



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TITAN SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNDC, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage; to keep all or part of a pet damage deposit or security deposit; and to recover the cost of the application fee.

The Tenant applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, Regulation, or Tenancy Agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The initial hearing on August 21, 2017, was adjourned to allow the Tenant to re-serve documentary evidence to the Landlord. The Landlord was permitted to provide documentary evidence in response to the Tenant's evidence; however, no additional evidence was received. The Landlord testified that he received a copy of the Tenant's documentary evidence.

Pursuant to section 2.5 of the Residential Tenancy Branch Rules of Procedure, the Landlord was ordered to provide a monetary order worksheet that itemizes his claim and provides a monetary breakdown for each item of his claim. The Landlord failed to provide a monetary worksheet prior to the rescheduled hearing. The Landlord testified that damage to the unit

exceeds the amount claimed in his application and he is simply seeking to retain the security deposit for the cost of replacing a door in the unit.

I find that the Landlords claim is restricted to the claim for the cost of replacing a door in the unit.

#### Issues to be Decided

- Is the Landlord entitled to keep the security deposit due to damage to a door in the rental unit?
- Is the Tenant entitled to compensation for damage or loss under the Act, Regulation, or Tenancy Agreement?

#### Background and Evidence

The parties testified that the tenancy commenced on April 1, 2015, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,389.00 was due by the first day of each month. The Tenant paid a security deposit of \$675.00 to the Landlord.

The parties testified that the Tenant moved out of the rental unit on June 30, 2017.

#### Tenant's Application

The Tenant is seeking compensation due to a loss of use of the unit for four months due to a flood. The Tenant testified that the unit flooded on October 20, 2016, and it took four months for the Landlord to complete the remediation. The Tenant testified that the flooding affected the master bedroom, kitchen, bathroom, and halls.

The Tenant testified that the dehumidifier machines were noisy and were running for weeks. She testified that the toilet, vanity, washer, and dryer had to be stored in the kitchen until mid-January. She testified that other than a three day period, she lived in the unit and slept in the master bedroom.

The Tenant is seeking \$2,239.47 in compensation as follows:

October 2016	11 days @ \$24.08 per day	\$264.88
November 2016	30 days @ \$24.08 per day	\$746.40
December 2016	31 Days @ \$24.78 per day	\$768.18
January 2017	20 days @ \$24.78 per day	\$495.60

The Tenant testified that she took the square footage of the areas that were affected by the flooding and multiplied it by the amount of rent. The Tenant testified that the rental unit is 1900 square feet.

The Tenant testified that the flood was caused by a drain pipe that directed rain water from the roof to pour onto a deck off the master bedroom located above the carport. The drain on the deck got plugged and the water pooled and entered the master bedroom and ran down the walls into the dining area and below into the basement area. The Tenant provided 13 color photographs of the interior of the rental unit affected by flooding.

In response to the Tenant's claim, the Landlord testified that the Tenant caused the flood. He testified that the drain is located on the master bedroom deck. He testified that that the water from the roof flows into the drain pipe and onto her deck and into the drain. He testified that the drain became plugged and the Tenant failed to keep the drain clean. He testified that the drain is on limited common property and is the responsibility of the Tenant.

The Landlord testified that he called the insurance adjusters immediately after the Tenant notified him about the flood. He testified that he paid the insurance deductible for the repairs, and submitted that a period of 8 -12 weeks for remediation and repair is common for flooding due to the drying and dehumidifying that is required.

The Tenant testified that it was not her responsibility to repair the water drain pipe. She submitted that she did occasionally clear the drain, but stopped when she was told not to touch stuff on the outside of the property. She testified that the drain pipe was improperly draining the roof water onto the deck and the Landlord has now fixed the pipe so that the water drains to the ground.

#### Landlord's Application

The Landlord is seeking to retain the security deposit of \$675.00 in satisfaction of his claim for the cost of replacing a door damaged by the Tenant.

The Landlord testified that the Tenant left the rental unit dirty and damaged at the end of the tenancy. He testified that the rental unit and yard were a mess. He testified that there was damage to the doors and carpet. The Landlord provided color photographs of the interior of the rental unit taken at the end of the tenancy.

The Landlord submitted that other than the cost to replace the front door, he did not do any repairs or cleaning of the rental unit. He testified that he sold the rental unit "as is" and received less money than he could have received.

The Landlord testified that the Tenants were responsible for damage to the front door and that the replacement cost and installation of a new door cost \$825.00. The Landlord provided a receipt for the cost and installation of a new door. The Landlords photographs include a photograph of the front door which he submits is damaged.

