



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** RP, OLC, MNDCT, RR, FFT, CNR-MT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46
- monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

As the parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As

both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

At the outset of the hearing, both parties confirmed that the tenancy had ended on March 31, 2022. Accordingly, the tenant's entire application was cancelled with the exception of the tenant's monetary claims.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to the rent reductions requested?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 16, 2021, and was to end on April 30, 2022. The tenant moved out on March 31, 2022. Monthly rent was set at \$2,200.00, payable on the first of the month. The landlord had collected a security and pet damage deposit in the amounts of \$1,100.00 each deposit, which the landlord still holds.

The tenant is requesting the following monetary orders and rent reductions:

<b>Item</b>	<b>Amount</b>
Mould Report & Testing	\$425.00
Cleaning after leak	150.00
50% Rent Reduction for Loss of Quiet Enjoyment September 2021-October 2021	1,100.00
40% Rent Reduction for Loss in value of tenancy November 2021-February 2022	3,520.00
Filing fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$5,295.00</b>

The tenant testified that the landlord did not inspect the rental unit with the tenant at the beginning of the tenancy. The tenant testified that the tenant had to perform the inspection themselves, and then fill in a report. The tenant submitted a copy of the move-in inspection report that was completed, and which noted several issues at the beginning of the tenancy that was communicated to the landlord. The tenant submitted copies of the emails sent to the landlord including an email dated April 21, 2021 with a list of issues that needed addressing such as the bathroom fan not going off, issues with the faucets in the tub (spout and handle) being very loose, and the switch stuck in the upright position, and a slow drain. The tenant received a response on the same date by email from the landlord inquiring about availability so the landlord's father could go by to do an inspection and repairs.

The tenant testified that the tenant's father attended on April 23 and 24, 2021 to perform repairs. The tenant testified that the bathroom had multiple issues. The tenant believes that the repair done by the landlord's father was not properly done, which caused leak on September 27, 2021, and contributed to the growth of mould in the bathroom.

The tenant testified that due to the leak, there was substantial mould and humidity in the rental unit. The tenant testified that mould was visible after the baseboard was removed from behind the toilet. The tenant paid for mould testing which determined that there was a high level of *Stachybotrys/Memnoniella* in the rental unit. The tenant provided a copy of the report dated January 11, 2022. The tenant testified that the landlord had agreed to pay the utility bills for October 2021, but not pay for the mould testing or grant any rent reductions. The tenant requests reimbursement for the cost of the testing.

The tenant testified that there was a dehumidifier in the rental unit for two weeks, which was loud, and used a lot of electricity. The tenant was working from home, and experienced a significant disruption because of the repairs and remediation.

The tenant testified that workers were coming and going, and had to pay for professional cleaning due to the mess. The tenant was concerned that the workers were not wearing masks, and the tenant had to request that they do so as the tenant is the sole caretaker of her parents who were at risk. The tenant requests reimbursement of the cleaning costs paid.

In addition to the reimbursement for the costs of cleaning and mould testing, the tenant is requesting the above rent reductions to reflect the reduction in the level of enjoyment of the rental unit.

The landlord disputes the tenant's claims, and denies that the leak and subsequent mould was caused by the landlord. The landlord argued that the restoration company was not a plumber, and did not have the expertise to determine the cause of the leak. The landlord expressed frustration that the restoration company, which was hired by the strata, had attempted to conclude that the cause was the tub spout.

The landlord hired and paid for a plumber who attended on November 30, 2021 to perform an inspection,. The landlord submitted a copy of the invoice which noted that "potentially water had come down from the unit above", and that "the drywall and surrounding areas around the tub seem to have zero water damage or sign of water being there".

The landlord testified that they had no control over the companies dispatched by strata, and that includes the behaviour of the contractors who attend the suite. The landlord testified that their attendance was coordinated with the tenant, and not the landlord. The landlord testified that the repairs were complicated due to the involvement with strata and insurance, and that they were wrongly denied by their insurer after the restoration company had determined that the leak was caused by faulty material or workmanship, and that this determination was done without a proper investigation. The landlord testified that they had attempted to deal with the issues to the best of their ability and in a timely manner, and that there could have been other factors that contributed to the leak and mould that is beyond the landlord's responsibility such a leak originating from another unit or inside the walls.

