



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, ERP, RP, RR, FF*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for the loss of use of a portion of the rental unit due to a water leak, for water damage to her rug and laptop and for the recovery of the filing fee. The tenant also applied for an order directing the landlord to carry out repairs.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, the tenant informed me that the water leak had been repaired and that she was moving out by November 30, 2016. Therefore since the tenancy is ending, the tenant's application for an order directing the landlord to carry out repairs is moot and accordingly dismissed.

### **Issues to be decided**

Was the landlord negligent in responding to the tenant's requests for repair and restoration following the water leak? Did the tenant suffer a loss of personal property? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on May 01, 2015 for a fixed term of one year. At the end of the term the tenancy continued on a month to month basis. The current rent is \$1,013.56 due on the first of each month. The landlord's agent stated that the current management company took over the management of the rental property on September 15, 2015.

The tenant testified that on September 19, 2015, she reported a leak in her living room followed by two more complaints of leaks before the landlord attended to the problem and had it fixed in November 2015.

The tenant testified that the next leak happened on May 30, 2016 and the tenant verbally notified the landlord of the problem. The problem was fixed on June 30, 2016. The tenant stated that the leak re occurred on July 09 and September 05, 2016. The tenant testified that every time there was a leak, her rug would get wet. The tenant agreed that the landlord had the rug professionally cleaned three times.

The tenant stated that after the July 09 leak, the landlord had sent her a letter saying that the leak would be permanently fixed "in the near future". Therefore by September 05, 2016, the tenant assumed that the leak had been fixed and removed the plastic covers that she had placed on her furniture for protection. The tenant stated that on September 05, 2016, the leak started again and her laptop got wet and stopped working.

The tenant filed a copy of an estimate to fix the laptop in the amount of \$1,338.40 and stated that she had purchased the lap top in Europe in 2013. The tenant also stated that the rug was a gift to her but would cost \$200.00 to replace. The tenant agreed that she had not yet replaced the rug or repaired the laptop.

The tenant has also applied for a reduction in rent for the times that she was unable to use a portion of her living room, which was approximately 140 days while the furniture was covered with plastic. The tenant filed photographs of the plastic covered furniture and puddles of water on the laminate flooring. A photograph taken on September 02, 2016 depicts a sofa covered with plastic and a rug half covered with plastic.

The landlord stated that the tenant's complaints were attended to immediately upon receipt and that some of the repair work was done on the roof and entry into the rental unit was not necessary. The landlord admitted that the first complaints were not acted upon immediately because they occurred a few days after the landlord took over the management of the building. The landlord stated that the leak was confined to a small area of the living room and was not significant because it did not cause any damage to the laminate flooring.

The landlord disagreed with the tenant's claim to replace the rug and repair the laptop, but offered \$400.00 towards the loss of the value of the tenancy, due to the leak. The tenant rejected the offer.

The tenant is claiming compensation in the amount of \$3,638.40 as follows:

1.	Cost to replace rug	\$200.00
2.	Repair laptop	\$1,338.40
3.	Rent reduction for loss of use of living room	\$2,000.00
4.	Filing fee	\$100.00
	<b>Total</b>	<b>\$3,638.40</b>

The tenant stated she did not make a claim through her insurance because she would have to pay a deductible of \$1,000.00.

### **Analysis**

Based on the documentary evidence and sworn testimony of both parties, I find that a water leak did take place in the rental unit. I further find that except for the time immediately after the landlord purchased the property, the landlord took action to carry out repairs in a timely manner and assisted the tenant with cleaning the rug.

Where a tenant is making a monetary claim for damages the tenant has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the person suffering the loss must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to a leak from the ceiling must remove these possessions as soon as practicable in order to avoid damage. Failure to take the appropriate steps to minimize the loss will affect a monetary claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the leak occurred and the quantity and frequency of the leak. The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

During the hearing the tenant stated that the leak was never fully repaired during the tenancy. She also stated that the ceiling was not restored and as of the date of the hearing, still has plaster peeling off.

The photograph taken on September 02, 2016 depicts the sofa and rug covered with plastic. Despite having knowledge that the leak was ongoing and having protected the furniture and rug, the tenant chose to leave a valuable item like her laptop sitting somewhere in the vicinity of the leak. Based on the above, I find that the tenant did not take reasonable steps to mitigate loss and was negligent by leaving her laptop in an area that was prone to leaks.

The landlord had the tenant's rug professionally cleaned on three different occasions. The tenant agreed that she has not repaired the laptop or replaced the rug.

Based on the above, I find that the tenant has not proven her claim for the cost to replace the rug and to repair her laptop. Accordingly the tenant's monetary claim for these items is dismissed.

Both parties described the area of the leak as a portion of the living room. The tenant is claiming the loss of the use of the living room due to the leak, for a period of 140 days. The tenant based her claim on the number of days that the furniture was covered with plastic for protection.

Both parties agreed that the remainder of the rental unit was livable and that the tenant continued to occupy the rental unit on the days that the leaks occurred. In addition, based on the photographs and the testimony of both parties, I find that the leak was not serious enough to flood the rental unit as evidenced in the fact that no damage was caused to the laminate flooring that took the brunt of the leak. However, I do find that the tenant was inconvenienced for this period of time which resulted in a loss of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the water leaks and the subsequent restoration work. Therefore I find that the tenant is entitled to nominal damages.

Since the tenant continued to occupy the rental unit during the 7 instances that the ceiling leaked and since I have determined that the leak was not serious enough to cause damage to the flooring, I find it appropriate to award the tenant \$700.00 as a minimal award for the inconvenience suffered during the times the leak occurred.

Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$800.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$800.00**

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: November 10, 2016

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Residential Tenancy Branch