



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC MND MNSD FF – Landlords' Application  
                              CNC – Tenant's Application

### Introduction

This matter convened for 42 minutes on December 23, 2015 by teleconference which was attended by both Landlords and the Tenant. On December 29, 2015 an Interim Decision was issued. The Interim Decision including my findings regarding the 1 Month Notice to End Tenancy for cause. The Landlords' monetary claim was adjourned to written submissions which will be determined in this final Decision. Accordingly, this Decision must be read in conjunction with my Interim Decision dated December 29, 2015.

On December 23, 2015 both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions regarding both the Notice to end tenancy and the Landlords' request for monetary compensation as documented in the Interim Decision of December 29, 2015.

During the December 23, 2015 hearing the Landlords were issued an oral order to submit additional evidence to the Residential Tenancy Branch (RTB) and to the Tenant consisting of proof of the alleged previous arrangement made with their insurance company and any loss as a result of their claim. That evidence was required to be submitted to the RTB no later than **January 20, 2016**. The aforementioned order was listed in the conclusion of the December 29, 2015 Interim Decision.

On January 18, 2016 the Landlord submitted 3 pages of evidence to the RTB. That evidence consisted of a one page fax cover sheet and a two page letter issued from the Landlords' insurance company dated January 14, 2016.

### Issue(s) to be Decided

Have the Landlords proven entitlement to \$10,087.77 in monetary compensation?

### Background and Evidence

The Landlords submitted a Monetary Order Worksheet listing the \$10,087.77 claim which was comprised of the following three items: \$122.85 plumbing costs for the toilet inspection; \$9,529.92 restoration repairs; and \$435.00 for the damage deposit. Invoices to support the plumbing costs and restoration repairs were also submitted into evidence.

Upon further clarification, the Landlords stated that they had paid the plumbing invoice themselves; however, they had not paid the invoice submitted from the restoration company as those charges were being paid by their insurance company.

During the December 23, 2015 hearing the Landlords testified that they had applied for \$10,087.77 in monetary compensation because they had entered into an agreement with their insurance company that if they repaid the amount of their insurance claim they would not suffer further losses resulting from making the claim against their insurance.

As stated in the December 29, 2015 Interim Decision (pg. 4 para 3, 4, & 5):

*The Tenant argued that the Landlords did not serve her with evidence of such an arrangement and requested that they submit that evidence. In response to the Tenant's request the Landlords were ordered to submit additional evidence consisting of proof of the aforementioned arrangement with their insurance company and any loss as a result of their claim. That evidence is to be served upon the RTB and the Tenant no later than January 20, 2016 at which time a final Decision will be issued in response to the Landlords' monetary claim.*

*The Landlord then changed his submission and stated that he had not made such an arrangement; rather he had general knowledge that if he repaid the loss to the insurance company that it would clear their claim and they would not suffer further loss.*

*The Tenant wanted it noted that the Landlord contradicted his own testimony, first by stating that they had made the arrangement with their insurance company and then changed their testimony only after they were ordered to submit the proof.*

[Reproduced as written]

The Landlords' insurance company wrote in their January 14, 2016 letter, in part, (p. 1 para. 4) as follows:

*We are not able to comment if future premiums will be affected by this loss. We can confirm that this loss is considered an occurrence on the insured's policy and will most likely have an impact on future premiums regardless of whether the claim is paid back or not.*

[Reproduced as written]

Regarding the events which occurred on October 15, 2015, I found as follows, as stated in the December 29, 2015 Interim Decision (p. 5 para. 8):

*After consideration of the totality of the oral and documentary evidence before me, I find that the damage was not the result of the Tenant intentionally putting the Landlord's property at significant risk nor was it the result of the Tenant causing*

*extraordinary damage to the unit/site due to neglect. Rather, I conclude the damage was the result of unfortunate events resulting in the toilet plugging and the flange not closing all of the way which caused water to overflow and run continuously until noticed by the Landlords in the lower level.*

[Reproduced as written]

### Analysis

**Section 7** of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

After careful consideration of the foregoing and on a balance of probabilities I find as follows:

Upon review of the items claimed I note that two of the three monetary amounts claimed were not paid by the Landlords. Rather, the \$435.00 damage deposit was previously paid by the Tenant and the \$9,529.92 was or would be paid by the Landlords' insurance company. Therefore, at the time the Landlords filed their application for monetary compensation they had not suffered those losses.

I accept the evidence that the Landlords had paid the \$122.85 for the plumber to inspect the toilet on October 19, 2015, four days after the flood occurred.

After review of the oral submissions from December 23, 2015 and the documentary evidence before me, I accept the Tenant's submission that the Landlords' had not previously entered into an agreement with their insurance company where the Landlords would not suffer an increase in their insurance premiums if the Landlords reimbursed or paid the insurance company for the total loss. Rather, the Landlords submitted adverse evidence that the insurance company stated on January 14, 2016 that the Landlords' insurance claim "will most likely have an impact on future premiums regardless of whether the claim is paid back or not." [sic].

As indicated in my December 29, 2015 Interim Decision, I found that the damage for which the Landlords are now seeking monetary compensation for was the result of unfortunate events that were not caused by the Tenant's neglect or by the Tenant intentionally putting the Landlord's property at significant risk. Therefore, I find there is insufficient evidence before me to prove the Tenant did not comply with the Act,

regulations, or tenancy agreement. Accordingly, I find the Tenant was not responsible to pay to have the toilet inspected. Therefore, I dismiss the Landlords' request for compensation of \$122.85 for the plumbing inspection, without leave to reapply.

As stated above, section 7(2) of the *Act*, stipulates that the Landlords were required to minimize their loss. Therefore, I find the Landlords did what was required by the *Act* by making a claim through their insurance which minimized the loss suffered by the Landlords.

Based on the above, I find the Landlords submitted insufficient evidence to prove their claim of \$9,529.92 restoration repairs and \$435.00 for the damage deposit. Accordingly, the Landlords' claim of \$10,087.77 is dismissed in its entirety, without leave to reapply.

### Conclusion

The Landlords were not successful and their application was dismissed in its entirety, 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: January 21, 2016

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Residential Tenancy Branch

