



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

At the beginning of the hearing, the Landlord made an adjournment request because he did not receive the Tenant's evidence package until August 27, 2013. The Tenant disputes the request as the Tenant's evidence was filed within the allowed time frame. The Landlord states that he is awaiting evidence from the report writer of the building inspectors report as he states that this submitted report is fraudulent. The Landlord has not provided sufficient evidence to satisfy me that anything in the report is fraudulent and as such, the Landlord's request for an adjournment is denied. The hearing shall proceed.

At the end of the hearing, the Tenant provided a new mailing address as the Tenant had vacated the rental unit on June 30, 2013. This Application and the Tenant's particulars shall be updated to reflect this change.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

Both parties agreed that this tenancy was approximately 12 years old before the Tenant vacated the rental unit on June 30, 2013.

The Tenant seeks a monetary claim of \$3,600.00 as compensation for the loss of use of the house due to a flood (May 9, 2013) for which the Landlord was warned 2 months earlier of a roof leak and moving costs. The Tenant states that the roof repairs were not made until June 7, 2013. The Tenant states that they are seeking the recovery of the \$1,275.00 monthly rent for May and June of 2013 and the aggravation that was caused by the water leak. The Landlord disputes this stating that they responded immediately on May 8, 2013 with the restoration company. The Tenant confirms this stating that the repairs were not complete as of June 30, 2013 when they vacated. The Tenants state that the monetary claim amount is arbitrary amount based upon the loss of 50% of the entire rental unit. The Landlord disputes this stating that the only affected room from the flood was a basement room.

### Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants have failed to provide sufficient evidence to satisfy me that the Landlord was negligent. The Tenant has not provided sufficient evidence to satisfy me that the Landlord was aware of a potential roof leak problem which eventually caused a flood in the rental building. The Tenant relies solely on a building inspection report dated June 8, 2013 and that all of their communication with the Landlord over issues with the rental were done verbally. The Tenant has also failed to provide proof of an actual amount required for compensation as she has stated that no evidence of moving costs were submitted and that the monetary claim was a "arbitrary amount". The Landlord has disputed the Tenant's claims and has stated that they have responded appropriately when notified. I find that the Tenant's monetary claim to be contradictory as she is seeking amounts equal to the entire months rent for May and June when she has stated that she is seeking compensation for loss of 50% of the rental unit. The Tenant's claim is dismissed without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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: September 06, 2013

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Residential Tenancy Branch

