



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord:** OPC, MNDRL-S, FFL

**Tenant:** CNC, RR, LRE, OLC FFT

### Introduction

This participatory hearing was convened after the issuance of an October 27, 2017, interim decision. I determined that the landlords' application for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) could not be considered with an application from the tenant that was for unpaid rent and reconvened the landlords' application to be heard with this tenant's application to dispute the One Month Notice.

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlords sought:

- an Order of Possession based on a One Month Notice pursuant to sections 47 and 55;
- a monetary order for damage to the rental unit or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlords' One Month Notice pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord N.P. (the landlord) attended the hearing and was given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord stated that he would be representing the interests of all the landlords in this matter.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

**Commencement of the hearing** - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord acknowledged that he received a copy of the Tenant's Application for Dispute Resolution (Tenant's Application). Pursuant to section 89 of the *Act*, I find the landlord is duly served with the Tenant's Application.

The landlord testified that the Landlords' Application for Dispute Resolution (Landlords' Application) and evidentiary package was sent by way of registered mail to the tenant on October 15, 2017. The landlord provided the Canada Post Tracking number to confirm this registered mailing. In accordance with sections 88, 89 and 90, I find the tenant was deemed served with the Landlords' Application and evidentiary package on October 15, 2017, five days after its mailing.

#### Preliminary Matters

At the outset of the hearing the landlord testified that the tenant has moved out of the rental unit and that the landlord is no longer seeking an Order of Possession. The landlord requested to withdraw their request for an Order of Possession but maintained that they are still seeking compensation for damages and to recover the filing fee.

The Landlords' Application for an Order of Possession is withdrawn.

**In the absence of any evidence or submissions from the tenant, I order the Tenant's Application for Dispute Resolution (Tenant's Application) dismissed, without liberty to reapply.**

#### Issue(s) to be Decided

Are the landlords entitled to compensation for damage to the rental unit or property?

Are the landlords entitled to retain all or a portion of the tenant's security deposit?

Are the landlords entitled to recover the filing fee for the Landlords' Application?

### Background and Evidence

The landlord gave written evidence that this tenancy began on July 1, 2014, with a monthly rent of \$1,180.00 due on the first day of the month. The landlord testified that he continues to retain a \$590.00 security deposit.

The landlord also provided into written evidence:

- a copy of a Notice of Violation dated June 10, 2017, from the municipal Fire and Rescue Services indicating that the sprinkler system is required to be serviced and requiring a 24 hour fire watch until the fire alarm system is reset and fully functional;
- a copy of an invoice dated June 10, 2017, for \$240.00 in plumbing work that was required to be done due to kitchen sink overflow from the rental unit in question to the unit below;
- a copy of an invoice dated June 12, 2017, for \$80.85 for the replacement of a smoke detector due to water leaking; and
- a copy of an invoice for 48 hours of fire protection watch, at a rate of \$10.00 per hour, in the amount of \$480.00.

The landlord gave undisputed affirmed testimony that the tenant left his tap running in his kitchen which overflowed to the rental unit below and caused damage to the fire alarm system. The landlord submitted that when the plumber attended to the tenant's door to trace the source of the leak, the tenant answered the door with a mop in his hand and refused entry to the plumber. The landlord recounted that he went to the tenant's rental unit the next day the tenant refused entry again and demanded 24 hours written notice.

The landlord stated that he is seeking compensation in damages for plumbing work in the amount of \$240.00, replacement of a smoke detector in the amount of \$80.85, 48 hours of fire protection watch in the amount of \$480.00 and the filing fee in the amount of \$100.00 for a total claim of \$900.85.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 32 of the *Act* stipulates that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant.

I find that the landlord has provided invoices for losses incurred due to water leaking from one rental unit to another and have proven that they suffered a loss. I accept the landlord's undisputed affirmed testimony that the plumber saw the tenant with a mop in their hand when the water was leaking to the unit below and that the tenant denied the plumber entry into the rental unit. I further find that the undisputed invoice from the plumber shows that the origin of the water leaking was from the rental unit in question. I find that the tenant's neglect caused water to leak to the unit below and caused damage to common property resulting in the landlords' loss under the *Act*. I find that the tenant is responsible to repair the damages caused by their neglect.

Based on the written evidence and undisputed affirmed testimony, I find that the landlords are entitled to a monetary award of \$800.85 for plumbing work, replacement of a smoke detector and fire watch protection services.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I also allow them to recover their filing fee from the tenant.

### Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover losses for damage, retain the security deposit and to recover the filing fee:

<b>Item</b>	<b>Amount</b>
Invoice for Plumbing Work	\$240.00
Invoice for Smoke Detector Replacement	80.85
Invoice for Fire Watch Protection	480.00
Less Security Deposit	-590.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$310.85</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that 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: January 09, 2018

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Residential Tenancy Branch