



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNSD</u>	Keep All or Part of the Security Deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim.

Despite being properly served by registered mail, the tenant did not appear.

### Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order for damage to the unit, money owed or compensation for damage and loss under the Act for a total claim of \$3,840.72

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit. This determination is dependant upon answers to the following questions:

- a) that damage and loss occurred
- b) that the damage was caused by the tenant in violation of the Act

- c) a verification of the actual costs to repair the damage
- d) that the landlord fulfilled the obligation to do what ever is reasonable to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The tenancy began on September 22, 2009 and this was the first tenant to live in the unit since it was built. The landlord testified that immediately after the tenant had moved in, a leak in the bathroom occurred and water from the tenant's unit damaged the unit below. The landlord testified that an investigation resulted in the discovery that the water was leaking from under the tenant's sink. The landlord testified that the owner was charged by the strata for repairs to rectify damage to the unit below.

Submitted into evidence was an email to the tenant dated December 24, 2009 in which the landlord was requesting payment of \$3,840.00 and states, *"Please let me know when you will be paying this invoice or contesting it. If you will be contesting it please write a letter to me explaining what happened and why it is not your fault."*

The tenant sent a letter to the landlord stating that shortly after the tenant had moved in, the caretaker advised that there was a leak from the unit into the unit below and *"The sink closest to the door to enter the bathroom had apparently had a loose screw from the pipe below....I'm not sure how the water leaked to the unit below or how this was caused. I did not tamper or touch any of the plumbing when I moved in. I also did not check to see if all the plumbing was working correctly. This is not my job or responsibility.....I did not cause this leak and if the screw was loose before I moved in this was going to happen regardless if it was me or another tenant. I am not responsible for this."*

The landlord submitted a report by email from the developer's plumber dated January 26, 2010 in which three professionals made the following conclusion about the cause of

the water leak: *"When we arrived in the unit, Neil, Peter and myself entered the ensuite to look for the leak. We checked the shower as the homeowner said this was the only fixture they used it was not leaking I then looked under the bathroom sink to find it Stuffed with boxes, I started to take them out One at a time and noticed the more boxes I took out the wetter the boxes were the boxes were sitting against the stop and drain causing the leak and damage I have attached the picture from the leak, It clearly shows the drain for the balcony hose bib dripping", (shown as written).* The statement from the developer report concluded, that their company would *"not be held accountable for any part of this claim in any way"*

Submitted into evidence was a photograph that appeared to show mechanical parts including a flange and some kind of mechanism.

The tenant responded to the report by email on January 28, 2009 stating, *"I have read the email and disagree with the decision. The boxes were not shoved underneath the bathroom sink to cause a leak. They were stacked on top of each other neatly and not pushing against any drain lever.....How can the boxes be the cause of the leak?? It's the plumbing not my boxes. Since the plumbing has been repaired there hasn't been any leaks and the boxes are still underneath."*

The landlord contacted the tenant on January 29, 2010 by email advising that the next step was for the tenant to *"request a hearing before strata and prove your innocence."* The landlord testified that the tenant did not attend any subsequent strata meetings.

## **Analysis**

In regards to an applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, 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 order payment in such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant 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 bears the burden of proof and the evidence furnished by the Applicant 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 amount required to rectify the damage.
4. Proof that section 7(2) of the Act was followed by trying to minimize the loss.

I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain 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 to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Under the residential Tenancy Act, it is not up to the tenant to prove that the leak was *not* the tenant's fault. Under the Act, the maintenance and repairs of fixtures, such as plumbing are generally the landlord's responsibility. In addition, when it comes to a claim for damages, the claimant carries the burden of proof.

In this instance, I find that, the developer's report seemed to be implying that that the tenant's storage of boxes under the sink caused the leak from "*sitting against the stop and the drain*", but fails to explain exactly how this could possibly have resulted in a significant leak that allowed water egress to the extent that it damaged the unit below. I find that impeding the "stop" or the "drain" would not likely cause a significant leak and I find that the picture in evidence did not serve to establish what the problem was nor why the tenant should be held accountable. In order to meet element 2 of the test for damages, I find that it is up to the landlord to explain how the tenant's actions violated the Act and precisely how this violation of the Act caused the damage being claimed.

I find that the relationship between the owner of the unit strata council which is governed by the Strata Property Act, is not the same relationship as that between the owner of the property and the tenant, properly governed by the Residential Tenancy Act. I find that the fact that the tenant did not appear before the strata council to plead the case does not create a negative inference against the tenant under the Residential Tenancy Act, under which this hearing has been convened.

Given the above, I am not able to find that the landlord's claim meets all elements in the test for damages and I find that the landlord's application must be dismissed.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I hereby dismiss the landlord's application dismissed in its entirety without leave to reapply .

Given the above, the landlord is required to refund the security deposit in compliance with section 38 of the Act.

August 2010

Date of Decision

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Dispute Resolution Officer