



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants for a monetary order for money owed or compensation for damage or loss under the Act, to recover all or part of the security deposit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

### Background and Evidence

This month to month tenancy began July 15, 2006, and ended on October 16, 2010 and monthly rent was \$600.00 per month. The Tenants testified that a security deposit of \$300.00 was paid prior to the move in and the Landlord testified he didn't think a security deposit was paid. There is no written tenancy agreement.

The Landlords' claim is for the following:

Return of a rental payment and security deposit	\$1,200.00
Hotel expenses	\$257.04
Transportation/moving/storage expenses	\$785.15
Food related expenses	\$506.87
Lost income from work	\$500.00
Filing fee	\$100.00
<b>Total</b>	<b>\$5,349.06</b>

In support of their application, I heard testimony from the male Tenant that on September 16, 2010, their basement rental unit flooded as a result of a very hard rain that day. The Tenants claim that main line drainage by the house became clogged due to improper maintenance by the Landlord.

The Tenant testified that the municipality forced the Tenants to move, which they did on October 16, 2010, and that the insurance restoration company also informed them they could not live there due to the carpets being wet.

The Tenant testified that the Landlord promised them he would pay for storage and a hotel and food expense, but has not done so.

The Tenant testified that they were forced to stay with friends in September and that he had to miss a week of work as a result of the flood.

The Tenants submit that they are entitled to a return of half a month's rent for October 2010, as they were forced to leave on October 16, 2010 and a return of their security deposit. The Tenants submitted a written document requesting the return of the deposit.

In response, the Landlord submitted that the clogged drain was the municipality's drain and not within his control. Further the Landlord stated that it was not possible for him to obtain contents insurance for the rental unit as he did not live there and that it was the Tenants' responsibility to carry insurance on their possessions.

The Landlord denied promising to pay for hotel costs.

### Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

#### **Claims in Tort**

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[my emphasis added]

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, it is upon the Landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event such as fire or flood. Damage to a Tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the Landlord has been negligent in the duty owed to the Tenant.

In light of the above, it is upon the Tenants to show that the clogged drain resulting in the flood was a result of the Landlord's negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the Tenant has shown that the Landlord acted unreasonably in causing the flood.

I have considered the submissions of both parties and I find that the flooding in the basement unit was the result a heavy rain, as testified to by the Tenants, and that a municipal drain became clogged and that this was beyond the control of the Landlord. I find the Tenants submitted insufficient evidence to prove the flood was a lack of maintenance by the Landlord.

Given my findings above, I do not find the Tenants have proven negligence on the part of the Landlord and the Tenants are not entitled to compensation for damaged possessions, storage, hotel, gas and food costs.

Policy guideline 16 also provides, in part,

**Claim for Breach of Contract**

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected. [my emphasis added]

I am satisfied that the Tenants paid rent of \$600.00 for October 2010, yet were only able to live there for one half of the month through no fault of their own. Therefore I find they are entitled to compensation in the amount of **\$300.00.**

The evidence and testimony supports that the Tenants provided the Landlord with their written forwarding address on November 22, 2010.

I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. Therefore I find that the Tenants are entitled to compensation in the amount of **\$600.00**.

I find that the Tenants have succeeded in part with their application and therefore I award recovery of the **\$100.00** filing fee.

**Monetary Order** – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$300.00	\$600.00
Return of one half month's rent for Oct '10	\$300.00
Filing Fee	\$100.00
<b>TOTAL AMOUNT DUE TO THE TENANTS</b>	<b>\$1,009.79</b>

Pursuant to the policy guideline, I have provided the Tenants with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The Tenants are granted a monetary order for \$1,009.79.

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: March 22, 2011.

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Residential Tenancy Branch