



# 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 an Application for Dispute Resolution by the Tenants for a monetary order for compensation for damage and loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement and recovery of the filing fee.

The Tenants provided affirmed testimony that they served the Landlord with the Application for Dispute Resolution and Notice of Hearing package on November 17, 2011 by registered mail. The Tenants provided a copy of the Canada Post receipt and registered mail tracking information into evidence.

I find that the Landlord was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Landlord did not participate in the conference call hearing. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the Tenants entitled to a monetary order for compensation for damage or loss and recovery of the filing fee?

### Background and Evidence

The Tenants testified that the tenancy commenced on November 01, 2008 with rent in the amount of \$1,100.00 due on the first of each month. The Tenants stated that they were renting a small two bedroom two bathroom heritage house from the Landlord. The Tenants stated that their tenancy ended on December 31, 2011 in accordance with two month's notice which had been provided. The Tenants stated that the Landlord returned their \$550.00 security deposit when the tenancy ended.

The Tenants stated that the rental unit and property had serious drainage, sewage and plumbing issues that were affecting their ability to live in the rental unit as of August 2011. The Tenants stated that they called the Landlord on August 27, 2011 to advise that sewage water was affecting the rental unit and that liquid drain clearing products were not working. The Landlord hired a plumber to address the issues, and the

plumber came to the rental unit on September 02, 2011 to see if he could resolve the situation. The Tenants stated that the plumber discovered that he could not resolve the situation quickly and significant repairs needed to be done which would result in the Tenants being unable to live in the rental unit during the repairs.

The Tenants stated that they could not remain on the premises as of September 02, 2011 as they could not use any of the toilets in the house or the showers or the sinks or the laundry, because sewage was coming into the rental unit from all of those locations. The Tenants stated that sewer lines had to be replaced resulting in the property being dug up and the rental unit had to have significant plumbing work done with the floors in the rental unit being cut into, as there was insufficient crawl space under the rental unit, and the ceilings had to be cut into to access pipes as well. Tenants stated that they had no hot water or heat in the rental unit during the repairs. The Tenants provided photographs into evidence of the extent of the work and disruption to the property and rental unit during the period when the repairs were being done.

The Tenants stated that they rented a furnished apartment nearby for \$840.00 per month and used their motor home while extensive repairs were being carried out in the rental unit. The Tenants stated that they were not able to live in the rental unit until October 15, 2011 when the issues were resolved, except for the drywall replacement. The Tenants stated that the plumbing issue was considered a non-insurable incident as the issues were discovered to be pre-existing.

The Tenants stated that when the Landlord missed payments to the contractors, the Tenants would have to make the payments or the work would stop. The Tenants stated that the Landlord has since reimbursed them for payments they had to make to the contractors. The Tenants stated that the Landlord made them pay rent for September and October 2011 and declined to give the Tenants any rent reduction even though the Landlord knew they were not able to live in the rental unit for 42 days while the repairs occurring.

The Tenants are seeking a rent reduction for 42 days of rent, which they estimate at \$1,650.00, for the period between September 02 – October 15, 2011 when the rental unit could not be occupied due to the extensive repairs being done, and recovery of the filing fee.

### Analysis

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

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party

not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicants (in this case the Tenants) have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Landlord) pay for the loss the Applicants (the Tenants) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Regulation,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant(s) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I am satisfied that the Tenants testimony and photographic evidence sufficiently support their claim that the rental unit could not be occupied while the repairs were occurring, as the Tenants had no water, no heat, could not use the sinks, bathroom facilities, or laundry, and the rental unit floors and ceiling were removed in areas to access the plumbing and pipes.

Based on the evidence and testimony submitted by the Tenants, and in the absence of any evidence from the Landlord to the contrary, I find that the Tenants claim for 42 days of rent reduction to compensate them for the loss of use of the rental unit during the period September 02-October 15, 2011 is reasonable. Although the Tenants have estimated that 42 days equates to \$1,650.00, I find this to be an inflated amount. I find that to calculate the 42 days of rent reduction, it is appropriate to use the monthly rent of \$1,100.00 x 12 months ÷ 52 weeks ÷ 7 days = daily average rent x 42 days rent reduction = \$1,523.08. I grant the Tenants a monetary order for \$1,523.08.

As the Tenants have succeeded in their Application, I find that the Tenants are entitled to recover the \$50.00 fee for this proceeding, which brings the total amount owed to the Tenants to \$1,573.08.

I grant the Tenants an order under section 67 for **\$1,573.08**

Conclusion

I find that the Tenants are entitled to monetary order pursuant to section 67 against the Landlord in the amount of **\$1,573.08**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenants' copy of this decision.

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: February 29, 2012.

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Residential Tenancy Branch