



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for monetary compensation pursuant to s. 67; and
- return of their filing fee pursuant to s. 72.

D.L. and J.H. appeared as the Tenants. J.L. appeared as the Tenants’ witness. Z.Z. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants advised that the Notice of Dispute Resolution and their evidence was served on the Landlord via registered mail sent on March 3, 2022. The Tenants provide a copy of a tracking receipt as proof of service. The Landlord’s agent was uncertain on whether the Tenants application materials were received, though says that the Landlord probably received it. I confirmed the Landlord’s mailing address as listed in the tracking receipt with the Landlord’s agent. The agent confirmed the address.

I have reviewed the tracking information provided by the Tenant, which indicates the registered mail was delivered on March 8, 2022. I find that the Tenants application materials were served by way of registered mail sent on March 3, 2022 in accordance with s. 89 of the *Act*. Pursuant to the tracking information, I find that the Landlord received the Notice of Dispute Resolution and evidence on March 8, 2022.

The Landlord’s agent confirmed that no evidence was provided in response.

### Issues to be Decided

- 1) Are the Tenants entitled to monetary compensation?
- 2) Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on November 29, 2016.
- Rent of \$752.00 is due on the first day of each month.
- The Tenants paid a security deposit of \$387.50 to the Landlord.

No copy of the tenancy agreement was put into evidence.

I am advised by the parties that there was a significant water leak in the rental unit. The Tenant D.L. testified that she was at home on December 28, 2021 when she heard a loud bang from a pipe and hot water and steam began to enter the rental unit. D.L. further testified to having called the building manager on several occasions with respect to the leak but had to wait for an hour for the manager to attend the rental unit. D.L. submitted that the building manager was slow to respond. D.L. says that the leak was so significant that the water began to enter the rental unit below theirs and that five or six other people were in their rental unit trying to assist in shutting off the water supply.

Eventually a plumber made it to the building and the leak was stopped. I am told by D.L. that the plumber recommended that the Tenants not occupy the rental unit given the extent of the water leak. D.L. testified that she went to stay with her daughter, J.L., on the evening of December 28<sup>th</sup>. The Tenants evidence indicates they stayed with J.L. for five days.

D.L. testified that she was asked by the building's manager to attend the rental unit on the 29<sup>th</sup> and was told by Z.Z. to move her furniture out due to the water and risk of mould. I am advised that the Landlord provided a suite that was vacant within the residential property to the Tenants to move their belongings. The Tenants indicate they

were no able to move all their belongings there as the suite below theirs which was affected were also given access to the suite.

I am advised by the Tenant D.L. that she obtained the services of a mover to assist in getting their belongings from and to the rental unit due to the water leak at a cost of \$200.00. The Tenants evidence includes a handwritten note indicating that the D.L. paying an individual \$200.00 to assist her in moving her furniture.

D.L. further testified that it took several weeks for the rental unit to be repaired, during which period it could not be occupied. The Landlord's agent confirmed this and indicated that the rental unit had asbestos, which extended the repair window due to the need to for remediation. The parties confirmed that the Tenants were able to return to the rental unit on February 6, 2022. The Tenants indicate that they paid rent in full throughout the repair window.

The Tenants seek the return of their rent payments over the period in which they were unable to occupy the rental unit. The Tenants provide a monetary order worksheet in which they seek the return \$977.54 for rent paid over the 39-day period from December 28, 2021 to February 6, 2022. The Tenants further testified that they paid electricity for the rental unit over that same period, which they seek the return of \$44.00 as they did not occupy the space and the electricity was used by the remediation contractor.

Finally, the Tenants seek compensation for food lost in the fridge as they no longer had access to their kitchen as well as the cost of purchasing food while they temporarily resided with J.L.. The Tenants estimate this amount to be \$435.00 and provide copies of bank statements as proof of the expense.

The Landlord's agent largely did not dispute the disruption, or the relevant points raised by the Tenants with respect to the water leak. It was argued, however, that the Tenants were given access to another spare suite within the residential property to use while their rental unit was being repaired. The Landlord's agent says that the Landlord was under no obligation to provide the alternate accommodation but did so due to the circumstances.

The Tenants both testified that they were told by the building manager that they could only sleep within the rental unit. However, D.L. also stated that she was ill during the period and that remained in her bed in the spare rental unit throughout the day. J.H. also advised that he came back to the spare unit and cooked in there. The Tenants

have provided written submissions that some of their belongings were in the rental unit such that the alternate arrangements were less than ideal when it came to cooking and living.

I am further advised by the Tenants that the space was also being used by the other tenants affected by the water leak. The Landlord's agent disputed that the tenants from the other rental unit affected by the leak made use of the spare suite while the Tenants occupied it during the repair window. However, the agent confirmed that the lower unit tenants did store some of their belongings in the spare suite.

J.L. was called upon to provide evidence and testified that her mother was told only to sleep at the suite provided by the Tenant. J.L. further discussed that the building manager was not present such that her mother, who was ill at the time, would let contractors into the building. The Tenants submitted that the building manager was neglectful in her duties and that these fell on them.

