



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RR, MNDCT, PSF, OLC, RP

### Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”) for a rent reduction for repairs, for a monetary order for damages or compensation under the Act, for an order for the Landlord to provide services or facilities required by the tenancy agreement or law, for an order that the Landlord comply with the Act, and for an order that the Landlord make regular repairs to the rental property. The matter was set for a conference call.

One of the Tenants and the Landlord attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

During these proceedings, the Landlord and Tenant agreed that this tenancy ended in July 2021; neither party provided testimony as to the exact day the Tenant moved out; however, both parties agreed to the end of tenancy date of July 31, 2021.

I have reviewed the Tenant's application, and I note that they have applied for a rent reduction, for an order for the Landlord to provide services or facilities required by the tenancy agreement or law, for an order that the Landlord comply with the *Act*, and for an order that the Landlord make regular repairs to the rental property.

As these issues relate to an ongoing tenancy, and this tenancy ended before the date of these proceedings, I must dismiss the Tenants' claims for a rent reduction, for an order for the Landlord to provide services or facilities required by the tenancy agreement or law, for an order that the Landlord comply with the *Act*, and for an order that the Landlord make regular repairs to the rental property.

I will proceed with this hearing on the Tenants' remaining claim for a monetary order for damages or compensation under the *Act*.

#### Issue to be Decided

- Are the Tenants entitled to a monetary order for damages or compensation under the *Act*?

#### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began on September 20, 2018, as a month-to-month tenancy. Rent in the amount of \$1,400.00 was to be paid by the first day of each month and the Landlord had been given a \$700.00 security deposit at the outset of the tenancy. Both parties agreed that the Tenants moved out of the rental unit as of July 2021.

The Tenant testified that they discovered a water leak in the rental unit in the spring of 2019 but that they figured it was a small leak and did not report it to the Landlord. The Tenant testified that on January 8, 2021, they discovered a major water leak in the rental unit and reported the leak to the Landlord by text message that same day.

The Tenant testified that the Landlord's response to their request for repairs was to come over to the rental unit and yell at them and refuse to make the requested repairs. The Tenant testified that after consulting the Residential Tenancy Branches website, they wrote a letter to the Landlord requesting that the roof repair, but that the Landlord did not make the requested repairs until March 2021. The Tenant submitted nine pictures, one letter and one text message into documentary evidence.

The Tenant testified that they had to be out of the rental unit for January and February 2021 due to the water leak and mould and that they should be refunded their rent for this period.

The Landlord testified that they were notified of the leak on March 3, 2021, that they had the water leak repaired on March 9, 2021 and the water-damaged areas of the property were repaired by March 16, 2021. The Landlord testified that they made the repairs as soon as possible after being notified of the problem and that they should not have to refund the Tenants' rent.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants are claiming for compensation in the amount of \$2,900.00 to recover their rent paid for the months of January and February 2021. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if the Tenants are entitled to the recovery of their rent for the requested period, I must first determine if there had been a breach of the *Act* by the Landlord. The Tenants have claimed that the Landlord breached section 32 of the *Act* when they did not make the necessary repairs to the rental property after being notified of the required repairs. Section 32 states the following:

*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 accept the agreed-upon testimony for both parties that there was a water leak in the rental unit and that the leak and water damaged areas were repaired by March 16, 2021.

However, during these proceedings, I find that the parties to this dispute offered conflicting verbal testimony regarding when the Landlord was informed of the water leak

on the rental property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim, in this case, that is the Tenants.

After reviewing the documentary evidence submitted into these proceedings by the Tenants, I find that the Tenants have not provided any documentary evidence to prove the date on which they claimed they notified the Landlord of the water leak on the rental property. Overall, I find that the Tenants' have not provided sufficient evidence to prove their version of events over that of the Landlord.

In the absence of sufficient or compelling evidence to prove that the Landlord breached the *Act* during this tenancy, I find that the Tenants have not met the onus to establish their claim and that I must dismiss their claim for the recovery of their rent for January and February 2021 in its entirety.

### Conclusion

The Tenants 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: October 7, 2021

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Residential Tenancy Branch