



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to make submissions and to cross-examine one another. At the commencement of the hearing, the landlord asked to amend the tenant's name to that appearing above, as he said that he had mistakenly reversed her first and last names in his application for dispute resolution. With the agreement of the parties, I amended the tenant's name for the purposes of the landlord's application accordingly.

The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 10, 2011. I am satisfied that this package and written evidence packages submitted by both parties were sent to one another and received by the parties in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters, e-mails and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This one-year fixed term tenancy commencing on February 1, 2011 is scheduled to end on January 31, 2012, by which time the tenants are planning to vacate the rental unit in this high-rise strata building. Monthly rent is set at \$2,000.00, payable in advance on

the first of each month. The landlord continues to hold the tenant's \$1,000.00 security deposit paid on January 30, 2011.

The landlord applied for a monetary award in the amount of \$534.76 to compensate him for expenses he has incurred to repair water leakage to the strata unit below the rental unit which has been caused by leakage from his rental unit. The amount of his repair bill was not disputed by the tenant. The landlord said that he was able to negotiate a reduced bill with the owner of the lower suite and that the \$534.76 bill is the only loss that he will incur. As the landlord maintained that the water leak resulted from the neglect or lack of care exhibited by the tenant and her family who also occupies this rental unit, he applied for a monetary award to recover his losses.

The parties submitted an extensive series of emails and other documents pertaining to this matter. The landlord also submitted copies of two estimates obtained to perform the restoration work, receipts, invoices and documents prepared and sent by the company that manages this strata building. In his oral testimony, the landlord made special reference to two "Incident Summary" documents prepared by officials with the company that manages this building regarding two flooding incidents of August 7, 2011 and August 30, 2011. He maintained that these Incident Summaries confirmed that the leakage problems in the lower suite resulted from flooding in his tenant's bathroom that occurred due to their negligence or lack of care in ensuring that water did not leak onto the bathroom floor from either the shower or the sink. He testified that when he visited the rental unit, he noticed that there were water marks 1 ½ to 2 inches above the bottom of the baseboard in the bathroom. He testified that someone in the tenant's suite was not closing the shower door when she showered or was overflowing the sink and causing flooding to the suite below.

The tenant and her sister who live in this rental unit with their mother testified that they have not done anything that would have caused the water leakage that has damaged the suite below them. The tenant's sister who was present on August 7, 2011 said that there was a little water on the floor of the bathroom when the building concierge knocked on their door that day. She said that she was able to clean up the water from the shower with a towel very quickly.

The tenant said that she returned to the rental unit within 20 minutes of receiving a phone call from the building manager about the flooding on August 30, 2011. She said that her mother had taken a shower that morning but there was a bath mat on the floor and not an unusual amount of water on the floor when she returned. She said that she waited for over an hour for the building manager to attend to her rental unit, but he did not knock on her door. She said that she called him when she arrived at her rental unit

and left a message for him. She said that she later learned that the building manager had been waiting in the lobby to see her.

The tenant and her sister both testified that there have been no recurrence of flooding problems since August 30, 2011 and after the landlord re-sealed and re-caulked around the toilet. As this work appears to have resolved water leakage problems, they maintained that it was a poor seal around the toilet or poor caulking that resulted in flooding damage to the suite below them.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

There is no dispute between the parties that the suite below the tenant's suffered significant water damage that originated from leakage from the tenant's bathroom. The parties did not dispute the amount of the landlord's claim. The sole issue in dispute is whether the tenants should be held responsible for this water damage or whether this is a responsibility the landlord should bear.

Although the Incident Summaries presented by the landlord provide details regarding the flooding that occurred on August 7 and August 30, 2011, neither of these Summaries are signed or are sworn affidavits. Neither of the people who prepared these statements participated in this hearing to confirm the authenticity of these documents or of the contents of these documents. The August 7, 2011 document does report that the author of that document "saw considerable water on the floor of the wash room." The August 30, 2011 Summary does not provide any eye witness account of the amount of water in the tenant's bathroom that day. The landlord's only first hand evidence provided at this hearing was his observation that he saw water marks approximately 1 ½ to 2 inches above the bottom of the baseboards in the tenant's bathroom.

While the quality of the landlord's evidence was lacking, at the hearing I heard some oral testimony from the tenant and her sister that confirmed that there was water on the floor of the bathroom on both August 7 and August 30, 2011, after their mother had used the shower. Although they testified that there was not much water on the floor, the tenant's sister confirmed that the water did extend across the bathroom floor although it was not in excess of one inch in depth. The tenant also testified that there was "not an unusual amount of water" on the bathroom floor and that the tenants had been using the bathroom in the same way for some time without incident.

Both parties agreed that there were no more flooding incidents affecting the suite below the rental unit after August 30, 2011. The tenants attributed this to the work that the landlord performed to re-seal and re-caulk the bathroom floor after the August 30, 2011 incident. The landlord maintained that the tenants may have changed their showering practices after the August 30, 2011 when they realized how much damage they were causing to the suite below them and that they might be held responsible for this damage.

I find that the landlord has failed to provide sufficient evidence to demonstrate his entitlement to reimbursement for his claim for a monetary award of \$534.76. He did not submit photographs, signed statements or sworn affidavits from anyone who witnessed the tenant's bathroom on the day of the flooding incidents. He did not provide witnesses to the flooding or what happened on August 7 or August 30, 2011 for this hearing. The tenant provided undisputed evidence regarding her attempt to respond to the building manager's call and attend the rental unit immediately on August 30, 2011. The tenant also gave undisputed oral testimony that the type of flooding alleged by the landlord would have impacted their carpets and flooring in the rental unit which did not happen. She said that there is little separation between their bathroom and other rooms in the rental unit and excessive water would have damaged other rooms. While up to one inch of water across an entire bathroom floor might very well cause water damage to the suite below the rental unit, I am not satisfied that the landlord has demonstrated to the extent required that the tenant and those using her bathroom were responsible for this flooding damage by negligence or a lack of due care. For these reasons, I dismiss the landlord's claim for a monetary award for reimbursement of his losses for water leakage without leave to reapply.

As the landlord was not successful in his application, he bears the cost of his filing for his application.

Conclusion

I dismiss the landlord's application for dispute resolution 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: January 26, 2012

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Residential Tenancy Branch