



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNDC ERP PSF AS RR FF O

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for a monetary order for the cost of emergency repairs, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, an order directing the landlord to make emergency repairs for health or safety reasons, to provide services or facilities required by law, to allow the tenants to assign or sublet because the landlord's permission has been unreasonably withheld, to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided, to recover the filing fee, and "other" although details of other in the application are already addressed elsewhere in the application.

The male tenant and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

During the hearing, the tenant testified that he did not submit evidence as he claims he was told to "hang onto his evidence" by the person who accepted his application. The agent testified that he did not receive any documents from the tenant except for the Notice of a Dispute Resolution Hearing. The agent stated that he did not receive any evidence in support of the tenant's claim and was unaware of what the tenant's claim of \$25,000.00 was comprised of. I explained to the tenant that the applicant is responsible for submitting and serving whatever evidence they intend to rely on during the hearing in accordance with the rules of procedure. I also reminded the tenant that the tenant and landlord were advised of the importance of evidence in the instructions included on the Notice of a Dispute Resolution Hearing and in the hearing package each applicant receives.

The tenant served the Residential Tenancy Branch with two pages of evidence, comprised of a fax cover page and a second page containing 2 photocopied Canada Post receipts, however, the evidence was excluded from the hearing as the tenant did not serve the landlord with this evidence.

The agent testified that the tenancy has already ended as the landlord received an order of possession dated November 20, 2012, which resulted in the landlord obtaining a Writ of Possession from the Supreme Court a day or two before this hearing. The agent stated that they have already hired a court approved bailiff pursuant to the Writ of Possession to remove the tenants from the rental unit. The agent also referred to a review consideration application submitted by the tenants, which the agent testified resulted in the tenant's application for review being dismissed.

As a result of the agent's testimony, I read the decision and application for a review consideration, the file number of which I have referenced on the front page of this decision. In the original decision, the landlord was granted a monetary order and an order of possession. In the review consideration decision, the tenants' application was dismissed and the original decision and related orders dated November 20, 2012 were confirmed as remaining in full force and effect, which supports the testimony from the agent.

As a result of this tenancy having ended, I decline to hear all aspects of the tenant's claim pursuant to section 59 of the *Act*, with the exception of their \$25,000.00 claim for money owed or compensation for damages or loss under the *Act*, regulation or tenancy agreement. All other aspects of the tenant's claim are now moot given that the tenancy has ended.

#### Issue to be Decided

- Are the tenants entitled to a monetary order for compensation for damages or loss under the *Act*, regulation or tenancy agreement?

#### Background and Evidence

In the tenants' application, the tenants are requesting a monetary order in the amount of \$25,000.00. The tenants did not provide any details of the breakdown of their claim of \$25,000.00 in their application. The agent testified that he had not been advised of what the tenants' claim was comprised of.

The male tenant was asked to provide a detailed breakdown of their claim of \$25,000.00 during the hearing. The tenant testified that he was unable to provide a breakdown of their monetary claim as he “forgot” his book with his information in it. The tenant stated that he did not have any witnesses to call during the hearing and that the other tenant was unavailable for the hearing.

The tenant stated that he fell on the stairs of the rental unit, which the agent disputed during the hearing.

### Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

This hearing was conducted due to the application of the tenants for a monetary claim of \$25,000.00. I find it reasonable that when an applicant requests an amount of \$25,000.00 that they would have detailed the breakdown of that amount in their application and be prepared to support their claim with witnesses, witness statements or other supporting evidence.

In the matter before me, the male tenant attended the hearing alone, did not have any witnesses or witness statements, did not submit any supporting evidence, and was unable to provide details of their claim during the hearing and was generally unprepared.

### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the tenants. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenant's statement that he slipped and fell at the rental unit was disputed by the agent for the landlord. The tenant submitted no documents regarding medical treatment, no evidence of injuries, and no evidence that the landlord breached the *Act*, regulation or tenancy agreement.

Based on the above, **I find** the tenants have failed to meet the burden of proof by failing to provide a breakdown of the amount being claimed, and failing to prove that the landlord breached the *Act*, regulation or tenancy agreement by submitting no supporting evidence.

Therefore, **I dismiss** the tenants' claim for a monetary order in full due to insufficient evidence, without leave to reapply.

### Conclusion

I dismiss the tenants' claim for a monetary order in full due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 21, 2012.

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Residential Tenancy Branch