



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover a monetary loss for which the landlord claims the tenant is responsible, as well as to recover the filing fee for this matter. The landlord testified they still hold the tenant's security deposit in trust.

Both parties appeared in the conference call hearing. The tenant acknowledged receiving the landlord's application package and evidence comprised of 7 pages inclusive of 2 photographs. The hearing file was absent of document evidence despite the landlord's claim they sent to this hearing the same evidence sent the tenant. The tenant was canvassed about the evidence received by the landlord and the landlord was permitted to fax the 7 pages of evidence sent the tenant after the hearing, subsequently received.

The proceeding advanced on the testimony of the parties.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amount claimed for loss?

### **Background and Evidence**

The following is undisputed. The tenant vacated October 29, 2016. At the outset of the tenancy the landlord collected a security deposit of \$800.00 and is retained in trust.

The landlord testified that in September 2015 they were notified by the tenant's daughter (the daughter) of a water backup incident in the rental unit kitchen. The landlord instructed the daughter to notify the building manager and also personally spoke to that individual. The building manager called their plumbing contractor whom arrived to assess the cause of the backup and attend to its resolve. The contractor subsequently provided their invoice/with report and I have benefit of the document.

The report states they found the dishwasher "running" and turned it off, looked to the garburator bubbling and inspected it. The contractor's report states they found "a lot" of watermelon inside it, removed it all from the drainage hold, and restored drainage. The report concluded the watermelon caused blockage to drainage from the dishwasher at the garburator connection. The report further concludes, *"The dishwasher overflowed due to not having the proper drainage available (due to debris) and caused a flood in suite \_ \_ \_."* (as written). The landlord submitted photographs from the contractor showing multiple sections of watermelon skins inside the garburator. The landlord was subsequently made responsible for the contractor's invoice for the visit to the rental unit and to their thinking the tenant is responsible for the expenditure.

The *respondent* tenant disputes the landlord's claim that their conduct caused any damage, or that any damage resulted from the incident. The tenant claims they were not at the unit and specifically disputes that the dishwasher was "running" at the time of the incident as their daughter claims it was off when the contractor arrived. The tenant further testified they have never experienced the problem described by the plumbing contractor's report as they, "always place watermelon skins in the garburator" and they and their daughter, "eat a lot of watermelon" and do not *grind* the skins. They have never experienced a problem with the dishwasher backing up or overflowing. Both parties testified there has been a history of 2 other incidents of backups in the suite previously "covered" by the strata or the landlord. The tenant testified that to their thinking all 3 backups may be related and they strongly doubt that in this incident in question their conduct resulted in the contractor's attendance of the water backup

incident and in turn the landlord's expenditure for the contractor's visit in the amount of \$596.40.

### **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant) .*

It must be known that the landlord, as applicant, bears the burden of proving their monetary claim pursuant to the Act, on balance of probabilities.

**Section 7** of the Act provides as follows in respect to claims of monetary loss or damage made herein:

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

- 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.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

In respect to the landlord's claim it is arguable if the landlord took reasonable steps to minimize their cost of the contractor's invoice. I accept the landlord and the building manager responded to a water backup occurring in the rental unit and relied on the

expertise of others for its resolve with the resulting monetary demand for the service. I find the expenditure, or loss, occurred and was instigated by the water backup incident. I accept the tenant's evidence they and their daughter consume an abundance of watermelon and place watermelon skins in the garburator without *grinding* them. I prefer the landlord's evidence over the testimony of the tenant as to how the dishwasher was found at the time the plumbing contractor arrived, as the tenant testified they were not there and the contractor was. I accept the landlord's evidence the plumbing contractor found watermelon skins in the garburator. I find the contractor's explanation of the watermelon skins impeding the dishwasher's drainage capacity reasonably makes sense. I have not been presented with evidence the dishwasher, in its operation as designed, as the source of problems. As a result, on balance of probabilities I prefer the evidence of the landlord over that of the tenant in finding the tenant's conduct responsible for the landlord's expenditure to address the water backup.

As a result of all the above, I grant the landlord their request of \$596.40. As the landlord was successful in their application they are further entitled to recover their filing fee of \$100.00 for a total award of **\$696.40**. As the landlord still retains the security deposit in trust it will be offset from the award made herein. Calculation for Monetary Order is as follows.

water backup service call invoice	\$596.40
filing fee	\$100.00
Landlord's monetary award	\$696.40
<i>minus tenant's deposit held in trust</i>	<i>-\$800.00</i>
<b>Monetary Order to tenant</b>	<b>(\$103.60)</b>

### **Order**

**I ORDER** the landlord may retain \$696.40 of the tenant's security deposit of \$800.00 in full satisfaction of their award, and **I grant** the tenant a Monetary Order pursuant to Section 67 of the Act for the remaining balance of their deposit in the amount of **\$103.60**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**Conclusion**

The landlord's application, in relevant part, has been granted.

The relevant balance of the tenant's deposit has been returned.

**This Decision is final and binding.**

*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: May 10, 2017

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Residential Tenancy Branch