



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Realstar Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, MNDCT, RP, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order reducing rent for repairs, services or facilities agreed upon but not provided; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the rental unit or property; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenant withdrew the application for an order that the landlord make repairs to the rental unit or property.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, specifically for repairs?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for loss of use the rental unit, labour, loss of wages, stress, pain and suffering?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy in this rental unit began on September 1, 2003, however the tenant moved into the building in March, 1994. The fixed term expired on August 31, 2004 and reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$770.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased over the years and is now \$1,163.00, and there are no rental arrears. The landlord collected a security deposit from the tenant in the amount of \$385.00 which was transferred from the previous tenancy. A pet damage deposit was also collected in the amount of half of the monthly rent about 3 years ago, and both are still held in trust by the landlord. The rental unit is a 2-bedroom apartment on the 16<sup>th</sup> floor, but in the top corner of a complex containing a total of 18 floors.

The tenant further testified that on January 5, 2018 the roof started to leak above the tenant's bed. The tenant notified the landlord, and the landlord is working on it now, and it might be fixed. The main point is compensation for having to live with it for 3 ½ years. The tenant has never claimed that the landlord didn't try to fix it, but standing in a foot of water and they're working on it, doesn't make the water go away.

The landlord offered to move the tenant into a temporary suite, but that was not feasible; the tenant has a dog. Also, the tenant had faith and hoped he wouldn't have to leave the apartment. After the repairs were done, if the tenant had moved to a temporary suite, it would have lasted for 40 months, or move in and out depending on rain.

The tenant has not been able to use the master bedroom, only the smaller bedroom, and the difference between a 2-bedroom suite and a 1-bedroom suite is \$300.00 per month. Although the spare bedroom in the rental unit is about 2/3 the size of a bedroom in a 1-bedroom suite, giving the benefit of doubt to the landlord, the tenant claims \$300.00 per month from January, 2018 to May, 2021.

The tenant also claims \$5,000.00 for pain, suffering and stress. The tenant is a carpenter and the landlord had hired the tenant to do renovations and seal it up prior to the start of the tenancy. However, after the roof started to leak, the landlord had the master bedroom ripped apart; butchering it and weakening everything that the tenant

had done to improve the rental unit. The person who made repairs was a hack, and now it's worse. Plugs have been placed upside down in the master bedroom. The tenant had no health issues and is now on medications for high blood pressure after a year of dealing with it. The tenant is also in excruciating pain, literally in tears from pulled tendons in his shoulder from sleeping on the couch. Numerous photographs of the rental unit have been provided for this hearing.

The tenant further testified that buckets and drains were the tenant's responsibility to deal with; the landlord's maintenance people didn't have to deal with it. It was easier for the tenant to do it than to call them to clean up water and empty buckets. At the beginning, it was a manageable leak and one bucket was not a problem to maintain, however on the 3<sup>rd</sup> try to repair it, the landlord wanted to patch the ceiling in the bedroom. The tenant told the landlord that if that happened and it wasn't actually fixed, they wouldn't be able to tell where the leak was coming from. They didn't listen and after they patched it, it started leaking in 5 or 6 places. The tenant claims \$1,000.00 for his labour attending to it and dealing with it.

The tenant also missed work for 3 weeks, and based on a 40 hour week and billing for his services at \$40.00 per hour, the tenant has lost \$3,600.00.

The roof cannot be fixed during winter and in the rain. The repair people would work on it once it was dry, but it goes on every year. Every time they came, the tenant started getting a little mad. The leak never changed and there was no reason for them to enter the apartment; the leak is on the roof. The tenant is a light sleeper and can't sleep with the dripping.

On January 15, 2018 the tenant provided an email to the landlord, along with photographs of a wet mark on his bed, suggesting that the landlord actually have the roof repaired before starting to repair the inside. The landlord replied the following day stating that the roofing company will be called again for an emergency follow-up.

The tenant has also provided a copy of an email to the landlord dated February 5, 2018 asking for reduction in rent to that of a 1-bedroom suite instead of paying for a 2-bedroom suite.

A statement from the tenant entered as evidence in this hearing states that commencing January 31 the tenant has been in excruciating pain, loss of sleep, and had been to see a doctor twice and acupuncture on February 3, and physiotherapy on February 5, 2018. The tenant was advised to continue with physiotherapy 3 times per week at a cost of \$60.00 per visit. It also states that an ultrasound appointment was made for February

28, and the doctor said it could take as long as 6 weeks to heal and be able to return to work. It states that the tenant had lost \$280.00 per day in wages, and how it has affected the tenant physically, financially and mentally.

A second lengthy statement has also been provided stating, in part, that when he tried to sleep during the day, a person was working in the rental unit keeping the tenant awake. The landlord, in January and February, 2018 decided to rip out a couple of the exterior walls in the tenant's bedroom which was completely unnecessary; the leak was nowhere near the walls, and there are other ways to check for moisture. It also states that as a ticketed carpenter, the landlord would not listen to complaints the tenant had with the work of the contractor hired by the landlord. The repair work was worse when the contractor finished than before he started. A manageable leak turned into a complete nightmare for the next 3 ½ years with 1 leak and one bucket turning into leaking from several spots and 4 buckets required.

