

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 30, 2009. The Landlord is deemed to be served the hearing documents on August 4, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The Landlord confirmed receipt of the hearing documents.

The Landlord and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed facts are that the fixed term tenancy began on May 1, 2008 and ended on the set expiry date of April 30, 2009. The monthly rent was payable on the first of each month in the amount of \$2,100.00. A security deposit of \$1,050.00 was paid on April 23, 2008 with \$942.39 being refunded to the Tenants at the end of the tenancy.

The Tenants are claiming \$2,400.00 (\$200.00 per month of the 12 month lease period) as they were not able to use two of the three showers. The female Tenant testified that they rented this home because of the three full bathrooms and having to be restricted to only one shower for a family of six was unacceptable.

The Tenants argued that they were advised at the onset of the tenancy that there was a flood in the ensuite shower causing damage to the ensuite shower and the ceiling of the lower bathroom rendering the lower shower inoperable. The Tenant testified that the Landlord came to a verbal agreement with the Tenants offering to have the repairs completed within the first few weeks of the tenancy.

The female Tenant testified that she called the Landlord about six times during May and June 2008 and that the Landlord finally referred the Tenant to speak directly with the building contractor. The Tenant stated that she called the building contractor in June 2008 and was told by the contractor that her repairs were a big job and the contractor was too busy to fit the repairs into his schedule at that time. The female Tenant testified that she did not make an effort to contact either the contractor or the Landlord again and felt that the onus was on the Landlord to see that the repairs were completed.

The Landlord testified and confirmed that they had a verbal agreement with the Tenants to have the repairs completed however the Landlord had no indication that the repairs were not done until the Tenants moved out of the rental unit. The Landlord confirmed that he gave the female Tenant the contractor's telephone number and requested that she arrange with the contractor to gain access to the rental unit to complete the repairs. The Landlord argued that the repairs should have been completed and he thought the issue had been dealt with.

### Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage

4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenants' right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced.

Based on the evidence and testimony before me I find that that there was a verbal agreement between the Landlord and Tenants that repairs would be conducted on the two bathrooms in question. I also find that there was a verbal agreement whereby the female Tenant would arrange the repair date and access to the rental unit directly with the contractor.

Based on the aforementioned I find that the Tenants have proven the test for damage and loss for the period of May and June 2008, as listed above, and I approve their claim in the amount of \$200.00 (\$100.00 per month for the loss of use of 2 showers).

For the remaining ten month period of July 2008 to April 30, 2009 I find the Tenants failed to do what was reasonable to mitigate their losses. If the use of the additional two showers was a necessity, as described by the female Tenant, a reasonable person would not have ignored the issue for the remaining ten months of the tenancy. I find that the Tenants have failed to prove the test for damage or loss, as listed above and I dismiss the remainder of their claim, without leave to reapply.

As the Tenants were partially successful with their claim I award them the recovery of the filing fee of \$50.00.

**Monetary Order** – I find that the Tenants are entitled to a monetary claim and the Tenants are entitled to recover the filing fee from the Landlord as follows:

Loss for May and June 2008	\$200.00
Filing fee	<u>50.00</u>

<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$250.00</b>
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Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$250.00. The order must be served on the respondent Landlord and is enforceable through the Provincial as an order of that Court.

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 17, 2009.

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Dispute Resolution Officer