The Landlord is only seeking to retain the security deposit of \$675.00 in full satisfaction of his claim for the front door.

In response, the Tenant testified that areas of the rental unit were already damaged at the start of the tenancy. She testified that they did not damage or break the front door. She testified that the front door was ugly and the Landlord wanted to replace it. The Tenant submitted that the front door had been damaged from the flood.

The Tenant submitted a condition inspection report ("the report") completed at the start of the tenancy which indicates that the rental unit was in a poor condition at the start of the tenancy. She submitted that the Landlord failed to sign the report. The report indicates that the Landlord paid the Tenant to clean the unit at the start of the tenancy. The Tenant provided a copy of a report completed at the end of the tenancy. The Tenant indicates that she did not agree with anything in the report. She submitted that the Landlord did the walk through without her.

The Tenant testified that the Landlords allegation that they trashed the rental unit is ridiculous.

### Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

### Tenant's Claims

Residential Tenancy Policy Guideline # 16 Compensation for Damage or Loss is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*Under section 7 of both the Residential Tenancy Act and the Manufactured Home Park Tenancy Act:*

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and*
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.*

*It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:*

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- loss or damage has resulted from this non-compliance;*

- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

The Tenant is seeking compensation for loss of use of the rental unit due to flooding and the Landlord submits that the flooding was caused by the Tenants neglect and he is not responsible to compensate the Tenant.

After considering the submissions and evidence of the parties, I find that the Tenant is not responsible for the flooding. I find that the Landlord is responsible to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and is suitable for occupation by a Tenant.

I find that the drainage of water from the roof was channelled by a drain pipe onto an upper deck rather than into or onto the ground. I find that by the nature of this set up, the Landlord is relying on this drain to potentially handle a large amount of water runoff. The drain plugged and the water pooled and ran into the unit through a door.

I do not find that the Tenant should bear the responsibility of having to regularly check the drain due to this set up. The Landlord has the responsibility to ensure any roof water is drained properly. My finding in this matter is supported by the Tenant's testimony that the Landlord has now fixed the pipe so that it drains to the ground.

I have considered the Tenants claim for compensation in the amount of approximately \$24.00 per day. I find that the amount being claimed is approximately 55% of the rent. I accept the Tenant's testimony that her use and enjoyment of the property was affected by the noisy dryers and dehumidifiers and that the flood affected her use of the master bedroom, kitchen, bathroom and recreation area. I find that the Tenant is entitled to compensation for loss of use of the rental property.

I find that the Tenant still had some use of the rental property. There was no testimony submitted that she could not use the kitchen or bathroom, and she testified that other than a three day period, she slept in the master bedroom.

Based on my findings regarding the Tenant's loss of use and inconvenience, I find an award of 35% of the rent is appropriate compensation.

I grant the Tenant compensation in the amount of \$1,458.16 as follows:

October 2016	11 days @ \$15.68 per day	\$172.48
November 2016	30 days @ \$16.20 per day	\$486.00
December 2016	31 Days @ \$15.68 per day	\$486.08
January 2017	20 days @ \$15.68 per day	\$313.60

#### Landlord's Claims

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

I find that the tenancy ended on June 30, 2017, and the Landlord applied for dispute resolution on July 4, 2017. I find that the Landlords made an application for dispute resolution claiming against the security deposit, within 15 days of the date the tenancy ended. The security deposit does not double.

The Landlord is seeking to retain the security deposit of \$675.00 in satisfaction of his claim for the cost of replacing a door damaged by the Tenants. I find that the Landlord has provided insufficient evidence to establish that the Tenant is responsible for damage to the front door.

The Tenant stated she was not responsible for the damage and submitted that the door was damaged by the flooding. The Landlord's photograph of the front door does not show visible damage or establish that the Tenant was responsible for damage. The Tenant's photographs of the flooding shows damage to the area around the front door.

The Landlord's request to keep the security deposit for the cost of replacing the front door is dismissed.

The Landlord is ordered to return the security deposit of \$675.00 to the Tenant.

I find that the Tenant has established a monetary claim in the amount of \$2,133.16 for the loss of use of the rental unit, and for the return of the security deposit.

I grant the Tenant a monetary order in the amount of \$2,133.16. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant established a loss of use of the rental property and is awarded compensation of \$1,458.16.

The Landlords claim to keep the security deposit for damage was not successful and the claim is dismissed. The Landlord is ordered to return the security deposit of \$675.00 to the Tenant.

I grant the Tenants a monetary order in the amount of \$2,133.16. This order must be served on the Landlords and may be enforced in Provincial Court.

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: December 8, 2017

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Residential Tenancy Branch