



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: MNDC LAT RR FF  
For the landlord: MND FF

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order in the amount of \$10,100.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization for the tenant to change the locks to the rental unit, for authorization to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee. The landlord applied for a monetary order for damage to the unit, site or property, and to recover the cost of the filing fee.

On February 5, 2016, the hearing began and after 62 minutes the hearing was adjourned. An Interim Decision was issued dated February 5, 2016, which should be read in conjunction with this Decision. On September 27, 2016, the hearing reconvened and after an additional 127 minutes of testimony the hearing concluded. Attending both portions of the hearing were the tenant, the tenant’s agent (the “agent”), the landlord, the daughter of the landlord (who was also acting as translator), and the spouse of the landlord.

At the outset of the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, 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.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

During the hearing and due to the fact that the tenant vacated the rental unit on January 22, 2016, the tenant's request for authorization to change the locks to the rental unit is now moot and will not be considered as a result. In addition, as the agent clarified the tenant's monetary claim, I find that the tenant's claim for a rent reduction is also moot as the tenant's monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement addresses the tenant's monetary claim. As a result, I will not consider the tenant's claim for a rent reduction.

### Issue to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on September 1, 2015 and was scheduled to revert to a month to month tenancy after August 31, 2016. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. The tenant vacated the rental unit on January 22, 2016 due to what the agent described as "fear" of the landlord.

### *Evidence related to Landlord's claim*

The landlord has claimed \$8,000.00 for damage related to a flood in the rental unit that the landlord stated they estimate was 80% the fault of the tenant and 20% the fault of the landlord. The landlord clarified that the amount of \$8,000.00 was reached by taking 80% of the total \$10,000.00 strata insurance amount to repair the \$14,000.00 in damages to the unit below the rental unit damaged from water leaking from the rental unit into the unit below. The landlord stated that they would accept paying \$2,000.00 or 20% of the \$10,000.00 strata insurance amount.

There is no dispute that the flood in the rental unit was related to a toilet in the rental unit. The position of the tenant was that the toilet was defective from the start of the tenancy as the landlord had asked the tenant to flush it three times. The landlord alleged that the tenant used too much toilet paper which the tenant denied. The tenant stated that the landlord should have repaired the defective toilet before renting out the rental unit. The landlord denied that he asked the tenant to flush the toilet three times at the start of the tenancy and denied that the toilet was defective. The landlord did admit that the toilet made an “un-normal sound” and evidence was provided from the renter in the unit below who complained about the growling noise coming from the rental unit toilet above. Given this, there is no dispute that the toilet in question was making noises which were not normal toilet noises and was not repaired by the landlord before the flood occurred. The landlord writes to the agent the following about the toilet water flooding insurance claim:

“...and we should be responsible for the toilet failure though the failure is an accident...”

[reproduced as written and “we” refers to the landlord]

There is also no dispute that the landlord paid \$10,000.00 as the strata insurance amount towards the total repair amount of \$14,000.00. The landlord confirmed during the hearing that the landlord did not arrange for his own insurance on the rental unit.

#### Tenant's claim

The tenant is claiming \$10,100.00, which is comprised as follows:

ITEM	DESCRIPTION	AMOUNT
1.	Fear and loss of quiet enjoyment (calculated at \$2,500.00 X 3 months)	\$7,500.00
2.	A. No notice / Tenant forced to look for a new rental unit in a hurry (calculated at a rent differential of \$100.00 per month X 7 months) B. Return of security deposit (not mentioned in Application details of dispute) C. Out of pocket expenses – replacement of broken items that the tenant either threw away, gave away or broke.	2A: \$700.00 2B: \$650.00 2C: \$1,250.00
	<b>TOTAL</b>	<b>\$10,100.00</b>

Tenant's Item 1

The tenant testified that she vacated the rental unit before the end of the fixed term due to being in fear for her life. The agent stated that the tenant reached the amount of \$7,500.00 by using a rough estimate of what a reasonable punitive amount would be of \$2,500.00 multiplied by three family members as the tenant has two children.

The agent alleged that the landlord has no idea on how to be a landlord and that one example is that the landlord failed to do an incoming and outgoing condition inspection report. The landlord confirmed during the hearing that neither an incoming or outgoing condition inspection report was completed during the tenancy.

The tenant testified that the landlord's daughter and two elderly family members entered the rental unit with the landlord's key and without permission of the tenant on December 9, 2015. The tenant testified that she was in her bedroom when the three landlord representatives entered her rental unit. The tenant stated that they argued with her about money and the tenant stated she "escaped" and instead of calling 911, she called 211 by mistake. The landlord's daughter stated that the tenant's version of events was not accurate and that while they did enter the rental unit, it was only after many attempts to knock at her door and they were worried about the tenant so they entered to see if the tenant was okay and still occupying the rental unit. The landlord's daughter stated that there was no escaping involved as the three landlord representatives left after stating that they were attempting to discuss what was owed in relation to the flood in the rental unit after they had confirmed that she was still occupying the rental unit. The tenant did not provide any additional dates of entry into the rental unit by the landlord or a representative of the landlord.

The agent then referred to an October 3, 2015 text message from the landlord as evidence of "email intimidation". The landlord denied that any intimidation was made by the landlord towards the tenant. The tenant claims that the police were contacted twice however no police reports were submitted in evidence by the tenant.

The tenant submitted a photograph of what the tenant described as eggs being thrown against the rental unit door. The tenant confirmed that she did not see who threw the eggs against the door. The landlord denied having any involved with throwing eggs at the rental unit door.