The tenant has also provided notes from medical practitioners and chiropractors. The first visit date is February 1, 2018 and is difficult to decipher entirely, but specifies Tylenol for pain, x- ray right shoulder and avoid lifting heavy objects. The note dated December 18, 2020 shows extremely high blood pressure and prescriptions.

On February 24, 2018 the tenant advised the landlord by email, with 2 photographs that the repair job was blatantly poor work, and the leak is worse than ever.

On March 16, 2019 the tenant again emailed the landlord explaining that when pink insulation turns black, it means air is getting in and the wall is not sealed properly; and mold means something wasn't done right.

The tenant has also provided numerous photographs showing the renovated rental unit and the poor plaster and repairs, as well as some of the leaks onto the bed in buckets, and plaster that has fallen, and some buckets held to the ceiling.

On February 12, 2021 the tenant emailed the landlord complaining about the landlord's total lack of concern after receiving an email from the landlord asking that the tenant let the workers complete the work and then the parties could discuss deficiencies. The following day, the landlord replied that the landlord Director of construction will visit.

The tenant has also provided a lengthy written statement which states, in part, that the first offer by the landlord with respect to compensation was on February 26, 2021. It also states that it took the tenant 16 years to get this particular suite, and any offer to move to another suite would only be only be accepted on a temporary basis, or the

tenant would not have accepted the offer. It also states that the tenant was off work from COVID, and that the tenant lost wages for the 3 weeks that he missed work due to his shoulder injury.

The landlord posted a notice to all tenants of the complex stating that the roof will be replaced, tear-off to take place from May 17 to May 19, 2021.

On June 16, 2021 the landlord emailed the tenant stating that the roof work is on schedule, and the roof above the tenant's suite is waterproofed.

The tenant has also provided a document entitled Monetary order worksheet, setting a claim of \$300.00 per month for 40 months; differential regarding less square footage at \$139.59 per month for 40 months; \$5,000.00 in pain and stress and health effects; \$3,600.00 for lost wages from injury caused from loss sleeping on the couch; \$1,000.00 for the tenant's time and labor dealing with the leak; for a total of \$27,183.60.

**The landlord's agent** testified that when the tenant reported the leak the landlord called a roofer who attended and investigated and fixed the issue in January, 2018. Copies of invoices have been provided for this hearing. The tenant again reported a leak in February, 2018 and 2 different roofing companies investigated and a roofer repaired it at that time, in February, 2018. The roofer confirmed the leak was resolved and the issue was closed.

In March, 2019 the tenant again reported a leak in the same area. A roofer arrived on site and fixed it again. Each time the tenant reported a leak, the landlord had roofers and did what the landlord could to resolve it, and it was fixed. However it leaked again in February, 2020, but didn't leak every time it rained.

On March 21, 2019 the contractor advised that all work was performed as planned. Also provided is an invoice from a roofing company dated December 4, 2019 stating that the roofer repaired with uncured detail membrane.

The landlord has also provided numerous emails indicating an effort to make the roof repairs. The first string is commencing January 30, 2020 until March 11, 2020 indicating that the landlords' contractors had been on site and notified the landlord that the ongoing repairs were very extensive. Another string commencing February 11, 2020 indicates that another unit had a leak, and a quote was provided by the roofing company.

The landlord has also provided an Invoice from a roofing company dated March 13, 2020 showing that some work had been completed, and another dated March 24, 2020 as well as another dated October 22, 2020 stating that on October 26, 2020 the roofers found 2 small sections of delaminated seam and repaired them. It also states that, "We believe that the water ingress may have occurred from residual water in the roofing system from previous leaks. The leak occurred during a very heavy rainfall, applying pressure on the saturated roofing insulation causing minimal water ingress." It also recommends accessing the site again if the leak becomes active to determine whether it is residual or an active leak.

The landlord's agent further testified that the landlord offered the tenant a transfer to an upgrade in a renovated apartment at a discounted amount, not temporarily, but the tenant refused because he didn't want to give up the view he has on the 16<sup>th</sup> floor. The rent would have been based on market rates, but discounted based on management approval.

The landlord disputes the claim for stress and pain; the landlord is not responsible because the tenant did not bring to the landlord's attention that he had missed work.

The landlord's agent further testified that the tenant's claim of \$5,583.00 is a double claim for the same issue. There was not rainfall for 40 months, and weather reports have been provided by the landlord for this hearing. The tenant pays \$1,163.30 per month now for rent, and claims that \$300.00 is the difference for 40 months, but that's not based on his current rent.

The landlord did not fail to fix the issue and each time it was reported, the landlord fixed it. The landlord made a good faith offer for 135 square feet of 850 square feet of the total suite at 15% for 12 months which amounted to \$174.75 per month for 12 months, for a total of \$2,093.40 which takes into account the number of days of rain.

