



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. 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.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on February 1, 2013. The tenancy agreement provided that

the tenant(s) would pay rent of \$2450 per month payable on the first day of each month. The tenant paid a security deposit of \$1225 at the start of the tenancy.

The landlord testified that in February the tenant, without permission from the landlord installed a bidet in the rental unit. The installation was faulty resulting in a water leak that lead to over \$30,000 in damage. The landlord testified that he has been billed \$4203.56 for emergency repairs from the restoration company. The company has also provided a quotation that the total cost will be over \$30,000.

The tenant does not dispute the facts of the faulty installation of the bidet. However, she submits that the landlord should have reported this loss to the building's insurance company and they would work it out with them. Secondly, the tenant disputes the amount claimed submitting that the work has not been completed and we do not know what the loss will be. I infer from the submission that the tenant takes the position the landlord is only entitled to his actual loss and that if the matter is reported to his insurer he would incur a \$5000 deductible loss only.

The landlord testified the damage is limited to this rental unit and that the building insurance does not have anything to do with this.

### Analysis

Section 32(3) of the Residential Tenancy Act provides as follows:

#### **Landlord and tenant obligations to repair and maintain**

**32 (3)** 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.

I determined based on the evidence presented that the tenant's actions or neglect has caused the loss and the landlord is entitled to compensation. I do not accept the submission of the agent for the tenant that I should get involved in the insurance aspect

of this dispute as I have no jurisdiction to deal with this. The landlord has the legal right to file a claim without going through his building insurance. In any event the presence of insurance is not a relevant fact in this situation.

I determined the landlord is entitled to \$4203.56 being the amount that has been billed for emergency repair work to date. However, I do not accept the submission that the landlord is entitled to \$25,000 claimed. In the circumstances I determined the presentation of a quotation is insufficient to prove this claim as it is possible the work will not be completed. The work has not yet been done and it is impossible to know what the actual loss will be. The landlord failed to present a representative from the renovation company as a witness and it is impossible to evaluate whether the quotation is reasonable.

I determined the claim for the balance of the restoration work is premature as the work has not been done and it is not possible to make a determination based on a quotation only. However, in the circumstances I determined that it was appropriate to give the landlord the right to re-apply. The jurisdiction of an arbitrator under the Residential Tenancy Act is limited to \$25,000. The Rules of Procedure provide that a landlord cannot split his claim. As a result, should the landlord re-apply the maximum the landlord is entitled to would be the \$25,000 less what was awarded in this hearing provided the landlord proves his actual loss.

Monetary Order and Cost of Filing fee

**In summary I ordered that the Tenant pay to the Landlord the sum of \$4203.56 plus \$100 for the cost of the filing fee for a total of \$4303.56.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 02, 2013

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Residential Tenancy Branch

