



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the hearing.

The hearing was held via telephone conference call. The tenant accessed the conference call from a cell phone and advised that his mother wished to participate in the hearing as well, but he did not know how to operate the speaker function on his phone and his mother's home phone did not appear to be operational. I made an attempt to telephone the tenant's mother at a number he provided, but was unable to complete the call. The tenant's brother, D.D., also accessed the conference call. The tenant, his mother and D.D. indicated that holding the hearing over the telephone was problematic, in part due to the tenant's brain injury which affected short term memory and ability to productively participate in a hearing. The tenant's mother suggested that an in person hearing be held. The tenant himself was not able to recall the events in question and D.D., acting as the tenant's advocate, did not dispute that the tenant had acted in the way alleged by the landlord as described in this decision. The tenant's mother and brother had not been at the rental unit on the date in question. As the tenant's defence dealt solely with whether a third party should be held responsible for damage, I determined that an in person hearing would not contribute to the resolution of this matter.

I note that the tenant disconnected from the call before the hearing was complete and I further note that the tenant's mother participated very little in the hearing. As the tenant's mother confirmed that she was not present in the rental unit on the date at issue and as the tenant was ably represented by D.D. and as he had no recollection of the events in question, I determined that there was no prejudice to the tenant to conclude the hearing in his absence.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The rental unit is located on the 6<sup>th</sup> floor of a multi-level apartment building. F.S., who was employed as the maintenance man for the building, testified that on or about May 3, 2009 he received an emergency telephone call from the occupant of the unit directly below the rental unit advising that water was leaking from the ceiling. F.S. investigated the complaint and attended at the rental unit to find the source of the leak. F.S. testified that he discovered that the sink was plugged and overflowing. F.S. stated that the tenant apologized and stated that he had forgotten to turn off the water.

The landlord presented evidence that it cost \$2,897.08 to repair the damage resulting from this incident and seeks to recover that cost as well as the \$50.00 filing fee paid to bring this application.

The tenant testified that he could not recall the incident or whether he was actually in the unit on the date in question. D.D. testified that the tenant suffered a brain injury some years ago and that the injury significantly impaired the tenant's short term memory. He stated that he did not dispute that the tenant had plugged the sink and left the water running, but argued that the landlord was aware that the tenant suffered from a brain injury yet placed him in an apartment without modifications designed to accommodate his disability. D.D. stated that after the incident, he installed an overflow alarm on the tenant's sinks. He also expressed surprise that the social services agency which had placed the tenant in the unit had not participated in the hearing as he believed they should be responsible for the damage.

The landlord's agent K.W. stated that the tenant was shown the rental unit before signing the tenancy agreement and that he stated that the unit met his needs. D.D. argued that the tenant would not have been able to make that assessment.

### Analysis

The landlord provided a copy of the tenancy agreement which shows that the agreement was between the landlord and the tenant, not between the landlord and the agency which placed the tenant in the unit. The tenant is the party who entered into the tenancy agreement and is therefore legally liable for any damage resulting from his actions or negligence. Although there was some question raised as to the tenant's capacity, there was insufficient evidence before me to show that the tenant did not have the capacity to enter into the tenancy agreement. I find that the tenant was properly named as a respondent.

As the tenant is unable to recall the events of May 3, I accept the landlord's version of events. It is clear that the tenant did not intend to overflow the sink or cause damage. However, he may still be held responsible for negligence regardless of whether he had the capacity to appreciate the consequences of his actions. I find that the tenant owed a duty of care to other apartment dwellers, that he breached that duty of care when he allowed the sink to overflow and that this failure directly resulted in damage to his unit and two others as well as to common hallways.

I find that the landlord has proven the quantum of the claim and I find that the tenant is obligated to pay the \$2,897.08 in damages as well as the filing fee paid to bring this application. I award the landlord \$2,947.08 and I grant the landlord a formal order for this amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$2,947.08.

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: June 02, 2011

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Residential Tenancy Branch