



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNR, MND, MNSD, FF

### Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

The tenants applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's agent testimony is as follows. The one year fixed term tenancy began on November 1, 2016 and was scheduled to end on October 31, 2017, however the parties mutually agreed to end the tenancy on April 30, 2017. The tenants were obligated to pay \$6300.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$3150.00 security deposit. The landlord has returned a portion of the deposit and still holds \$2391.50. The parties conducted move in and move out condition inspection reports in writing. The agent testified that there were several deficiencies at the end of the tenancy.

The agent testified that the tenant did not take care of the landscaping as per the tenancy agreement. The landlord testified that the tenant damaged some walls that required painting and touch ups along with the replacement of 13 lightbulbs. The agent testified that the tenant caused numerous stains on the carpet totalling fourteen. The agent testified that the parties agreed that the landlord would hold \$2391.50 of the deposit to address the deficiencies unless the tenants wanted to do it; which they did not. The landlord testified that \$758.50 was returned to the tenants. The landlord testified that the parties had been in negotiations as to a possible settlement up until June 7, 2017. The landlord testified that they filed for dispute resolution on June 14, 2017 as a result of not being able to come to a resolution with the tenants.

The landlord is applying for the following:

1.	Landscaping	\$441.00
2.	Walls and Lightbulbs	892.50

3.	14 carpet stains x \$80.00 per stain	1120.00
4.	Filing Fee	100.00
5.		
6.		
	Total	<b>\$2553.50</b>

The tenants gave the following testimony. WB testified that the landlord did not return their full deposit within fifteen days and seeks the return of double that deposit as noted in the Act. WB testified that the claims made by the landlord are without merit, lack detail and justification. WB testified that he disputes the landlords claim in its entirety.

GB testified that this is a four floor home that had ten tenants, including him; renting the entire home from the owner. GB testified that a “major flood” occurred on November 22, 2016 that resulted in the basement being unusable for three of the tenants for 157 days up to an including the end of the tenancy on April 30, 2017. GB testified that the tenants were without running water for three days from November 22, 2016 to November 24, 2016.

GB testified that the tenants were without laundry facilities for four weeks. GB testified that the landlord may have come to a compensation agreement with the three basement tenants but the remaining seven tenants in this home have not been properly compensated. GB testified that the flood was a major loss to their quiet enjoyment, stress of living in a construction zone, constant interruptions by the landlord, and their agent and tradesman and eviction threats from the landlords’ agent. GB provided a calculation for the compensation sought. GB testified that the landlord has also not fully compensated the three basement tenants as agreed to.

The tenants are applying for the following:

1.	Rent Refund – Loss of Quiet Enjoyment	11, 380.14
2.	Outstanding compensation	310.65
3.	Loss of Running Water	434.91
4.	Laundromat	200.00
5.	Outstanding damage deposit	2391.50
6.	Doubling of Deposit Penalty	3150.00
7.	Filing Fee	100.00
8.		
	Total	<b>\$17967.20</b>

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

#### Landscaping \$441.00 -

The agent testified that the tenancy agreement states that the tenant is responsible for the landscaping. The tenant disputes this claim. The tenant testified that the landlord did not include the exterior of the property as part of the condition inspection report at move in. The tenant testified that the landlord was not able to substantiate their claim. In addition the tenants testified that the agreement was to cut the grass, not trimming bushes and trees as the landlord wanted. Due to the landlords neglect or oversight in not including the exterior of the property in the move in condition inspection report, I am unable to ascertain the changes or condition from move in to move out, if any. In addition, the agent referred to tree trimming and pruning. Residential Tenancy Policy Guideline 1 states landlords are responsible for such tasks in property maintenance. Based on the insufficient evidence before me, I find that the landlord has not proven this claim and I dismiss this portion of their application.

#### Walls and Lightbulbs \$892.50 –

The agent testified that the tenant damaged some walls that required touch up painting and repairs. The landlord testified that 13 lightbulbs needed replacing. The landlord

submitted a receipt for this claim. The tenant disputes this claim. The tenant testified that the walls were not damaged but were simply wear and tear. The tenant testified that the landlords invoice is very generic and lacks detail. The tenant testified that the amount is inflated and that there were only several small holes. The receipt submitted by the landlord lacks the amount of hours worked, detailed description of the work, the hourly rate and the cost of materials. I find this receipt to be lacking in details. The tenants have disputed the condition as reported by the landlord on the condition inspection report. The landlord did not provide photos of the damage. Based on the insufficient evidence to support the severity of the damage and the vague receipt before me, I dismiss this portion of the landlords claim.

Carpet cleaning \$1120.00 –

The agent testified that the tenants caused 14 stains on the carpet and that \$80.00 per stain is reasonable. The agent testified that the carpet is 40 years old. The landlord testified that the carpet was torn out and that she now has the hardwood that was underneath exposed. The agent testified that they did not spend \$1120.00 for the carpet cleaning but felt it was a fair amount. As the landlord has not provided sufficient proof of the out of pocket costs as claimed, they have not provided sufficient evidence to support this claim, accordingly; I dismiss this portion of the landlords' application.

The landlord has not been successful in their application.

I address the tenant's application and my findings as follows.

