



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for damage or compensation under Section 67;
- Reimbursement of the filing fee under Section 72.

The landlord YK appeared on behalf of both landlords (“the landlord”). The tenant CC and the tenant JB personally appeared (“the tenants”). The remaining three respondents did not appear.

The landlord and the tenants were given full opportunity to present affirmed testimony, submit documentary evidence and cross-examine the other party.

The landlord testified all respondents were individually served with the Notice of Hearing and Application for Dispute Resolution by registered mail although she was not certain of the mailing date. The tenants acknowledged service by registered mail although the date of service was not established. Further to Section 89 of the *Act*, I find the tenants CC and JB were served with the Notice of Hearing and the landlord’s evidentiary materials.

The landlord failed to submit evidence establishing service upon the remaining three respondents (CM, PR and QA) who did not appear at the hearing. Therefore, I find the landlord has failed to establish service as required under Section 89 with respect to the respondents CM, PR and QA and the applications against them are dismissed with leave to reapply.

### *Preliminary Issue*

The preliminary issue concerned the naming of two tenants as respondents each of whom had a separate tenancy relationship with the landlord.

The landlord testified each tenant rented a bedroom in the landlords' building in which the landlords did not reside. Each tenant had a separate agreement with the landlord with unique terms.

The landlord testified she suffered damages because of a blocked toilet to which both tenants had access (as well as the landlords themselves, the tenants' guests, and other occupants of the building and their guests). The landlord claims someone is responsible to reimburse her for the resulting expense and seeks a monetary order against the tenants, or one of them. She requests her claims against both tenants be heard together.

Each landlord-tenant relationship is generally a separate matter for which a distinct application for dispute resolution must be made based upon the terms of their individual relationship.

While more than one tenant may be named in an application, this generally occurs when two or more tenants have entered into the lease agreement together.

In this case, the only connection between the two respondents is that they reside in the same building. As stated, the terms of their respective tenancy agreements are not the same. They are not joint tenants.

Section 2.10 of the *Rules of Procedure*, allows for applications to be joined and heard at the same hearing in certain circumstances. Section 7.12 provides that a party may make an oral request at the hearing to add another party.

In this case, the landlord has *not* brought separate proceedings against each tenant and sought to join them or add a party. Instead, she seeks to bring separate tenancy agreements under the procedural umbrella of one proceeding.

The only connection between the two tenants is the claim for damages for a blocked toilet located in a building in which they both happen to reside. The landlord has not shown a connection between the tenants as a basis for a claim of shared responsibility.

An arbitrator has authority, pursuant to section 62 of the *Act*, to dismiss all or part of an application for dispute resolution.

In consideration of the testimony of the parties, the requirement for procedural fairness and the provisions of the *Act* and *Rules of Procedure*, I decline to hear this application against both tenants together. Each tenant is entitled to procedural fairness and a separate hearing.

I allow the matter involving the tenant CC, the first named respondent, to proceed (hereinafter, "the tenant"). I dismiss the claim against the tenant JB with leave to the landlord to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for damage or compensation under Section 67;
- Reimbursement of the filing fee under Section 72.

#### Background and Evidence

##### *Preliminary Issue*

As set out earlier, the landlord testified each tenant rented a bedroom in the landlord's building. Each tenant had a separate residential tenancy agreement with unique terms with the landlord.

The tenant and the landlord entered into an agreement starting September 1, 2017 for \$650.00 a month with a security deposit of \$325.00 for the rent of one room. The tenant shared certain facilities including two bathrooms to which other tenants, their guests and the landlords also had access, although the landlords did not live in the premises.

On May 9, 2017, the tenant, four other tenants, guests and the landlords had access to one bathroom on the main floor in which the toilet was not working adequately. After efforts to solve the problem by the tenant, the occupants and the landlord were exhausted, the landlord retained the services of a plumber. The plumber found a female hygiene product lodged in the toilet. The plumber submitted a bill for services in the amount of \$325.50 which the landlord paid. The landlord submitted a photograph of the item removed from the toilet by the plumber.

The landlord seeks a monetary order against the tenant for this expense.

The tenant denies responsibility for plugging the toilet and for responsibility for the expense. The tenant stated there were tenants who vacated shortly before May 9, 2017 who could be responsible. The tenant also points to an estimated number of ten to fifteen people a day having access to the toilet. The tenant questions if the item was indeed the sole cause of the blockage and states the house is old, approximately 100 years, and in an uneven state of repair. The tenant alleges the cause of the blockage may be failure by the landlord to adequately maintain the premises, including the plumbing system.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of damage or loss and order a party to pay compensation to the other. 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 resulted 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 to verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a monetary award.

Rule 6.6 of the *Rules of Procedure* states in part as follows:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The parties agree many people had access to the toilet, although they disagree on the number of people. There was no information presented on when the object became lodged in the toilet and who had access to the toilet at that time. I can understand the landlord's frustration at having an expense associated with a tenancy caused by an unknown person, but the landlord cannot attribute responsibility to this tenant without adequate evidence.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord has failed to establish the claim against the tenant. The landlord's claim against the tenant is dismissed without leave to reapply.

The landlord is therefore not entitled to reimbursement for the filing fee.

### Conclusion

The application against the tenant is dismissed without leave to reapply.

The application against the respondents JB, CM, PR and QA is dismissed with 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: August 7, 2018

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Residential Tenancy Branch