



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: PSF RR FFT

### Introduction

The tenant applied for the following relief under the *Residential Tenancy Act* ("Act"):

1. an order to reduce rent for repairs, services, or facilities agreed upon but not provided, pursuant to subsection 65(1)(f) of the Act;
2. an order for the landlord to provide services or facilities required by the tenancy agreement or law, pursuant to section 62 of the Act; and,
3. an order that the landlord pay the tenant for the cost of the filing fee, pursuant to subsection 72(2)(a) of the Act.

Both parties, including a witness for the landlord, attended the hearing on November 26, 2021. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

### Issue

Is the tenant entitled to any or all of the relief sought?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on May 1, 2021 and monthly rent is \$2,060.00. The tenant paid a security deposit of \$1,083.00. A copy of the written tenancy agreement was in evidence.

The facts of this case are largely undisputed. The rental unit is a two-bedroom, two-bathroom apartment, located on the second floor of a 51-suite rental apartment building. In late August of 2021 the tenant noticed paint peeling in one of the bathrooms, and a water leak or trickle coming down.

On August 27 the tenant sent a text message to the landlord informing them of the water leak. (According to the landlord, the tenant was perhaps aware of the problem for a few weeks; the tenant testified that she was not home all the time and was frequently away on work trips.) The building manager responded promptly to the tenant's note and came to check it out. A plumber was immediately booked, but due to limited availability the earliest that they were available was September 8.

The plumber attended to the rental unit on September 8 and investigated the problem. It turned out that the water was coming from the rental unit located on the floor immediately above the rental unit. Several repair visits were made. The source of the initial leak was that the overflow valve in the bathtub (in the rental unit the floor above) had a seal issue. This was repaired. The landlord's witness testified about this.

On September 26, the tenant notified the landlord that the water leak had resumed. Three days later the plumber returned; he again investigated, and this time found a hairline crack in the bathtub (the same bathtub that had the overflow valve seal issue). The crack in the tub was repaired on November 2, 2021.

The tenant testified that there were several visits over a period from the end of August until the end of October, and that the bathroom was out of service during repairs, and that it was out of use for a considerable period of time. She noted that a rent reduction was approved, but only for September. The tenant withheld rent for September but eventually made a partial payment. In respect of the amount of time in which the bathroom was out of service, the tenant seeks a further rent reduction in the amount of \$600.00. The bathroom was not fully accessible again until October 27. Last, she also noted that there is the possibility of the leak resuming.

The landlord (C.T.) testified that the landlord waived the tenant's NSF fee of \$25.00 (the tenant's rent payment for September was initially returned as an NSF), they waived the landlord's \$25.00 late fee, they provided a \$375.00 rent credit on October 22, and they provided an additional credit of \$33.00. The credits (including the waived fees) therefore totalled \$458.00.

In respect of the bathroom being out of use, the landlord's witness testified that throughout the period of repairs, the toilet, sink, and vanity were fully accessible. It was only the shower that was not usable. He noted that the repairmen always took their tools with them when done and that "it was not like a big construction zone" in the bathroom. The bathroom is now fully accessible, both parties confirmed.

Documentary evidence from the parties consisted of text and email correspondence, and photographic and video evidence of the water problems.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The first claim for relief is for an order made under subsection 65(1)(f) of the Act, which states that

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 [ . . . ] 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 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.

In this case, it is clear that the rental unit located above the tenant's rental unit in question encountered two separate water leaks, both from the same bathtub. The water leaked downward into the rental unit, thereby causing damage to the drywall, paint, and so forth.

This resulted in the landlord having to make repairs, which put the shower out of use for a period of time. That the landlord was not aware of the leak until the tenant pointed it out does not affect the landlord's obligations to comply with subsection 32(1)(a) of the Act (see section 32(5) of the Act).

It is clear that, while the rental unit was, for the most part, fully suitable for occupation by the tenant, that occupation was impeded or negatively affected by the shower being out of use. As such, the landlord, for a brief period of two months (at most), breached section 32(1) of the Act.

That having been said, I respectfully disagree with the tenant's argument that the entire bathroom was inaccessible. They did not dispute the landlord's witness's testimony that, but for the inaccessible shower, the remainder of the bathroom was fully accessible.

The landlord gave \$458.00 in rental credit to the tenant (comprising various amounts, but all linked to the underlying issue of the water leak). This amount is close to the amount that the tenant seeks in her application.

The \$600.00 sought by the tenant works out to \$300.00 a month. \$300.00 would represent close to 15% of the value of the tenancy, given that rent is \$2,060.00. The tenant made no argument to persuade me to find that an inoperable or inaccessible shower (considering that there was one fully accessible bathroom with a working shower and one mostly accessible bathroom) is worth 15% of the tenancy. Certainly, it is not lost on me that a claim for damages for loss of the use of a facility or service is often arbitrary, but the amount sought—\$600.00—strikes me as excessive given the very limited period in which only one shower was not usable. And, while I acknowledge and agree with the tenant that the repairs took rather long, I find no fault on the landlord's part in dealing with the problem as promptly as possible.

Given the above, and after taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving a rent reduction in the amount of \$600.00. It is recognized that the tenant has already received a \$458.00 rent credit which is sufficient compensation for the inconvenience. No additional compensation shall be awarded.

As for the second relief for an order for services or facilities, it is noted that both bathrooms in the rental unit are currently fully usable, and as such this aspect of the tenant's application is dismissed with leave to reapply.

(That is, the tenant remains at liberty to make an application for dispute resolution in the future should the water leak issue return. Though, based on the parties' mostly cordial and professional manner of communicating, and the property manager's diligence, this will, with any luck, be unnecessary.)

Given that one of the tenant's claims is dismissed without leave to reapply (the claim for compensation) and the other claim is dismissed with leave to reapply, the third claim for recovery of the application filing fee is dismissed.

### Conclusion

**The application is dismissed.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 26, 2021

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Residential Tenancy Branch