The Tenant said they understand if the evidence must be excluded.

Pursuant to rule 3.17 of the Rules, I excluded the Tenant's evidence as I found it would be unfair to consider it when the Landlord had not received it and therefore could not respond to it.

The parties were given an opportunity to provide relevant testimony and make relevant submissions. I have considered the testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenant sought \$3,900.00 in compensation due to water damage and resulting repairs in the rental unit.

The Tenant testified as follows. There was a written tenancy agreement in this matter. The tenancy started March 01, 2018. A new written tenancy agreement was signed between the parties each year. Rent was \$2,750.00 due on the last day of each month. A security deposit of \$1,375.00 was paid.

The Landlord testified that they do not agree the Tenant paid a \$1,375.00 security deposit but do not recall the amount paid. The Landlord testified that rent was lowered to \$2,750.00 in March of 2020 due to the pandemic.

The parties agreed the tenancy between them ended because the Landlord sold the rental unit to new owners. The Tenant testified that this occurred November 25, 2020. The Landlord testified that this occurred November 26, 2020.

The Tenant provided the following relevant testimony and submissions.

On October 17, 2020, grey water leaked into the rental unit causing damage. About one-third of the rental unit was damaged and unlivable. The water damage affected three rooms. During the repairs, the rental unit did not have water for five days. Grey water is very unhealthy. The water damage was not fixed until December 05, 2020. They were affected by the water damage for 44 days. They did not have access

to internet or laundry while they could not live in the rental unit. They had to use a laundromat. They had to add data on their phone to be able to work outside of the rental unit. Drying fans were on 24/7 for the first 10 days after the water damage. The fans were very loud. The cleaning products used to address the water damage left a smell in the rental unit. They are seeking \$3,900.00 as one-and-a-half month's rent.

During repairs for the water damage, people came to the rental unit at least 22 times. People came to the rental unit every two days. They had to be home to let people in. People were coming in and out of the rental unit so much that the door had to be left open and unlocked. Random people were coming into the rental unit which was "not great" during the pandemic.

The Landlord only attended the rental unit twice during repairs. The Landlord failed to cooperate in relation to the repairs. The Landlord failed to communicate effectively about next steps in relation to the repairs. For example, the Landlord would send a text message at 9:00 p.m. outlining things they had to do by the next morning to get the rental unit ready for the next stage of repairs.

The Tenant is one of three tenants named on the tenancy agreement. There is also a fourth occupant that lives in the rental unit. The tenants paid full rent for November.

The Landlord provided the following relevant testimony and submissions.

They received a call October 17, 2020 about water coming into the bathroom of the other rental unit in the house. They called their insurance company. They attended the rental unit the next morning. Repairs took a lot more time than everyone wanted. Repairs took a lot longer than they should have and it was hard to deal with their insurance company. They tried to make things work as much as possible. December 05, 2020 as the end date for repairs sounds correct. They agree communication was difficult, but this was not due to a lack of trying. They did everything they could as fast as they could in relation to the water damage and repairs.

It is accurate that the tenants could not use the water for three to five days. The Landlord repaired things themselves until a plumber could attend. They lowered the rent by \$200.00 in October and \$100.00 in November to compensate the tenants. They told the Tenant they would give them \$300.00 to find somewhere to stay. It was only the Tenant who stayed elsewhere due to the water damage and repairs. They calculated the appropriate amount of compensation as \$826.00 and gave the Tenant a further \$500.00 because they had already given the Tenant \$300.00.

They agree a lot of people and subcontractors were going in and out of the rental unit. They attended the rental unit more than twice. The Tenant stated that they had to let these people in; however, they were told the Tenant rented another place for weeks. They do not agree with the amount sought because they gave the Tenant \$826.00 and lowered the rent by \$300.00.

In reply, the Tenant testified that other tenants did leave the rental unit due to the water damage and repairs. The Tenant testified that they knew everything that was happening at the rental unit because the other tenants were providing updates.

### Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 28 of the *Act* states:

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;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 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.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

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 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 entitlement to 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.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises...

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.

### **Compensation for Damage or Loss**

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.

I am not satisfied the Tenant is entitled to \$3,900.00 due to water damage and repairs for the following reasons.

The Tenant acknowledged that only one-third of the rental unit was damaged by water and not the entire rental unit. Therefore, I am not satisfied the Tenant is entitled to

compensation equivalent to full rent for 44 days when portions of the rental unit were undamaged.

The Tenant testified that they are one of three tenants named on the tenancy agreement. The other two tenants did not join in the Application. The other tenants did not provide any evidence in relation to the Application. Therefore, I am not satisfied based on the evidence provided as to the affect the water damage and repairs had on the other tenants. Therefore, I am not satisfied the Tenant is entitled to compensation equivalent to the full rent amount paid by all tenants for 44 days.

I accept that a lot of people were coming and going from the rental unit due to the water damage and repairs as the parties agreed on this. However, the Landlord disputed that it was the Tenant who stayed at the rental unit and dealt with the people coming and going. In the absence of further evidence, I am not satisfied it was the Tenant who stayed at the rental unit and dealt with this. As stated, I do not have any evidence from the other tenants about the affect people coming and going had on them.

There is no admissible documentary evidence before me. Given the parties disagree about the appropriate amount of compensation that should result from the water damage and repairs, I would expect to see documentary evidence such as photos, videos, witness statements and correspondence between the parties that gives a sense of the impact the water damage and repairs had on the Tenant and tenants. There is no such admissible documentary evidence before me.

I accept that there was no water in the rental unit for five days as the parties agreed on this. As stated, I accept that a lot of people were coming and going from the rental unit due to the water damage and repairs. I also accept that the repairs took longer than they should have as the parties agreed on this. However, I accept that the Landlord paid the Tenant or tenants \$826.00 and reduced rent by \$300.00 as compensation for the water damage and repairs. I accept this as the Tenant did not dispute this point. In the absence of further evidence, I am not satisfied that the \$826.00 and \$300.00 rent reduction were insufficient to cover the loss suffered by the Tenant and tenants due to the water damage and repairs. The Tenant has failed to prove the amount or value of the damage or loss and therefore has failed to prove they are entitled to the compensation sought.

Given the Tenant was not successful in the Application, I decline to award the Tenant reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 17, 2021

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Residential Tenancy Branch