



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: MND, FF  
                             Tenants: MNDC, FF, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order. In addition the tenants sought an order to reduce rent.

The hearing was conducted via teleconference and was attended by the landlord; her agent and her witness and both tenants.

The tenants clarified at the hearing that they were in the process of moving out on the day of the hearing and as such no longer required a rent reduction. I amend the tenants' Application to exclude the matter of a rent reduction.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided a copy of a portion of a tenancy agreement that confirms the tenancy began on July 1, 2011 as a fixed term tenancy that converted to a month to month tenancy on August 1, 2012 for a monthly rent of \$1,300.00 due on the 1<sup>st</sup> of each month with a security deposit of \$650.00 paid.

The landlord submits the tenants have caused damage to the tiles in the bathroom by deliberately putting holes in the grout that caused water damage requiring replacement of the shower in the main bathroom; clogged the vacuum line on the built in vacuum cleaner; damaged locks requiring the landlord replace the door knob and deadbolt lock.

The tenants submit that they had no ideas about how holes may have been found in the grout but that it appears the problem existed prior to their tenancy; that the vacuum

never had good suction; and that the door knob just broke off when being used to open the door.

The landlord's Application also seeks compensation for expenses in bringing in a technician to assess the functionality of the wireless internet service; to replace two toilets and a bathroom fan. During the hearing the landlord submitted that she no longer sought compensation for the computer technician.

The landlord seeks compensation for the replacement of toilets because they had been in proper working order at the start of the tenancy and were damaged shortly after the tenancy began and for the bathroom fan because the tenants kept it on constantly during the tenancy.

The tenants testified they had complained that the toilets were not flushing properly at or near the start of the tenancy and the landlord replaced the toilets. The also submit that they used the fans on a regular basis, but not 24 hours per day, because of the moisture in the unit but also because of the smell of food being cooked in the landlord's portion of the residential property.

The landlord testified that unit was inspected at the start of the tenancy and that the tenant had agreed to that in the tenancy agreement. However, when I sought clarification of where in the tenancy agreement this was the landlord confirmed this was not in the tenancy agreement. The landlord confirmed that a move in Condition Inspection Report was not completed at the start of the tenancy.

The tenants seek compensation for loss of use of the bathroom while it was being repaired for over a 1 ½ month period and for taking over part of the tenant's space for a 4 or 5 month period; and for dealing with these disputes. The tenants confirm that the rental unit was comprised of 3 bedroom and 2 bathrooms.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the landlord's Application, the burden is on the landlord to provide sufficient evidence that the tenants have caused the damage for which she now seeks compensation for. As such, it is necessary for the landlord to provide evidence of the condition of the unit at the start of the tenancy; at the end of the tenancy; any additional evidence that may substantiate the landlord's claim that the tenant's caused the

damage; and invoices, quotes, or receipts to establish the value of the cost to repair any such damage.

In the case before me I find, from the landlord's testimony that no move in Condition Inspection Report was completed and because the landlord has provided no other evidence of the condition of the rental unit at the start of the tenancy, that the landlord has failed to establish that any damage in the unit resulted from or during this tenancy.

Therefore I find the landlord has not established that she has suffered a damage or loss or that it results from this tenancy.

In relation to the tenants' claim Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the main bathroom tub and shower would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I note there is no provision in the *Act* to allow for compensation to tenants for costs involved in settling disputes between the parties such as lost wages for missing work or costs to reproduce evidence.

As such, I find it reasonable based on the testimony of both parties that the tenants have suffered a loss of quiet enjoyment resulting from the landlord's requirements to make repairs to the bathroom. However, I find the claim of \$650.00, the equivalent of ½ month's rent, to be an unreasonable amount of compensation.

To determine the amount of compensation, I must consider the loss in the value of the tenancy and the inconvenience of that loss. In the case before me, I find that the

tenants did have an alternate bathroom to use, particularly for the shower and as such, the value of the tenancy and for all other intents and purposes both bathrooms were available to the tenants. I find compensation in the amount of \$100.00 to be more commensurate with the decrease in value of the tenancy.

### Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety without leave to reapply.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$150.00** comprised of \$100.00 compensation and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: August 31, 2012.

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Residential Tenancy Branch