



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security and/or pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's application and evidentiary materials and the landlord confirmed receipt of the tenant's evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

### Preliminary Issue – Amendment of Landlord's Application

The landlord's application indicated a total claim of \$4,290.30. The landlord stated that this was the total cost of the repairs related to the damages, however she stated she is only seeking to recover a portion of the cost of the repairs for which she believes the tenant bears half the responsibility. Therefore, the landlord requested to amend the amount claimed for damages against the tenant to \$1,064.70.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to reduce the amount of the claim to \$1,064.70 since it would not be prejudicial to the tenant.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

A written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information about the tenancy agreement. This tenancy began September 1, 2012 and has continued on month to month basis. The tenant paid a security deposit of \$350.00 at the beginning of the tenancy and the deposit continues to be held by the landlord. Monthly rent is currently \$808.00 due on the first of the month.

The landlord testified that on February 8, 2018, she received a text message from the tenant regarding a water leak in the rental unit. The landlord attended the rental unit and discovered water on the kitchen floor and the cupboard under the kitchen sink contained mold. The landlord arranged to have a plumber attend at the unit the next morning. The plumber determined that the hose on the kitchen faucet had broken at the handle, which allowed water to leak into the cupboard when the faucet was used. The faucet had been leaking for an undetermined amount of time; however, the landlord noted that it was long enough for significant mold growth, and to have caused the cabinet and drywall at the back of the cupboard to have become water-logged enough that water eventually began to leak out onto the kitchen floor.

The landlord stated that she spoke with tenant about sharing some of the costs. The landlord stated that she felt the tenant bore some responsibility for the cost of the repair

as the damages would not have been as extensive had the tenant reported the leaky faucet to her sooner so that it could have been fixed.

The landlord stated that the tenant had initially agreed to pay some of the costs, and submitted into documentary evidence a text message exchange with the tenant in which he states he will not pay for a new cabinet, but “other costs yes”.

The landlord submitted into documentary evidence an invoice from a restoration company which provides a breakdown of the \$4,290.30 cost to repair the drywall, replace the cabinetry and countertop, and address the plumbing.

As set out in the landlord’s application, the landlord is only seeking compensation from the tenant for the following percentage of the repair costs and fees charged on the invoice in relation to the drywall, plumbing, demolition/disposal, and additional fees and taxes, as summarized below:

Item	Invoice Amount	Percentage Allocated to Tenant	Amount Claimed
Drywall	\$650.00	50%	\$325.00
Plumbing	\$650.00	50%	\$325.00
Demolition/Disposal	\$390.00	50%	\$195.00
<b>Sub-Total</b>			<b>\$845.00</b>
Overhead fees	10% of the Sub-Total		\$84.50
Profit fees	10% of the Sub-Total		\$84.50
<b>Pre-Tax Total</b>			<b>\$1014.00</b>
GST	5%		\$50.70
<b>Final Total</b>			<b>\$1,064.70</b>

The landlord stated that the rental unit was originally installed around 2003. The kitchen cabinetry dated back to 2003 and the faucet was replaced in 2004. The drywall and plumbing building elements were last updated in 2011. The landlord testified that she and her ex-partner resided in the rental unit prior to the tenant, and she submitted into evidence a statement from her ex-partner stating that the kitchen faucet was in good working order and not leaking prior to the tenant moving into the rental unit.

The tenant testified that he had noticed seepage from the faucet from the time he moved in six years ago. He thought the water was just on the surface and “not a big

deal". He kept wiping it up. The tenant stated that he does not use the cupboard under the sink, therefore he had no reason to look under the sink and he had no idea when the last time was that he last opened the cupboard under the sink. The tenant testified that when he saw the water on the kitchen floor he notified the landlord. The tenant submitted into documentary evidence a statement from his friend attesting that he has not seen the tenant behave in a negligent manner in regard to the rental unit, and that the faucet had seepage from the time the tenant moved in. The tenant stated that the landlord has never conducted an inspection of the rental unit in the six years that he has lived there.

The tenant submitted into documentary evidence a text message exchange with the landlord in which he requested to have the mold addressed immediately due to health concerns and stated that the landlord "must pay to remove the mold".

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this matter, the landlord alleges that the tenant was negligent in failing to report the issue of the leaking faucet sooner, so that the faucet could have been replaced and the resulting water damage to the cabinet, drywall and countertop avoided or significantly reduced.

Section 32 of the *Act* sets out the obligations for both the landlord and tenant to repair and maintain the rental property, as follows, in part:

- 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
  - (a) complies with the health, safety and housing standards required by law,
  - and

- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
  - (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
  - (3) 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 or a person permitted on the residential property by the tenant.
  - (4) A tenant is not required to make repairs for reasonable wear and tear.
- ...

