



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      RP RR FFT

### Introduction

The tenant seeks an order to reduce or recover rent under section 65(1)(f) of the *Residential Tenancy Act* ("Act"), an order for repairs under sections 32 and 65 of the Act, and an order to recover the cost of the filing fee under section 72 of the Act.

Attending the dispute resolution hearing were the tenant, the landlord, and the building owner (on behalf of the landlord). The parties were affirmed, no service issues were raised, and Rule 6.11 of *Rules of Procedure* was explained.

### Issues

1. Is the tenant entitled to an order for reduction of rent?
2. Is the tenant entitled to an order for repairs?
3. Is the tenant entitled to recover the cost of the application filing fee?

### 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 issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in 2016 and the tenant pays \$883.05 monthly rent. The tenant seeks \$393.10 in compensation for an 18-month period for each month that she had a leak in her front window. In addition, she would like the landlord to repair a leak (not presently occurring, but during rainfall) that is coming in from the exterior of the building. Possibly due to siding issues. While the landlord did a "great job on the windowsill" (a previous source of a leak), and she's happy with that, she remains concerned about a leak from elsewhere.

The landlord opposes the claim for compensation and argued that there is no quantification as to how the amount was calculated. The amount is, they submit, arbitrary and they dispute it.

Regarding the repairs, the landlord testified that as far as they are aware the requested repairs have been completed. "The matter's resolved," he noted. They also replaced a stove, which is not an issue in this dispute. However, the landlord's building owner continued, if there is still a potential water leak, they will not be able to assess the source and make any repairs until it rains again. "We won't know until we know," he added. Certainly, he noted, any repairs would be undertaken promptly as it is also not in the landlord's interests to have a water leak in the building.

### 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.

#### **1. Claim for Reduced Rent**

Section 65(1)(f) of the Act states that an order may be made "that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement".

While the tenant claims 3% (in compensation) of the value of the rent over a period of 18 months, I am not persuaded that there would have been a leak in each month during that period. The parties' own testimony supports a more reasonable finding that a leak would have only occurred during the rainy months. Moreover, I am persuaded by the landlord's argument that the 3% is rather arbitrary, and not based on any meaningful quantification. However, what is more decisive is that the tenant has not proven, on a balance of probabilities, that the leak, when it occurred, made the rental unit unsafe, unhealthy, or otherwise unsuitable for occupation.

As such, taking into consideration all the oral and documentary evidence before me, it is my finding that the tenant has not proven that the leak (whenever it occurred) reduced the value of the tenancy agreement. For this reason, I respectfully decline to award the tenant any compensation for reduced rent. This aspect of the tenant's application must be dismissed without leave to reapply.

## **2. Application for Repair Order**

Based on the evidence before me, the previous leak around the window appears to have been repaired. There remains the possibility of a future leak, however, the tenant was unable to provide persuasive evidence that a future leak may occur. In other words, if there is a potential leak, this will not be realized until it starts raining again.

Given the above, I decline to make an order under section 62(3) of the Act requiring the landlord to make repairs for a potential and as-yet-unproven water leak. This aspect of the tenant's application must therefore also be dismissed.

That having been said, the building owner strikes me as a professional property manager who, based on his previous conduct in making repairs, would promptly address any future water leaks and have them repaired forthwith. The parties are encouraged to communicate with each other if any future leaks occurred. And, if this is not already the case, that the landlord provides to the tenant a phone number at which they may be reached in the event of a future water leak. A water leak should be dealt with quickly.

The tenant's application to recover the cost of the application filing fee is dismissed.

### Conclusion

**The application is hereby dismissed, without leave to reapply.**

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

Dated: August 9, 2022

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Residential Tenancy Branch