### Analysis

The Tenants seek monetary compensation following a water leak in their rental unit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Under the present circumstances, there is no dispute that there was a significant water leak within the rental unit on December 28, 2021. The leak and resulting damage took several weeks to complete, with the Tenants taking back possession of the rental unit on February 6, 2022.

Section 32 of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant.

I have little difficulty in finding that the water leak and the loss of use of the rental unit for 39-days constituted a breach of s. 32 of the *Act*. I would also note that it constitutes a breach of the Tenants' right to quiet enjoyment under s. 28 of the *Act*, which provides that the Tenants have right to the exclusive possession of the rental unit.

The primary issue in the Tenants claim is whether they suffered loss or damage from the breach of ss. 28 and 32 of the *Act*. There can be no doubt that the leak and repair adversely and significantly affected their right to the rental unit under the tenancy agreement. Indeed, the disruption entirely deprived them of their right to occupy their rental unit for a period of 39 days. However, the Tenants were given access to a spare suite by the Landlord, a point that was not disputed by the parties. There was some discrepancy on what that entailed, with the Tenants indicating they were told only stay within the spare suite overnight. The Tenants submissions were, however, contradictory as they also indicate that they stayed there during the day and cooked within the rental unit. It appears based on the evidence that the Tenants were out of the residential property with J.L. for five days only. Counterposing this is that the spare suite was shared, to an extent, with the other the tenants below the Tenants' rental unit who were also affected by the leak, who made use of the space to store some of their belongings.

The Tenants couched their monetary claim as one of rent reduction for the rent paid to the Landlord over the 39-day period. Though I understand the basis for them to do so, I find that such a method of quantification is more attuned to an application for rent reduction under s. 65 of the *Act*. The Tenants lost the use of their rental unit but were given access to another such that the loss service or utility was replaced. They were not out of pocket with respect to finding alternate accommodations. In this instance, I find that the appropriate course would be characterize the Tenants' loss as one arising from a breach of their right to quiet enjoyment giving rise to nominal damages. I indicate damages are nominal because it is difficult to precisely quantify the loss by reference to money paid as evidenced in receipts or invoices.

As mentioned, the Tenants did have use of alternate accommodation provided by the Landlord during the disruption. This was far from ideal and lacked the comforts of home

and the space was shared with neighbouring tenants to a certain extent. To be certain, the disruption to their quiet enjoyment was significant as the Tenants were in limbo for a period of several weeks. Further, the Landlord's building manager appears to have been largely absent from the building to attend to the repairs, and the Tenants were left in a situation where they were letting tradespeople to enter. That is clearly not their responsibility and further infringed on their right quiet enjoyment. Considering the circumstances, I find that the appropriate compensation under is \$900.00 for the breach of s. 28 of the *Act*.

The Tenants seek \$200.00 in moving expense they paid to an individual. I am not provided with a receipt, only a handwritten note that this amount had been paid to some individual. I have difficulty accepting evidence of this nature as proof of loss as there is no corresponding evidence demonstrating the amount was actually paid. This is the Tenants' claim. They bear the burden of proving it, which includes quantification of their claim. I find that there is insufficient evidence to demonstrate this expense was incurred and I am unable to permit this portion of the claim.

The Tenants also seek utility costs for the rental unit while they were not occupying it. However, the Tenants provide no utility invoice to support their quantification of \$44.00 for the utility expense. I have reviewed the account details provided by the Tenants. The electricity expense is not in there either. I find that the Tenants have failed to properly establish this portion of their claim as there is no utility invoice. As such, I do not allow this portion.

The Tenants finally seek \$435.00 for food expense during the disruption. This portion too has quantification issues. Though I accept that perhaps the spoiled food may conceivably be a consequence of the water leak, the Tenants seek the cost for all their food expenses during the disruption. Surely had the leak not occurred, the Tenants would have had need to feed themselves. In other words, there is a lack of causal connection between this portion of the claim with the water leak. To seek all their food expense is not, in my view, appropriate. Further, I am unable to determine or quantify the loss of food from the fridge, even if I were to find the Landlord responsible. The Tenants are also under an obligation to mitigate their damages, which in this circumstance would mean clearing out their fridge of perishables. All this is to say that I find that the Tenants have failed adequately quantify this portion of their claim.

I find that the Tenants are entitled to a total monetary award totalling \$900.00. All other portions of their monetary claim are dismissed without leave to reapply.

Conclusion

The Tenants are entitled to \$900.00 in monetary compensation.

The Tenants were partially successful in their application. I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants \$100.00 filing fee.

Pursuant to s. 67 of the *Act*, I order that the Landlord pay \$1,000.00 to the Tenants (\$900.00 + \$100.00). Pursuant to s. 72(2) of the *Act*, I direct that the Tenants withhold \$500.00 from rent owed to the Landlord on **two occasions** in full satisfaction of their monetary claim.

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: October 21, 2022

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Residential Tenancy Branch