



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MND, MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to an application filed by the landlord on November 07, 2011 seeking a monetary order for damages to the unit, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to retain the security deposit in satisfaction of the monetary claim, as well as to recover the filing fee for this application.

Both parties attended the hearing and were each given opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide relevant testimony. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be determined**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence in this matter is that the tenancy started May 01, 2001. The tenant has since vacated the rental unit. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525 which the landlord retains. On October 31, 2011 the parties conducted a move out inspection, but did not arrive at agreement as to the administration of the security deposit. The landlord claims there is no move-in inspection record as such an inspection was not required by statutes at the outset of the tenancy.

The landlord claims / testified that during the tenancy the tenant's refusal to remove their freezer in time, from an area the tenant did not have exclusive right to occupy under the tenancy agreement (the laundry room), caused the landlord to incur an additional charge to the contract. The landlord claims that the contractor had to make a second visit to complete a tiling job in the laundry room for which the landlord was charged extra. The landlord testified the tenant did not comply with the landlord's request to make the work area accessible to the tiling contractor by removing their freezer so as they could complete the tiling work as originally planned - requiring a

return visit. The landlord provided evidence of letters to the tenant dated August 01, 2011 and August 28, 2011 explaining to the tenant and reminding the tenant to remove their freezer as improvement work was commencing September 01, 2011.

The landlord also provided evidence the general contractor invoiced the landlord \$250 for the additional cost for the tiling work, "due to delays", for which the landlord provided payment and a copy of the instrument for payment (cheque) into evidence. The tenant argued the veracity of the landlord's claim, and effectively the contractor's reasons for their claim of additional costs.

The landlord also provided into evidence findings (*findings of fact*), in part, of a decision of the Director dated October 19, 2011. The landlord highlighted the Analysis portion of the decision, in part, as follows,

*I find the weight of the evidence, on the balance of probabilities, is that the tenant has materially breached her tenancy agreement by significantly interfering with the landlord's use of the premises. She has refused to comply within the time specified with reasonable requests to remove items so that the landlord could affect renovations for health and safety reasons. I find from the evidence on file that when the landlord made a request, the response from the tenant was to argue her right to continue to store items such as the freezer in the laundry room on the basis of an implied right from a long term tenancy. Although the advocate said she never "refused" to remove the items, I find that after the request on August 1, 2011, the evidence is that she still had not complied by September 21, 2011 to remove the freezer thus costing the landlord extra by having to get the contractors to return again to do the laundry room floor. There was a similar episode with the bike storage where she wanted certain work to be done first. I find that her lack of complying after being given a month's notice does in fact constitute a refusal.*

The tenant's advocate argued that I am not bound by the previous *findings of fact*. The tenant also highlighted from their evidence,

- The tiling contractor started tiling work in the *basement suite* (vs. laundry room) during the second week in September 2011, then
- The tiling contractor left for 5 weeks to work elsewhere, then,
- The tiling contractor returned and began tiling work in the *laundry room* October 28, 2011.

The tenant queried how their freezer remaining in the *laundry room* until September 22, 2011 impeded the tiling work in the *laundry room* if the tiling of the *laundry room* commenced October 28, 2011. The tenant provided a letter from another tenant of the residential property which the tenant argued supports their argument. The tenant further argued that the contractor's invoice does not identify the cause of the delay.

The landlord also claims that the tenant caused water damage to the rental property – the ceiling of the rental suite below them - "by leaving the shower on". The landlord is

claiming \$300 – the cost to repair the ceiling in the suite below. The landlord provided the invoice for the work, as well as a letter dated in November 2010 from the downstairs tenant notifying the landlord that a leak had occurred above their suite, corresponding to the tenant's bathroom. The letter states, "She (the respondent) said her shower head has been leaking"(parenthesis mine). The landlord argues the tenant left the shower on, causing some overflow or spillage. The landlord also provided a letter from themselves to the tenant sent during a period of dispute resolution hearings between the parties. The letter informs the tenant of the landlord's determination that the tenant has caused water damage due to their alleged negligence.

The tenant denies they left the shower on. The tenant claims that the shower head in her unit "broke due to wear and tear" in November 2010, causing some water to spray behind the bathtub, which they immediately wiped up and the leaking below their suite was contained. The landlord confirmed the 'start and stop' nature of the leak. The tenant provided photographs of the area adjacent and behind the bathtub showing, what appears to be where the linoleum floor and the wall meet. The area appears to be less than structurally pristine. The tenant claims it has not looked any different from the day they moved in and that the wall edge likely allowed some water from the broken shower head to travel to the lower suite. The tenant claims they informed a member of the landlord's management about the shower head problem and the shower head was replaced a few days later.

### **Analysis**

In this matter the burden of proving claims of loss and damage rests on the claimant (landlord), who must establish, on a balance of probabilities that they have suffered a loss due to the tenant's neglect, or failure to comply with the Act, regulations or tenancy agreement. And, if so established, did the claimant take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act, regulation or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The landlord bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the loss incurred.

The tenant argued the tiling in the laundry room started in October 2011, and therefore the landlord's claim is not reasonable. The tenant did not offer why the tiling in the laundry room was not started and completed before the contractor went to work elsewhere. Rather, the tenant suggests by their evidence the tiling contractor simply planned to start in the laundry room in October 2011 because they had other plans, and therefore the tenant's conduct vis a vis their freezer was not an issue. On preponderance of the evidence of both parties, and on balance of probabilities I prefer the landlord's account of events. I find the evidence best supports the previous *findings of fact*: that the tenant's freezer was, and remained, in the laundry room beyond the tiling contractor's time to start and complete the tiling in the laundry room before they left – having to return at a later time to do the work – for which time the landlord was assessed an additional cost. Effectively, I find that the landlord has met their onus - meeting the test for loss in this portion of their claim. I am allowing the landlord claim of compensation for the additional cost to the work contract they incurred, due to delays. I find the delay was caused by the tenant's breach of the tenancy agreement in occupying an area of the residential property the tenant did not have exclusive right to occupy under the agreement, and in non-compliance with the landlord's request to render the landlord's property free and clear for improvement work. I grant the landlord their claim for **\$250**.

In respect to the landlord's claim of \$300 for purported water damage by the tenant, I find the landlord has not met the test for loss. The landlord has not provided sufficient evidence proving the water damage occurred solely because of the tenant's actions or their neglect in violation of the *Act*, regulations or tenancy agreement. As a result, I **dismiss** this portion of the landlord's claim on application, without leave to reapply.

As the landlord has been partly successful in their application, I grant the landlord recovery of their filing fee of **\$50**, for a total award in the sum of **\$300**.

As the landlord applied to keep all or part of the security deposit and interest, it is only appropriate that I return any balance back to the tenant, to which the landlord is not entitled to retain in satisfaction of their award.

**Conclusion**

The landlord's application has been allowed in part. **I Order** that the landlord may retain **\$300** from the security deposit and accrued interest of \$554.54 in full satisfaction of their claim; and, I grant the tenant a monetary order under Section 67 of the Act for the balance of **\$254.54**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

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 30, 2012.

---

Residential Tenancy Branch