If the tenant had a legitimate complaint, he ought to have minimize the loss, by filing this application after the leak happened.

Back in 2020 when the tenant requested new kitchen cabinets, the landlord obliged to recognize or acknowledge his inconvenience, which the landlord wouldn't usually entertain that unless needed. The tenant only wanted an upgrade. During cross examination, the landlord's agent testified that around 4 or 5 doors were replaced, and the tenant replaced them himself, refusing to let the landlord complete the installation.

The landlord made an offer with respect to compensation, being 15% of the rent for 12 months, for a total of \$2,093.40, and also provided rent rates; 1-bedroom regular suites are between \$1,400.00 and \$1,500.00, and renovated are \$1,550.00 to \$1,600.00. Two-bedroom standard suites are between \$1,600.00 to \$1,700.00, and renovated \$1,850.00 to \$2,000.00.

#### SUBMISSIONS OF THE TENANT:

The tenant submits that the new cabinet doors were an agreement between the tenant and another agent of the landlord because the tenant fixed things up during COVID. The tenant was off work, so he repainted and paid for materials. The doors were 20 years old, and the tenant only asked for doors. It had nothing to do with leaks.

The tenant mitigated the losses, but the landlord kept accepting that the leak was fixed every time.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The roofers fixed the roof and resolved the issue.

#### Analysis

Both parties have provided copious amounts of evidence, all of which has been reviewed, including statements, photographs, videos, emails and all other evidence.

It's clear that the tenant is a carpenter and I find that he has some expertise in the field of carpentry and repair. I find it quite relevant that the tenant told the landlord prior to patching the ceiling in the tenant's bedroom that if it was patched and continued to leak, the landlord wouldn't know where the leak was coming from, and he was obviously correct; the roof leaked again in several places.

I also accept that the tenant has been insulted by the "butchering" of the rental unit after he had renovated it, and as a carpenter would likely cringe at any errors made. However, the point is that the tenant was inconvenienced and not able to enjoy the rental unit he occupies. Replacing kitchen cabinet doors is not relevant.

I also find that had the tenant accepted the temporary unit offered by the landlord, the tenant is correct, he would have had to move out and in perhaps several times by the time the leak had been fully repaired, or may not have ever been able to move back into his rental unit. There is no evidence or testimony from the landlord to indicate what amount of rent would have been discounted, only that it would be dependent on

whether the tenant accepted a 1-bedroom or a 2-bedroom and whether or not the temporary unit had been renovated.

The tenant claims \$300.00 per month for 40 months; differential regarding spare foot at \$139.59 per month for 40 months; \$5,000.00 in pain and stress and health effects; \$3,600.00 for lost wages from injury caused from loss of sleep from sleeping on the couch; and \$1,000.00 for the tenant's time and labor dealing with the leak; for a total of \$27,183.60.

The landlord's position is that it didn't rain all of the dates that the tenant claims compensation for, and therefore isn't entitled. However, the evidence shows that the work completed by the landlord's contractors caused the tenant damages throughout the period in one way or another, not just a leaky roof.

In the circumstances, I find that the tenant has established that he lost the master bedroom, and using the rate differential that the landlord provided to the tenant, a 1-bedroom unit would have been \$300.00 per month less than a 2-bedroom suite. However, I agree with the landlord's agent that the tenant's current rent is less than that of a 1-bedroom suite. Using the square footage that the landlord testified of 850 for the current rental unit and loss of use of 135 square foot bedroom, the tenant has lost use of about 16%. The amount of rent payable is \$1,163.00 per month, and a reduction of 16% is \$186.08 less than the current rent payable. Given that the repairs were on-going, and for inconvenience, I agree that the tenant is entitled to that amount for 40 months, or **\$7,443.20**.

With respect to the \$5,000.00 claim for pain and suffering, I have read the physician's notes from the February 1, 2018 and December 20, 2018 visits, which showed a recommendation of Tylenol and to avoid heavy lifting, and extremely high blood pressure. There is no evidence of why the tenant slept on the couch when another bedroom in his unit was at his disposal. I find that the tenant failed to mitigate and the claim for pain and suffering cannot succeed.

However I find that the stress on the tenant was a result of the landlord's failure to properly maintain the rental unit and have the job finished a long time ago. I refer to Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss, which states, in part:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:



- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I therefore find that the tenant has established a monetary claim for nominal damages amounting to **\$1,000.00** for stress.

The tenant has not provided any evidence to support his claim for loss of work at \$3,600.00, and I dismiss that portion of the claim.

I also find that the tenant’s claim of \$1,000.00 for the tenant’s time and labor dealing with the leak is an arbitrary amount, and the tenant chose to do it himself, and therefore the claim has not been proven.

In summary, I find that the tenant has established a claim of **\$7,443.20** and nominal damages of **\$1,000.00** for stress. Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the **\$100.00** filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$8,543.20**.

This order is final and binding and may be enforced.

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: September 28, 2021

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Residential Tenancy Branch