



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RR, RP, OLC, PSF, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on January 31, 2022 seeking:

- compensation for monetary loss
- reduction in rent for repairs not provided
- provision of services/facilities required by the agreement or law
- the Landlord's compliance with the legislation and/or the tenancy agreement
- repairs to the rental unit after making a request
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on May 2, 2022.

Both parties attended the hearing and confirmed they received each other's prepared documentary evidence in advance. This was via email due to the Tenant moving out from the rental unit after they filed their Application. On the basis of both parties confirming they received the evidence of the other, I proceeded with the hearing as scheduled.

### Preliminary Matter – end of tenancy

In the hearing the Tenant provided that they moved out from the rental unit on February 28, 2022. They stated they included grounds concerning their requests for repairs and the Landlord's compliance with legislation and/or the tenancy agreement in order to show the Landlord's pattern of behaviour in dealing with matters of repair in the rental unit.

The Tenant's request for repairs is a matter that concerns an ongoing tenancy. Given that this tenancy ended, there is no landlord-tenant relationship between the parties and any order for repair would be of no effect or relevance at this point. I dismiss this portion of the Tenant's Application for this reason.

Similarly, any matter of the Landlord's compliance with the *Act* and/or the tenancy agreement concern an ongoing tenancy. The provision of services/facilities required by an agreement or the *Act*, concern an extant tenancy agreement. I dismiss these portions of the Tenant's Application for this reason.

### Issues to be Decided

Is the Tenant eligible for compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant eligible for a reduction in rent – retroactively – for repairs not provided, pursuant to s. 65 of the *Act*?

Is the Tenant entitled to compensation for the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

Neither party provided a copy of the tenancy agreement; however, they both spoke to its terms in the hearing. The parties signed an agreement on September 15, 2021 for the tenancy starting on that same date. The set rent amount was \$2,500 payable on the first day of each month. The Tenant paid a security deposit amount of \$1,250.

The Tenant described having a reduced amount for rent for the last few months of the tenancy: this was \$1,500 for the months of December 2021 and January 2022, for “losing half the house because of flooding.” The Landlord confirmed this was the case; however, they presented that there were additional charges for utilities in place that arose during those months.

As proof of the justification for a reduction in rent, the Tenant presented their evidence of text messages to/from the Landlord around late December 2021. They stated the

Landlord's offer of reduced rent for December 2021 was "acceptable" and proposed this ongoing reduced amount going forward "for the foreseeable future or until the repairs have been completed". On December 31 the Landlord clarified that reduced rent was only for the month of December, "and not going forward."

In response to that message from the Landlord, the Tenant (as shown in the string of text messages) re-sent the Landlord's December 7 statement that the rent was reduced to \$1,500 until renovations completed. . ." The Tenant stated: "We will have to hold you to this agreement until we have full use of the house."

The Tenant described the flooding events of mid-November and December 1, 2021. They were "never satisfied the initial [smaller] flood was handled satisfactorily." The December 1 flood was "bad", coming in through all walls, every direction, all rooms in the basement". The Tenant on their own spent three full days vacuuming water out of the house with no assistance from the Landlord. The Tenant themselves had to advise the Landlord on the matter of insurance, with the Landlord querying the Tenant on what should be done. Contributing to the problem was a faulty pump in the basement which the Tenant estimated to be 40 years old, and their own ongoing difficulties at that time.

In response to the Tenant's description, the Landlord acknowledged there was a flood in the basement; however, on December 1 this was due to a weather calamity that occurred at that time. The Landlord provided a text message from December 1. This is when the Tenant queried the Landlord on the Landlord's insurance, stating an insurer would handle hiring remediation staff, as well as cover the accommodation costs until an assessment. On December 2, the Landlord advised remediation staff would arrive that morning, and the Tenant confirmed their arrival.

The Landlord also provided that they offered to pay for the Tenant's food and lodging expense on December 3. This was the first night the Tenant spent in a hotel.

In the Landlord's evidence is their message to the Tenant of December 5, wherein they advised the Tenant should have their own "renting insurance". At that time the Landlord's insurer would not allow for the Tenant's continued stay in a hotel. The Landlord forwarded \$236.69 to the Tenant's account. This was to cover the Tenant's expenses for the first couple of days. The image of this appears in the Landlord's evidence.

Another message from the Landlord on December 6 shows their response to the Tenant: they “already provided a hotel for 5 nights and food expenses that I’m not supposed to do.”