In making a determination on whether the tenant caused the damage, by action or neglect, I have considered the evidence presented on nature of the damage, condition of the kitchen faucet, and the reasonableness of the actions of both parties. As a point of clarification, I have found that the kitchen faucet leak was a result of “wear and tear” due to the age and normal use of the faucet, and not the result of any action or neglect by the tenant. Rather, my finding explained below relates to the damage resulting from the leaking faucet.

I find that the nature of the damage, that being the water-logged kitchen cabinet, drywall, and countertop, as well as the development of mold, support the findings of the plumber that the water leak was not the result of a spontaneous, catastrophic plumbing failure but rather a leak from the faucet over an extended period of time.

The landlord never completed a move-in condition inspection report, which would have provided evidence of the state of repair and condition of the kitchen sink faucet at the beginning of the tenancy. Instead, each party submitted conflicting witness statements; the landlord’s attesting to the fact the kitchen faucet did not leak prior to the tenant moving in, and the tenant’s attesting to the fact there was “seepage” around the base of the kitchen faucet when the water was turned on, from the time he moved in. Regardless of whether or not the seepage was “benign” in the tenant’s opinion, the tenant’s testimony confirms that he was aware of water leaking from the faucet as he had to keep it wiped up. Therefore, I find that the faucet was leaking water, and that this water leakage was visible to the tenant.

I find that the landlord took action to mitigate the damage from the water leak, once alerted to it by the tenant, by arranging for a plumber to attend the next morning to replace the kitchen faucet. The landlord then undertook to obtain quotes from

restoration companies to address the resulting water damage to the cabinet, drywall and countertop, in a timely manner.

Although section 29 of the *Act* allows a landlord to inspect a rental unit monthly, this is not a requirement. Given the circumstances of this case, I find it unlikely that a monthly inspection would have alerted the landlord to the leaking faucet as it would not be reasonable to expect a landlord to test each faucet during an inspection. Rather, a landlord relies on a tenant to alert them to these issues.

I find that the tenant failed to report to the landlord the water leak from the kitchen faucet that caused visible water seepage around the surface of the sink. I find that had the tenant reported this ongoing leakage from the faucet, the resulting water damage to the surrounding building elements could have been avoided or significantly mitigated. Further to this, I find that the text messages dated February 21, 2018, submitted into evidence by the landlord, support the landlord's testimony that the tenant had agreed to pay for some of the repair costs. This infers that the tenant had accepted some degree of responsibility for the cause of the damage.

Having made the above-noted determinations, I find on a balance of probabilities that the tenant was negligent in failing to report the leaking kitchen faucet to the landlord, and it was this negligence which caused water damage to the surrounding building elements.

In order to determine if the landlord is entitled to compensation for the damage caused by the tenant's negligence, I refer to Section D of Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, which provides the following direction:

*D. AMOUNT OF COMPENSATION*

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. **The amount arrived at must be for compensation only**, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question.** For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

**[My emphasis added]**

The landlord submitted into documentary evidence an invoice with the total costs of the repair due to the damage. The landlord's application sets out her claim against the tenant for a percentage of only some of these costs, namely the costs for drywall and plumbing, and the associated demo/disposal, fees and taxes related to these costs on the invoice. As such, I find that the landlord has presented compelling evidence of the value of the damage in question and therefore I find that the landlord is entitled to compensation for the damage to the building elements itemized in the invoice, and as set out in the landlord's application.

In light of the above and in accordance with section 67 of the *Act*, I find that the landlord is entitled to a monetary award in the amount of \$1,064.70 for compensation for damages resulting from the tenant's negligence in failing to report the leaking faucet to the landlord before significant water damage occurred.

The landlord continues to retain the tenant's security deposit of \$350.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$350.00 in partial satisfaction of the monetary award, and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. A summary of the monetary award is provided as follows:

<b>Item</b>	<b>Amount</b>
Compensation for damages to rental unit	\$1,064.70
Landlord to retain security deposit in partial satisfaction of monetary award	(350.00)
Remaining amount of compensation owing to the landlord	= \$714.70
Recovery of filing fee for this Application	+ 100.00
<b>Total Monetary Order in Favour of Landlord</b>	<b>\$814.70</b>

### Conclusion

I order the landlord to retain the \$350.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$1,064.70 for damages flowing from the tenancy.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$814.70 in satisfaction of the remaining amount owing for damages, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: July 6, 2018

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Residential Tenancy Branch