



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL GROUP REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MND, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for alleged damage to common property, for compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

The Landlord claims the child of the Tenant damaged a couch in the lobby of the building where the subject rental unit is located.

The Agent for the Landlord testified that the rental unit is located in a building which is run by a strata council. The Agent testified that the Landlord was informed by the strata that a surveillance camera recorded the Tenant's son putting his name on a couch in the lobby of the building. The strata has fined the Landlord as the strata claims it is the child of the Tenant who defaced the couch.

The Agent for the Landlord testified that the caretaker for the building knows all the residents in the building. According to the Agent for the Landlord the caretaker picked out the Tenant's child on the video.

The Tenant testified he did not agree to the Landlord's claims. The Tenant testified his spouse viewed the video and it was vague and did not show anything. The Tenant testified that his son denies doing this and he believes his son. According to the Tenant the child told him that someone was pulling a prank on him.

The Tenant further testified that the video is of poor quality and shows someone approximately the same height as his son, but the Tenant testified that, "... all teenagers look the same."

The Tenant further testified that his spouse went down with a trolley to help her son and there is no video showing this.

The Tenant agreed he received a letter from the strata council, but he did not get a copy of the video.

The Agent for the Landlord testified that the name placed onto the couch was the same first name of the Tenant's son. The Agent explained that the video showing the Tenant's spouse with the child had been erased.

In reply, the Tenant explained that while his son's name is similar to the one on the couch, it is not the same name.

### Analysis

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 Landlord 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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord 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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I dismiss the Application of the Landlord without leave to reapply. I find the Landlord had insufficient evidence to prove the child of the Tenant defaced the couch.

The Landlord submitted no evidence in support of this Application, aside from the testimony of the Agent for the Landlord. The Agent for the Landlord wanted to submit the video after the hearing, but the rules of procedure require evidence to be submitted to the branch and the respondent, no later than five days before the hearing. This Application was filed in December of 2013, and I find the Landlord had sufficient time to provide evidence, but failed to do so.

The Landlord and the Tenant provided equally probable versions of the events, and so without further evidence, I find the Landlord failed to meet the onus of proving the claim on a balance of probabilities.

Therefore, the claims of the Landlord in this matter are dismissed without leave to reapply, due to insufficient evidence.

Conclusion

I find the Landlord has insufficient evidence to prove the claim against the Tenant. The claims of the Landlord are dismissed 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: April 07, 2014

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Residential Tenancy Branch