The Tenant’s submission is that they did not ask or inquire about a hotel stay to the Landlord. They notified the Landlord on December 3 that they had to stay out of the unit because of fumes involved in the emergency recovery process. At that point, they were “exhausted and ill”, and when the Landlord sent an offer stating ‘here’s a hotel’ they did it without any discussion.

The Tenant stayed in a hotel on December 3; however, the following day they realized they would not be able to afford 2 or 3 meals per day without the Landlord reimbursing them on a daily basis. The Landlord reneged on this offer on December – this was because, for the Landlord, it was out-of-pocket expenses not covered by their insurer, and the Landlord could not afford it.

The Tenant had concerns about hazardous materials being uncovered in the immediate remediation procedures and tried to ask the Landlord whether any report had been generated. This is shown in the text messages provided by the Landlord in their evidence. The Landlord proposed to the Tenant that the upper level – as opposed to the flood-damaged basement – was available to them, and “as far as the rent amount we can lower it down until the basement is full renovated.”

Another message from the Landlord on December 6 shows their response to the Tenant. They clarified that the Tenant did not have renter’s insurance, and the Landlord offered to “refund the money for the month of dec.” Also: “I already provided a hotel for 5 nights and food expenses that I’m not supposed to do.”

In their claim for compensation, the Tenant listed the following on their Application:

- food and lodging as agreed upon in text on December 4<sup>th</sup>: Landlord reneged same day: \$350.

The Tenant stated in the hearing this was a tally of 4 days’ worth of food and drew attention to the text messages they provided to the Landlord showing individual food bills, as appearing in the Landlord’s evidence.

- moving costs: \$1,500

- heat and hydro compensation: \$650.

In the hearing the Tenant described this amount as “bills that we supposedly refused to pay”. In the entire course of the tenancy, they never received a water bill previously, and while they had offered to discuss payments of a higher-than-usual electricity bill (because of dehumidifiers running for long periods), there was no response to this from the Landlord, and hence no “refusal” from the Tenant. Further, while the insurer advised the Tenant should not pay for extra costs associated with the flood aftermath, the Landlord put forward unpaid bills as part of the basis for eviction.

- compensation for lack of reasonable enjoyment of the property since first flood on November 14: \$2,500 for each of 4 months of rent. This piece of their claim is \$10,000 in total.

The Tenant in the hearing clarified this was for each of the latter 4 months of the tenancy: November, December, January, and February. They “just tried to show they lived under bad conditions.”

They cited the Landlord’s “illegal entry” on January 15, being a “severe breach of reasonable enjoyment” of the rental unit. This was the subject of a video the Tenant submitted in their evidence, showing the conflict situation where the Landlord entered the rental unit using the back door. As shown in evidence provided under this heading, the Tenant showed the Landlord’s pattern of insufficient notice – *i.e.*, less than 24-hours– for visits for miscellaneous reasons.

Further, they described the workers attending to the situation in the basement as forwarding the Landlord’s comments about the Tenant to those workers. Further material in the Tenant’s evidence shows them trying to procure a working washer-dryer in January. There was also the matter of utilities left unpaid, eventually met with the Landlord’s threat of eviction for that matter.

The Landlord responded specifically to these amounts by stating the Tenant did not provide any documentation to justify these as legitimate expenses. As such, the amounts, in the Landlord’s estimation “seem arbitrary.”

## Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Tenant no doubt faced difficulty with the immediate problem of flooding in the basement that reduced their use of the rental unit by approximately one-half, in terms of space available to them for use. This upended their ability to stay in the rental unit for a short period of time in December 2021, necessitating a stay in a hotel for a brief period due to remediation that was underway.

I find there is evidence of communication barriers in place between the Landlord, their insurer, and clear outlines of what was available to the Tenant in terms of reimbursable expenses to them. I find the primary means of communication between the Landlord and the Tenant was, unfortunately, text messaging. Given the immediacy of the situation, with ongoing clarification needed from each party every step of the way, this was not the ideal method of communication; however, I acknowledge that it was an ongoing situation that stemmed from an emergency and that was an immediate method of communication that was available.

I find there is evidence that the Landlord reimbursed the Tenant for their immediate expenses of accommodation and food. The Landlord forwarded \$236.69 to the Tenant on December 5, and there is no evidence this transfer of funds was cancelled or withdrawn. The Tenant did not clearly present their additional food expenses in terms of a daily breakdown; I conclude that an insurer would demand the same if it were determined to be a reimbursable expense. Applying that here, and with no evidence of a *per diem* rationale or estimate, I find that the Landlord reimbursed the Tenant's immediate expenses in that two-day timeframe. I find this was granted by the Landlord

in the immediate situation, without clarity on the insurance claim, and without that process being yet concluded.

