



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes

MNDC

### Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord on.

The hearing was adjourned as the applicant had been hospitalized and required more time to prepare his evidence. At the reconvened hearing held in August, 2010 the hearing was also adjourned as the tenant has served the landlord at her old address and she did not reserve Notice of the hearing or the tenants' evidence. The hearing was reconvened to today's date.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation or damage or loss?



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## Background and Evidence

Both Parties agree that this tenancy started on June 01, 2007 and ended on March 11, 2008.

The tenant paid a monthly rent of \$750.00 for this basement unit.

The tenant testifies that two months into his tenancy in July, 2007 there was a flood at his unit when the landlords' garbage disposal and the tenants' washing machine were used at the same time. This caused a flood to the tenants unit in his office and bathroom areas and there was at least three inches of water. The tenant claims this caused irreparable damage to a wool rug which was custom cut and bound to fit his office. The tenant states he gave the receipt for this rug to the landlord but was not compensated for this damage. The tenant claims that five months later there was a second flood which emanated from the outside of the house. This flood caused water damage to the coat closet and his kitchen area and caused irreparable damage to a new area rug. The tenant states he gave the landlord this receipt also but was not compensated for the damaged rug. The tenant seeks compensation from the landlord for both rugs to the sum of \$450.00. The tenant states the actual cost of these rugs was in fact \$2,800.00. The tenant agrees he did not file an amendment to his application for this increased cost.

The tenant testifies that although the landlord acted promptly after the first flood to clear up the water the area was not restored. The tenant states they had to take up part of the wooden flooring and the landlord made no attempts to repair this area for two months. The tenant states he lived with concrete floors in this area which caused significant inconvenience to his mobility due to his medical condition and states he had to start wearing shoes while inside his home.

The tenant testifies that as a result of the second flood in January, 2008, he lost the use of his closet and had a five foot by five foot area of cement flooring in his kitchen where the floor had to be taken up. The tenant states he had to store his belongings from the closet on his table and his coats and shoes had to be stored in his bedroom. The tenant states as he walks with a cane he found this detracted from his quality of life as every time he wanted to go out he had to go up the stairs to his bedroom to get his coat and shoes. The tenant also states he found an increase in ants on the floor and higher dampness levels in the unit. He states he repeatedly asked the

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landlord to fix the flooring but this was not completed until after his tenancy. The tenant states that due to the two separate floods he has lost the use of some areas of his rental unit and suffered both physical and mental stress which reflected on his quiet enjoyment of his rental unit. The tenant seeks to recover the sum of \$1,500.00 in compensation from the landlord for the periods of time after each flood.

The tenant testifies that he was served with a Two Month Notice to End Tenancy by the landlord on February 02, 2008. He states she served another Two Month Notice to End Tenancy on February 09, 2008. He states the reason the landlord gave on this notice is that the rental unit will be occupied by the landlord, or the landlord spouse or a close family member of the landlord or spouse. The tenant states he did not receive any compensation for this Notice equivalent to one months' rent at the end of his tenancy. The tenant states he found alternative accommodation and gave the landlord a 10 day Notice to end his tenancy. The tenant states he felt he should protect himself further against any future loss and so asked the landlord to sign a mutual agreement to end the tenancy on March 07, 2008. The tenant states at that time he had no idea that by doing this he may affect his right to compensation. The tenant seeks compensation from the landlord for one months' rent due to the Two Month Notice to the sum of \$750.00.

The tenant states the landlord did not occupy the rental unit after he moved out but did carry out renovations of the unit. The tenant states he should therefore be entitled to receive the equivalent of two months rent in compensation to the sum of \$1,500.00 as the landlord did not use the rental unit for the stated purpose on the Notice.

The landlord states that there are inconsistencies in the tenants' submissions. She states that there was a flood but most of the water went into a concrete area and a tiled area and there was not three inches of water on the floor. The landlord states the tenant agreed to her cutting a section of the floor to relieve the pressure after it had buckled up and he agreed to live with the floor like this while it dried out as he did not want to move out. The landlord states she has not received any receipts from the tenant concerning his rugs and states she has seen no evidence



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that these rugs were in place during his tenancy and does not recall seeing rugs in the unit when she went there during his tenancy.

The landlord states she acted promptly as soon as she was notified of the floods. The landlord has provided receipts for the work carried out for both floods and states with the second flood the tenant only experienced inconvenience for a few days due to his loss of the use of his closet. The landlord states she obtained a quote for a replacement carpet to cover the cement floor while they waited for it to dry out but the tenant declined this offer. The landlord states the tenant did not voice any concerns to her about the flooring while it was drying out and she states the tenant did not have insurance for his belongings.

The landlord testifies that when she gave the tenant the Two Month Notice she must have checked the wrong box as the insurance adjuster told her she would have to remove the entire floor after the tenant moved out. The Notice was given for repairs to be done and not for her use of the unit. The landlord agrees that she did receive a hand written notice from the tenant on February 13, 2008 which stated he would move out on March 6 or 8, 2008. On February 19, 2008, she states, the tenant asked her to sign a mutual agreement to end the tenancy effective on March 07, 2008. The landlord states she did not give the tenant his last month's rent in compensation as the mutual agreement effectively negated the Two Month Notice to End Tenancy. The landlord states the tenant agreed in writing to her keeping the sum of \$266.13 from his security deposit in lieu of rent from March 01, 2008 to March 11, 2008 which was the actual date he moved out. The remainder of his deposit was returned to him and the tenant did not mention any compensation at that time. The landlord states she did not know why the tenant asked her to sign the mutual agreement to end the tenancy.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for compensation for the alleged damage to his rugs I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation for damage to his rugs does not meet all of the components of the above test. The tenant has not submitted any evidence to verify the existence of the rugs or the damage caused to them. The tenant states he attempted to have the rugs repaired but has not submitted any information from the repairer to show they were damaged irreparable. I also find the tenant did not have any contents insurance for his belongings. Consequently this section of the tenants claim is dismissed.

With regard to the tenants claim for compensation of \$1,500.00 I find in this matter that both parties agree that there was a flood and that sections of the floor were removed and the tenant did lose the use of his closet space for a period of time. I refer both parties to the Residential Tenancy Policy Guidelines #6 which deals with a tenant's right to quiet enjoyment. Part of this guideline states that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

While I find that the tenant did experience some discomfort, inconvenience and loss of the use of his closet; there is no evidence to show how long this went on for or that the landlord did not



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act promptly in locating the source of the leaks and deal with it within the time constraints allowed in letting the floor dry out. The landlords' evidence shows she did act promptly in organizing contractors to investigate the problems and contacted an insurance adjuster. Consequently this section of the tenants claim for compensation is dismissed.

With regard to the tenants claim for compensation equivalent to one months' rent for the Two Month Notice issued on February 09, 2008 and for compensation equivalent to two months' rent as the unit was not used for the intended purpose as declared on the Notice; It is my decision in this matter that the tenant asked the landlord to sign a mutual agreement to end the tenancy. In doing so the tenant and landlord had reinstated the tenancy on that date and agreed the tenancy would then end on March 07, 2008. In taking this step the tenants' agreement to end the tenancy negated the Two Month Notice to End Tenancy and as such no compensation would be due to the tenant as the Two Month Notice was then rendered null and void. Consequently, I dismiss this section of the tenants claim for compensation.

## Conclusion

The tenant's application is dismissed in its entirety, 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: November 02, 2010.

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Dispute Resolution Officer