Rent Refund \$11, 380.14 plus \$310.65 compensation

GB submits that this claim is in regards to the seven tenants that did not receive compensation as a result of the flood in the home. GB submits that the landlord miscalculated the number of days and still owes them \$310.65 for the initial agreement for the three basement tenants directly affected by the flood. GB submits that the remaining \$11380.14 is for the other seven tenants that had to live in an uninhabitable situation, loss of quiet enjoyment, disruptive restoration, neglect by the agent and owner, and additional stress from the property manager threatening eviction. GB testified that numerous attempts to resolve the situation with the agent were tried, but to no avail.

The agent testified that the tenants signed an agreement that fully compensated them and that the landlord has paid that amount in full. The agent testified that the calculations and amount in the signed agreement were offered by the tenant and

accepted by the owner. The agent testified that the tenants were compensated as a whole group and not as individuals. The agent testified that the tenants paid a reduced rate that benefitted all of them and how they chose to divide up the compensation was up to them. The agent testified that there were two subsequent minor floods that were remediated quickly with minimal impact on the tenants. The agent testified that the tenants have continually tried to receive compensation for the same issue that had been resolved.

Both parties provided disputing testimony, photos and documentation. The tenants are the applicants for this claim and as such bear the burden of proving their claim as noted above. The letter requesting compensation was proposed by the tenants and the landlord agreed to the calculations. The tenants have not provided sufficient evidence that this flood was a result of the landlords' negligence or recklessness. GB acknowledged that the landlord had someone immediately attend to the floods each time they occurred.

The landlord immediately contacted a professional plumbing company to fix the flood and was done so in a matter of hours. The landlord then obtained the services of a professional restoration company as provided by their insurance company. Both the landlord and the tenants were subjected to the restoration and insurance company's timeline. I find that based on the evidence before me, the landlord and their agent acted in accordance with the Act and did so in reasonable and timely manner. Based on the above, the insufficient evidence before me, and on a balance of probabilities, I dismiss this portion of their claim.

#### Loss of Running Water - \$434.91

The agent disputes that the tenants were without water for three days. The agent submits that the tenants advised of the flood on November 22, 2016 at 7:30 p.m. and that the water was fully functional by the evening of November 24, 2016. The agent further submits that the water was turned off intermittently and that the tenants were with running water at various times during those three days as claimed. The agent submits that emergency repairs were being conducted and that it necessitates the water being turned off at times. GB originally claimed that the tenants were without water for three days; when challenged by the agent, GB revised the amount to two and a quarter days and then again down to one day. GB further testified and acknowledged that the water was "off and on" during that time but was still an inconvenience for the tenants. Based on the inconsistent testimony of GB, the inability to provide a clear and defined breakdown of the amount sought and days affected, and the failure to show that this

claim was a result of the landlord being reckless or negligent, I must dismiss this portion of their application due to insufficient evidence.

Laundromat- \$200.00

The agent testified that there were two sets of washers and dryers in the house and although one set was not usable, the other was. The agent feels that no compensation is required. GB testified that all ten tenants were unable to access the second set of laundry machines as there was ongoing construction in the basement. GB testified that although the landlord provided a rent rebate to the three tenants living in the basement, the other seven tenants were not provided laundry services for four weeks. GB testified that laundry is included in their tenancy agreement and that the amount sought is a very conservative amount for the loss of use for ten people for four weeks. I agree with the tenants. The tenants were unable to access the functioning machines for four weeks and that amount sought is reasonable. Based on the evidence before me, and on a balance of probabilities, I find that the tenants are entitled to \$200.00.

Unreturned security deposit \$2391.50 plus penalty of \$3150.00

The tenant was seeking the return of double the security deposit. The tenant testified that they agreed that the landlord could retain \$2500.00 as part of the negotiations but that \$650.00 should have been returned to him by May 15, 2017. The tenant testified that they did not receive the full \$650.00 until June 7, 2017. I do not agree with the tenant. The tenant and landlord agreed to work together and to negotiate the deficiencies and possible resolution of the matter. I find that the doctrine of estoppel applies under these circumstances. In the tenants own testimony he stated that both parties acted in good faith and were attempting to resolve the matter. I find that the actions of the tenant allowing the landlord to retain a portion of the security deposit for repairs enforced the landlords belief that the parties were working together to resolve the matter.

The tenant cannot then change their position and then seek to enforce timelines that had expired as a result of unsuccessful resolution discussions. Furthermore, the agent testified that they landlord was prepared to return the entire deposit provided that the tenant correct the deficiencies in the unit, however due to the tenants inaction in not addressing a single item, and deteriorating settlement discussions, the landlord filed an application for dispute resolution. Based on all of the above, I find that the doubling provision under Section 38 does not apply, but I do find that the tenants are entitled to the return of the remaining security deposit of \$2391.50.

The tenants' are entitled to the recovery of the \$100.00 filing fee. The tenants are entitled to \$2691.50. The landlord has not been successful in their application.

### Conclusion

The tenants have established a claim for \$2691.50. I grant the tenants an order under section 67 for the balance due of \$2691.50. This order may be filed in the Small Claims Court and enforced as an order of that Court. The landlords' application is 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: April 17, 2018

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Residential Tenancy Branch