The tenant and agent did not provide a detailed breakdown of how they determined the amount of \$2,500.00 in compensation for the tenants and each of her two children other than indicating that it was punitive in nature towards the landlord.

Tenant's Item 2A

The agent stated that the tenant is claiming a total of \$700.00 for this portion comprised of \$100.00 in rent differential for a period of seven months comprised of February 2016 to August 2016. The agent stated that the new tenancy agreement after vacating the rental unit quickly due to "fear" cost the tenant \$1,400.00 per month compared to the \$1,300.00 per month the tenant had been paying at the rental unit. A copy of the tenant's new tenancy agreement was not submitted in evidence.

Tenant's Item 2B

This portion of the tenant's claim related to the tenant requesting the return of her security deposit although the tenant failed to indicate that she was seeking the return of her security deposit as part of her application. Furthermore, the tenant submitted her Application on December 21, 2015 and did not vacate the rental unit until January 22, 2016 which would have made her claim for her security deposit premature even if she had applied, which she did not. Therefore, the tenant's request for the return of her security deposit was dismissed with leave to reapply during the hearing.

Tenant's Item 2C

The tenant has claimed \$1,250.00 for out of pocket expenses she incurred due to giving away her television and television stand, and throwing away chairs, and furniture. The tenant was asked why her personal items were not taken to her new rental unit and the agent responded by stating that due to fear some people act irrationally. The tenant provided no receipts in evidence to support the value of the items being claimed.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

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 what was reasonable to minimize the damage or loss.

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.

**Landlord's claim** – After thoroughly reviewing the documentary evidence and the testimony provided by the parties, I prefer the evidence of the tenant over that of the landlord regarding the condition of the toilet that leaked. I accept that the tenant was advised to flush the toilet three times at the start of the tenancy. I have reached this finding as the landlord admitted to a portion of the responsibility in his letter to the agent where the landlord writes in part:

“...and we should be responsible for the toilet failure though the failure is an accident...”

[reproduced as written]

I have also considered the fact that the landlord failed to comply with section 7(2) of the *Act* which states:

**Liability for not complying with this Act or a tenancy agreement**

**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.**

[my emphasis added]

I find that by the landlord admitting to not carrying insurance on the rental unit, I find the landlord did not do what is reasonable to minimize the damage or loss to the landlord. Given the above, I **dismiss** the landlord's entire claim **without leave to reapply**, due to insufficient evidence and failure to comply with section 7(2) of the *Act*.

**Tenant's claim: Item 1** – In considering the tenant's submissions I am not satisfied that the tenant has met the burden of proof to support this portion of her claim for \$7,500.00 as claimed. I also note that according to Residential Tenancy Branch Policy Guideline 16 – Claims in Damage “An arbitrator does not have the authority to award punitive damages, to punish the respondent.” The agent clearly testified that the \$7,500.00 amount claimed for item 1 was punitive in nature. While I do accept that the landlord breached section 29 of the *Act* by entering the tenant's rental unit without permission on December 9, 2015, **I caution** the landlord to comply with section 29 of the *Act* in the future.

I have also considered the documentary evidence and find there is insufficient evidence of “email intimidation” by the landlord as claimed by the tenant. **I dismiss** the tenant's claim #1 due to insufficient evidence to support “fear” or a loss of quiet enjoyment in the amount claimed and I reiterate that I am unable to grant a monetary amount to the tenant for punitive purposes.

**Tenant's claim: Item 2A** – In considering this portion of the tenant's claim, I find the tenant has failed to meet the burden of proof. While I make no determination on whether the tenant breached a fixed term tenancy by vacating on January 22, 2016, I find there is insufficient evidence before me that the tenant suffered a loss of \$100.00 for a period of seven months. In reaching this finding, I have considered that the tenant failed to provide a copy of her new tenancy agreement to support the new amount of rent paid by the tenant. Therefore, **I dismiss** this portion of the tenant's claim **without leave to reapply** due to insufficient evidence.

**Tenant's claim: Item 2B** – As mentioned above, this portion of the tenant's claim was dismissed with leave to reapply during the hearing as the tenant failed to indicate in her Application that she was claiming for the return of her security deposit and only stated such through her agent during the hearing. Furthermore, the tenant submitted her Application on December 21, 2015 and did not vacate the rental unit until January 22, 2016 which would have made her claim for her security deposit premature even if she had applied, which she did not. The tenant is at liberty to apply for the return of her security deposit but I note that this decision does not extend any applicable timelines under the *Act*.

**Tenant's claim: Item 2C** – The tenant has claimed \$1,250.00 for out of pocket expenses she incurred due to giving away her television and television stand, and throwing away chairs, and furniture. I find there is insufficient evidence before me to support this portion of the tenant's claim and is **dismissed** accordingly. The tenant failed to provide evidence to support the value of the items and I am not satisfied that

the tenant could not have reasonably brought all of her personal items with her when she moved out with reasonable due diligence.

As neither application before me had merit, **I do not** grant either party the recovery of the cost of the filing fee.

**I caution** the landlord to comply with section 23 and 35 of the *Act* in the future which require that a landlord complete an incoming and outgoing condition inspection of the rental unit.

### Conclusion

The tenant's application is unsuccessful and is dismissed.

The landlord's application is unsuccessful and is dismissed.

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: October 6, 2016

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Residential Tenancy Branch



