



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes            MNDC, ERP, RP, RR, FF

### Introduction

This matter dealt with an application by the tenants for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee for this proceeding. As the tenants have since moved from the rental property they have withdrawn their application for an Order for the landlord to make emergency repairs and other repairs to the unit, site or property and to reduce the rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were given in person to the landlord's agent. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties were provided the opportunity to present evidence and make submissions. The hearing started on November 25, 2009 and was reconvened to today's date to allow the Applicants time to provide additional evidence to the landlords and myself.

On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### Issues(s) to be Decided

- Are the tenants entitled to compensation for damage or loss under the *Act* and if so how much?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?



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## Background and Evidence

This tenancy started on August 01, 2009. The tenants had a month to month agreement with the landlords and paid rent of \$1,200.00 per month which was due on the last day of each month. The tenants paid a security deposit of \$600.00 on July 16, 2009. Since the first hearing took place the tenants have moved from the rental property on December 01, 2009.

The tenants claim the landlord has not made emergency repairs to the roof of the garage which progressively got worse and caused water damage to the garage and the tenants belongings stored there. The notified the landlords about a small leak in the garage roof on August 31, 2009. The tenants were worried at that time that if there was heavy rainfall or snow the hole would get worse. The tenant's testify that the landlords did not take immediate action and they had to remind them again of the hole in the roof at the end of September, 2009. The landlords did send a repair man to look at the hole but he was unable to make the repair as it was beyond his skill level and a professional would have to be called in. The landlords did not take action again to make the required repairs until after the tenants had moved from the property. The landlord stated during the hearing that the repairs took longer than expected due to the weather conditions in the area.

The tenants moved their belongings away from the hole to protect them from water damage. On October 30, 2009 the tenants entered the garage and found it was covered in water and water was pouring through new larger hole, a light fixture as well as the pre-existing hole. The tenants found that some of their personal belongings which had been moved from the pre-existing hole had now been damaged by the water coming through the new holes. The tenants claim the following items were damaged by water: a Kirby upright vacuum cleaner with a replacement value of \$1936.86; a pool cue with a replacement value of \$119.00 plus \$21.00 shipping costs; a folding couch with a replacement value of \$399.00; child's new Halloween costume with a replacement value of \$50.00; women's air-walk shoes with a replacement value of \$45.00; a box of baby clothes with a replacement value of \$500.00; two boxes of sentimental items i.e. letters, pictures and yearbooks.



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The landlords testify that they instructed the property manager to take action to get the roof repaired and several attempts were made to have the repair completed. The landlords testifies that she has not neglected this issue and offered the tenants a rent reduction of \$150.00 per month to cover storage costs elsewhere; however the tenants declined this offer.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant tenants 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 tenants, bears the burden of proof and the evidence furnished by the Applicant tenants 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.



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The tenants have claimed for damage to their personal belongings namely a Kirby upright vacuum cleaner which is four years old and cost \$1936.86. a Pool cue which was been warped and was less than one month old at a cost of \$119.00 plus \$21.00 shipping costs; a folding couch which was one year old at a cost of \$399.00; a child's Halloween costume which was new at a cost of \$47.50; ladies air walk shoes which were new at a cost of \$45.00 and a box of baby clothes which were one year old at a cost of \$500.00.

I have considered all of the evidence and testimony and find that the landlord did attempt to make repairs to the roof however these repairs were not carried out in an expedient manner and no other preventative measures were taken by the landlord to prevent further damage or leaks to the garage. I do note however that the landlord did offer the tenants a rent reduction of \$150.00 to cover any storage costs if they choose to store their belongings elsewhere. I also note that the tenants took preventative action to move their belongings away from the first hole in the garage roof and could not have known at that time that the leak would spread and cause further damage to their belongings and as such did not take up the landlord's offer of a rent reduction.

The tenants have provided invoices and estimates for some of their belongings such as the Kirby vacuum cleaner, the pool cue and the couch, their photographic evidence also shows the original price tags on the Halloween costume. However, they have not provided any evidence to verify the cost of the air walk shoes or the baby clothes. I am not satisfied that all the baby clothes were ruined beyond normal cleaning as the photographic evidence of the box they were stored in only shows a small amount of water damage seeping at the bottom of the box.

With this in mind I find the tenants are entitled to a monetary award for damage to the vacuum cleaner. As this was four years old I have reduced the tenants claim of \$1936.86 by 20% for normal depreciation to an amount of \$1,549.48. The tenants are also entitled to their claim for the pool cue plus shipping costs at an amount of \$140.00. The tenants are also entitled to compensation for the folding couch. As this was approximately one year old I have reduced the tenants claim of \$399.00 by 10% to an amount of \$359.10. The tenants are also entitled to recover the costs for the Halloween costume at an amount of \$47.50.



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As mentioned above the tenants have the burden of proof to determine the actual value of the air walk shoes and the damage and actual value of the baby clothes. As the tenants have been unable to satisfy this burden of proof for these items this section of their claim is dismissed without leave to reapply.

The tenants are not seeking compensation for the box of sentimental items as they are unable to put a value on these items.

As the tenants have been largely successful with their amended application I find they are entitled to recover the \$50.00 filing fee from the landlords. A Monetary Order has been issued for the following amount:

Kirby vacuum cleaner	\$1,549.48
Pool Cue	\$140.00
Folding couch	\$359.10
Halloween costume	\$47.50
Filing fee	\$50.00
Total amount due to the tenants	<b>\$2,146.08</b>

## Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,146.08**. The order must be served on the respondent and is enforceable through the Provincial Court 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: January 07, 2010.

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Dispute Resolution Officer