



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes          FFL MNDL-S

### Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the Filing Fee pursuant section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The landlord was represented at the hearing by agent V.S. (the “landlord”). The tenant confirmed receipt of the landlord’s application for dispute resolution and evidentiary package. I find that the tenant was duly served with the landlord’s application and evidentiary package in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?

Can the landlord recover the filing fee?

### Background and Evidence

Testimony was provided by both parties that this tenancy began on April 29, 2017 and ended on December 31, 2017. Rent was \$2,395.00 per month and a security deposit of \$1,197.50 paid at the outset of the tenancy continues to be held by the landlord.

The landlord explained that they sought a Monetary Order of \$1,538.57 for damage done to the tenants unit and a neighbouring rental unit because of a leak in the washing machine.

The tenant acknowledged that a flooding incident occurred on approximately December 2, 2017. Both parties agreed that water entered the unit below the tenant’s suite after it seeped through the floor following a leak from the washer. The landlord argued the tenant had failed to adequately care for the washer as a result the drain had become plugged with a hair clip, causing the water level to rise and resulting in the flooding of the unit. The landlord described the actions of two separate plumbing crews who attended the property on December 4, 2017 and again on December 12, 2017 to identify the problem.

The landlord said that several expenses related to these plumbers along with a restoration company were incurred. The landlord sought a return of their insurance deductible which paid for the cost of the repairs to the suite below the tenant's rental unit.

The tenant disputed that she should be held accountable for something which she described as an "accident" and argued there was no negligence on her part related to the usage of the washer. The tenant said she used the washer in a regular fashion, and the tenant questioned how the hair clip in question could be attributed to her. The landlord acknowledged that the washer was new with the building in 2009 but sought to connect the tenant's use of the machine to the flooding incident.

### 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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

*Residential Tenancy Policy Guideline #1* explains, "The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site...reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear...or neglect by the tenant."

After having considered the testimony of both parties and having reviewed the evidence submitted by the landlord, I find the landlord has failed to demonstrate that the tenant did not use the washing machine in a reasonable fashion or neglected to address any service issues that may have been present.

The washing machine was approximately eight years old at the time of the tenancy. The tenant only occupied the rental unit for a very brief period. I find these factors to be very influential in my determination

I find that the nexus connecting the tenant's normal use of the washing machine with the flooding of the rental units to be a delicate one. There is no doubt that a blockage in the drain led to the flooding of the units. There remains however, great difficulty in attributing this

blockage to any action, or inaction on the part of the tenant. As *Policy Guideline #14* notes, "Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Turning to whether the blockage occurred due to neglect by the tenant, I find the fact that the drain is located in an area accessible by a specialist who examined the machine following the incident not to be a case of neglect. The drain is not visible to the naked eye. It would be very difficult to place the burden of removing a drain catch on the tenant when two plumbing crews were called to examine the machine. For these reasons, I dismiss the landlord's application for a Monetary Order.

As the landlord was unsuccessful in their application, they must bear the cost of their own filing fee.

### Conclusion

The landlord's application for a Monetary Order is dismissed.

The landlord must bear the cost of their own filing fee.

The landlord is directed to return the tenant's security deposit.

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 31, 2018

---

Residential Tenancy Branch