



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNSD

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order for \$1200.00, and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The applicant testified that:

- The floor the rental unit was not damaged when the tenant moved in however when he moved out there was significant water damage.
- When he took out the damage flooring it was soaking wet underneath.
- He thinks that water must have come from the kitchen sink however he is not sure.
- He does not believe the water entered from the exterior of the house and therefore it is his belief that the damage must have been the result of negligence on the part of the tenant.

The applicant is therefore requesting an order as follows:

Replacement cost of flooring	\$1150.00
Cost to remove damage flooring	\$50.00
Filing fee	\$50.00
Total	\$1250.00

The applicant further requests an order allowing him to keep the full security deposit of \$275.00 towards this claim, and that a monetary order be issued for the difference of \$975.00.

The respondent testified that:

- The damage to the flooring was not caused by any negligence on his part.
- At no time did he ever overflow the kitchen sink or the bathtub, and at no time did he ever notice any kind of leaking underneath the sinks.
- There were significant gaps in the stucco on the exterior of a rental unit and it is their belief that moisture may have entered through those gaps during rainstorms.
- They have supplied a letter from a professional restoration company who viewed the photographs of the damage and it is that restoration companies professional opinion that this damage was caused by water seepage from the exterior of the building.

The respondent therefore request that the application be dismissed and that is full security deposit be returned.

### Analysis

It is my finding that the applicant has not met the burden of proving that the water damage in the rental unit was a result of any negligent or wilful actions on the part of the tenant.

The landlord himself testified that he believes the water came from an overflowing sink but he is not sure.

The photo evidence supplied by the landlord is also inconclusive because although it does show water damage to the flooring, there is no evidence to show that the water was the result of an overflowing sink.

The tenant testified that he never had an overflowing sink or noticed any kind of leaking underneath the sink.

The burden of proving a claim lies with the applicant and is my decision that the applicant has supplied insufficient evidence to prove this claim.

### Conclusion

This application is dismissed in full without leave to reapply and I have issued an order for the landlord to return the full security deposit of \$275.00 to the tenant.

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: October 12, 2011.

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Residential Tenancy Branch