For these reasons – chiefly, the lack of detail on the \$350 amount claimed, and some primary coverage already given by the Landlord – I dismiss this piece of the Tenant's monetary claim.

Concerning moving costs, I find that the Tenant has not adequately defined what was involved, whether that was the burden of having to relocate out from the rental unit for a couple of days due to the remediation process involving chemical agents, or whether it was the matter of them having to remove all personal belongings from the basement area due to the flood. If the latter, the Tenant did not present this in terms of hours of work to them, and as such exists as just a number without rationale. I find this cannot be attributed to any breach of the *Act* or the tenancy agreement by the Landlord. While certainly an imposition of an urgent nature, and certainly affecting the Tenant's effective use of other areas of the rental unit, the value of the damage or loss is not compensable.

Concerning the billed amounts of utilities to the Tenant, I find they presented no evidence this was an expense borne by them for which they should be recompensed. I find the amount of \$650 was not an amount that they paid; therefore, it does not follow this should be an award of compensation to them from the Landlord. I find the Tenant is pleading these are costs that *should not rightfully* be paid by them; however, this does not warrant an award to them. I dismiss this portion of the Tenant's claim for this reason.

The Tenant claimed an amount equal to the full amount of rent for each of the months they were dealing with the residual flood matters. Primarily their claim for this portion was for the lack of quiet enjoyment and interference/disturbances to them during the tenancy. Given that an initial flood occurred in mid-November (i.e., not a full calendar month), and the Tenant did not present this was an imposition to them, I automatically reduce their claim for this amount by that initial month. Aside from that, there is insufficient evidence to otherwise show the tenancy was completely devalued by other Landlord actions that would constitute breaches of the agreement or the *Act*.

I find as fact that the Tenant paid a reduced amount of rent for December. This was agreed to by the Landlord, to the best degree possible via text messaging. I eliminate compensation for one month's rent to the Tenant for December for this reason: there was already reimbursement to them in the form of reduced rent for that month of

December. Further, a full amount of monthly rent would equate to the complete inability to use the property which was not the case here: though dealing with a rather severe imposition, the Tenant was not fully prevented from complete use of the rental unit.

The Tenant did not present evidence that they paid the full amount of rent for January, and I conclude from the evidence available here that they did not. Consequently, I find the reduced amount of rent carried through that month. I eliminate a full amount of January rent from consideration for this reason based on my finding from the available evidence here. Additionally, the Tenant was not deprived of complete use of the rental unit in January.

For February, the Tenant presented they did not pay rent for that month. The Tenant presented no agreement from the Landlord for this, and there is no authority under the *Act* for the Tenant to reduce rent unilaterally. I find this is not a claim for *rent reduction*; rather, this piece of the Tenant's claim is for compensation that is a monetary award to them. With the purpose of compensation being to put the person who suffered damage or loss in the same position as if the damage or loss had not occurred, I find compensation in this scenario is not due, because the Tenant did not pay rent that *could be* recoverable. Without evidence they *did* pay full rent that should fairly be returned to them, I reject this portion of the Tenant's claim for compensation for this reason.

The Tenant also applied for a rent reduction. This is the amount of \$1,250, and on their Application, the Tenant provided "Loss of more than half the house – half seems reasonable." As above, I find the Tenant paid a reduced amount of rent for December and January, minus evidence to the contrary. There was no evidence of reduced access or space available to the Tenant for November, with the major flood event occurring on December 1.

The Tenant, on their own admission, did not pay rent for February. This was not negotiated or otherwise communicated to the Landlord, and this formed the basis for the Landlord attempting to end the tenancy. As of the hearing date, the tenancy had ended, and to grant this would be a retroactive rent reduction; as above, that would more effectively take the form of a monetary order. I find that is not applicable in this situation where the Tenant did not pay rent for that month. Though they stated they attempted to negotiate a suitable amount of rent for the final few days of the tenancy on a *per diem* arrangement with the Landlord, they did not present evidence of this. Instead, they stated they needed that money for their own move out from the rental unit, and they had to pay for their new living arrangements on February 1.



In sum, I dismiss the Tenant's claim for a rent reduction.

For the reasons above, I dismiss the Tenant's Application for compensation in its entirety. Because of this I find they are not entitled to reimbursement of the Application filing fee.

### Conclusion

I dismiss the Tenant's Application for compensation, and reduced rent, and the Application filing fee, without leave to reapply.

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

Dated: May 31, 2022

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Residential Tenancy Branch