The landlord submitted a report from a leak and mould investigation performed on March 9, 2022. The landlord stated that the report had pointed out other possible causes of water damage and mould such as the improper use of a shower curtain, and water runoff onto the floor. The conclusion of the investigation was that "it is very clear that the water damage is from the incorrect use of the shower". The bathroom was also tested for mould and humidity. The report states that the humidity in the bathroom was 77% relative humidity, and that the "high humidity will contribute to the growth of mold as moisture is the main contributor to mold growth". The report also noted that the mould spores found were very common mould spores, and that "the species of molds identified are in very low concentration and rarely cause infections in humans".

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

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

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

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claims on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement” due to the landlord’s contravention of the *Act*.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**Landlord and tenant obligations to repair and maintain**

**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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony of both parties, and while it was undisputed that a leak had taken place that affected the tenant's rental unit, both parties provided contrasting accounts about the cause of the leak and whether the landlord had fulfilled their obligations as required by section 32 of the *Act* as stated above.

As noted above, the burden is on the applicant to support their claims. While the tenant felt that the leak was caused by a faulty repair by the landlord's father, the landlord denies that this was the actual cause of the leak and resulting damage. The landlord argued that the restoration company dispatched by the strata and the tenants did not have the expertise to do a proper investigation and determine the cause of the leak. The landlord testified that the restoration company had simply concluded that the landlord was responsible for the leak, which affected the landlord's claim with their insurer. The landlord hired their own plumber who determined that the possible cause of the leak could have been from the unit above. The landlord also paid for another inspection in March 2022 which concluded that the leak and moisture issues could have been caused by the tenant.

In light of the evidence before me, I am not satisfied that the tenant had sufficiently supported that the landlord had contravened the *Act*, or had intentionally or negligently caused the leak in the rental unit. If fact, I find that the landlord had acted in a timely manner by performing repairs as requested, and by parties to investigate the issues in the rental unit.

Section 33 of the *Act* states the following in regards to emergency repairs:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system...
  - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, a “major leak” may be considered emergency repairs. Although the tenant did have a leak in their rental unit, I find that the appropriate parties were dispatched to deal with the matter, and perform repairs. I do not find that the mould testing qualified as an emergency repair, nor am I satisfied that the testing was required due to the landlord’s contravention of the *Act* or tenancy agreement. Although the landlord does have a duty to maintain and repair the rental unit in order to ensure that health and safety standards are met, I am not satisfied that the evidence provided sufficiently supports that the tenant’s health was at risk. Accordingly, I dismiss the tenant’s application for reimbursement of the mould testing without leave to reapply.

I have also considered the tenant’s application to recover the cost of cleaning. Although I sympathize with the tenant, and the inconvenience and discomfort that accompanies repairs and remediation work, I do not find that this claim is the result of the landlord’s non-compliance. I dismiss the tenant’s claim for cleaning without leave to reapply.

I will not consider the tenant’s claims for rent reductions. The tenant requested a reduction in rent of 50% for September 2021 and October 2021 related to the loss of quiet enjoyment of their rental unit, and a 40% rent reduction for the months Of November 2021 to February 2022. As noted above, past rent may be reduced if it is determined that there has been a reduction in the value of the tenancy agreement due to the landlord’s contravention of the *Act*, regulations or tenancy agreement. Although the tenant believes that the leak and mould was caused by a faulty repair, the landlord provided contrasting evidence which suggests alternate explanations for the issues referenced in this application. As noted above, the tenant bears the burden of proof of establishing and supporting their claims. I am not satisfied that the tenant has provided sufficient evidence to support that the had suffered a loss in the value of the tenancy



due to the landlord's actions or contravention of the Act, regulation, or tenancy agreement. Accordingly, the tenant's applications for the rent reductions are also dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

### **Conclusion**

The tenant's entire application is dismissed without leave to reapply.

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: June 09, 2022

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Residential Tenancy Branch