



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with a application by the landlord for a monetary claim of \$1,319.23, for the cost of repairs caused by water damage from the shower and reimbursement for the \$50.00 fee paid for this application.

At the outset of the hearing the landlord stated that the claim for the cost of the repairs amended to \$1119.23 to reflect the true costs.

The landlord and both co-tenants appeared at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Each party confirmed receipt of the other party's evidence. Neither party raised any issues regarding service of the application or evidence. I have reviewed all testimony and other evidence. However, only evidence relevant to the issues and findings in this matter are referenced in this decision.

### **Preliminary Matter**

At the outset of the hearing the tenant advised that, after receiving the landlord's Notice of Hearing, they filed their own application for dispute resolution against the landlord on December 5, 2012, seeking an order for the return of their security deposit. The tenant was also claiming the \$50.00 fee paid for their application.

The tenant stated that they intended to make a cross application to be heard at the same time as the landlord's application today. However the tenant's application was assigned its own hearing date of January 23, 2013.

The tenants had submitted a copy of their application, as evidence. This had already been served on the landlord.

In accordance with Rule 2.2 of the Residential Tenancy Rules of Procedure, the Arbitrator presiding over a hearing may join separate applications to be heard at the same time. In determining whether to join Applications for Dispute Resolution, the Arbitrator must consider the following criteria:

- a) whether the applications pertain to the same residential property, or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of law in resolving each application.

I find that the issues to be determined in regard to the two applications pertain to the same residential property, involve the same tenants and landlord and both seek monetary remedies. Each of the applications also require the arbitrator to consider some of the same facts and make the same or similar findings of law.

For the reasons above, I hereby order that the landlord's file, (#799812) and the tenant's file (#799825) be joined and heard together at the hearing today.

#### **Issues to be Decided for the Tenant's Application**

Is the tenant entitled to return of double the security deposit under section 38 of the Act?

#### **Issues to be Decided for the Landlord's Application**

Is the landlord entitled to compensation under section 67 of the *Act* for damages?

**Burden of Proof:** The burden of proof was on the tenant to establish that 15 days had expired from the time that the forwarding address was given, without the landlord either refunding the deposit or making an application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted and supported by the evidence submitted.

#### **Background and Evidence**

The tenancy began on June 2, 2012 with rent of \$995.00. A security deposit of \$500.00 had been paid. The tenancy ended on October 15, 2012 and the landlord had received the tenant's written forwarding address by email after the end of the tenancy. The tenant testified that the landlord had not returned the tenant's security deposit and retained it beyond fifteen days, after being given the tenant's written forwarding

address. The tenant is therefore seeking a refund of double the deposit, pursuant to the provisions in section 38 of the Act.

The landlord pointed out that her application to keep the tenant's security deposit occurred on October 26, 2012, which was within 15 days of the end of the tenancy.

The landlord testified that at the end of the tenancy the tenants left water damage that required a new floor and wall repairs costing \$1,119.23 and the landlord is claiming compensation. The landlord testified that the damage was discovered in September 2012 when water was found to be dripping from the ceiling of the unit below the suite. The landlord testified that a restoration expert who assessed the damage concluded that the tenants were responsible because the water came from the shower area, but was found not to be attributable to a leaking water pipe. The landlord testified that there was never any previous leaking and that the water infusion only occurred when the tenants were using the shower. The landlord stated that this is proof that the tenants were misusing the shower and had caused the damage through their negligence. The landlord also alleged that the tenants knew about the water, but neglected to report it to the landlord.

The landlord submitted a receipt dated October 30, 2012 proving that she incurred costs of \$843.20 to repair damaged flooring and drywall. The landlord also submitted a copy of the report from the expert who assessed the damage dated October 25, 2012. This report contained the following statement:

*"Our flood technician attended the properties to try and confirm the source of the water damage to the kitchen ceiling in unit #4. The suspected cause prior to arrival was the shower in unit #5 above.".....According to the contact onsite, the leak only happens when one of the tenants takes a shower. This may be causing the water to run down the wall and over the edge of the tub. There is no water block in the corner to stop the ingress, therefore we believe this to be the most likely cause. Note: the shower also has a detachable shower head, which when used without caution could also cause water damage outside the tub."*

The tenants disputed the landlord's testimony. The tenant testified that:

- They did not misuse the shower, always closed the curtain and always ensured that the bottom of the curtain was inside the shower.
- They were not aware of any problem with the shower or with water leaking until the landlord suddenly contacted them by telephone about an "emergency".
- At the time that the landlord contacted them about the water leakage emergency they were not even residing in the premises.

- The landlord originally suggested that the water had possibly come from a leaking refrigerator.
- They believe that the evidence submitted by the landlord does not prove that the tenants did anything to cause a water problem beyond merely using the shower in the expected manner.
- The landlord did not complete proper move-in and move-out condition inspection reports as required under the Act.
- There is no basis to grant the landlord monetary compensation for repairs that were not caused by the tenants.

### **Analysis: Tenant's Application**

The tenants feel that they are entitled to the full return of their security deposit and are seeking a monetary order for double the \$500.00 based on the landlord's delay in refunding the deposit.

Section 38 of the Act deals with this issue. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations OR
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord did make an application to retain the tenant's security deposit within the 15-day deadline to do so and the tenant's security deposit credit is only valued at the original \$500.00 paid.

### **Analysis: Landlord's Application**

In regard to the landlord's claim for monetary damages, an applicant's right to claim damages from the other party is covered under, Section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount of , and order a party to pay, compensation to the other party.. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act 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 steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to 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 respondent.

With respect to repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit.

Under this section, a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Section 32 also requires the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

I find that the Act places all responsibility on the landlord for infrastructure matters, including maintenance and repairs of plumbing deficiencies relating to the pipes or fixtures. In this instance, the landlord is alleging that there was no problem with the shower and that all of the water damage was solely due to improper actions or negligence by the tenant.

I do accept the landlord's evidence which proves that the walls, floors and ceiling were damaged and I also accept that the landlord incurred genuine costs for the repairs.

However, I find that the landlord has not submitted sufficient proof that the tenants had misused the shower resulting in the water damage.

Based on the written report from the landlord's contractor, placed in evidence by the landlord, I find that the statement; "*There is no water block in the corner to stop the ingress, therefore we believe this to be the most likely cause*" indicates what was concluded. I find that this establishes, on a balance of probabilities, that the likely cause of the water dripping beyond the tub was due to a missing "water block" that should have been located in the corner to stop the water from dripping beyond the tub.

I find that the tenant would not be liable for this missing water block and therefore could not be held accountable for the results of the water ingress caused by the deficiency .

Although the landlord's contractor did make an observation that use of the detachable shower head without caution could also cause water leakage outside the tub, there was no testimony nor evidence put forth to confirm that this had transpired. In fact, the tenants testified that they did not misuse the shower in any way.

Based on the evidence before me, I find that the landlord has not sufficiently satisfied the criteria to meet element 2 of the test for damages and I find that the landlord's claim for the cost of repairs must be dismissed.

I find that the tenant is entitled to monetary compensation in the amount of \$550.00 comprised of \$500 refund of the security deposit and the \$50.00 cost of the tenant's application. This order must be served on the landlord by registered mail or in person and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The landlord's application was dismissed and the tenants were successful in their application for the return of the security deposit and were granted a monetary order.

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: December 13, 2012.

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Residential Tenancy Branch