



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

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

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 landlord's agent, tenant's agent and the tenant's brother, who occupied the rental unit during the tenancy, attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant's agent (the tenant) indicated that they would be the primary speaker on behalf of the tenant during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package, which were sent by registered mail to the tenant on February 03, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Application and an evidentiary package.

The tenant acknowledged receipt of the Amendment to an Application for Dispute Resolution (the Amendment) and a second evidentiary package, which were sent by registered mail to the tenant on August 16, 2018. In accordance with sections 88 and 89

of the *Act*, I find that the tenant is duly served with the Amendment and a second evidentiary package.

The landlord acknowledged receipt of the tenant's evidentiary package, which was sent by registered mail to the landlord on August 24, 2018. In accordance with section 88 of the *Act*, I find that the landlord is duly served tenant's evidentiary package.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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?

#### Background and Evidence

A tenancy agreement was provided in evidence showing that this one month fixed term tenancy began on December 18, 2017, with a monthly rent of \$6,875.00, due on the first day of each month and a security deposit in the amount of \$3,437.50.

The landlord provided in evidence;

- A copy of a Monetary Order Worksheet which details the landlord's total monetary claim of \$17,477.16, including but not limited to \$10,312.50 for lost rental income, a plumbing inspection in the amount of \$150.00, painting of the rental unit in the amount of \$1,149.51, repair of the floors in the amount of \$2,543.85, project coordination in the amount of \$2,540.49 as well as for various losses incurred for materials and the cleaning of the rental unit;
- Copies of various receipts for the items listed on the Monetary Order Worksheet including a receipt for cleaning in the amount of \$150.00, dated January 24, 2018;
- Copies of pictures, submitted by the landlord on February 01, 2018, taken of the second bedroom closet and a section of the hallway with parts of the walls removed as well as some of the hardwood floor in the hallway;
- Various pictures taken from within the rental unit submitted by the landlord on August 17, 2018, showing the bathroom, as well as floor and walls in other parts of the unit, in a state of getting repaired; and

- Copies of documents from a restoration company with a document listing the fans used in the affected areas dated January 05, 2018 and a partial copy of a document detailing the affected areas on January 11, 2018.

The tenant provided in evidence;

- A copy of a move-in and move-out Condition Inspection Report signed by the landlord and the tenant at the beginning on December 18, 2017, and at the end of the tenancy on January 15, 2018, which notes all items in the same condition at the end of the tenancy as it was in the beginning of the tenancy, other than a stain on the floor in one bedroom. The report also notes that there were leaks including a leak in the tub in the second bathroom with floors affected and the floors being affected in one of the bedrooms due to a leak. The report also does not list any damage to the rental unit for which the tenant is responsible at the end of the tenancy and only indicates that it is not applicable;
- A copy of a signed statement dated August 23, 2018, from the occupant who discovered water coming up through the hardwood floor in the hallway of the rental unit. The statement indicates that there was no water on the floor in the bathroom or in the shower and that the occupant could not find the source of the water coming up through the floor. The occupant further states that they called the concierge when they could not find any overflow or leak in the bathroom, toilet, shower or sink. Finally the occupant states that different parties came to the rental unit to perform inspections and that fans were placed in the rental unit;
- Copies of floor plans for the rental unit, for the unit adjacent to the rental unit and for the floor that the rental unit is on;
- A copy of a text message exchanged between the tenant and the property manager on January 05, 2018, in which the tenant notifies the property manager of a leak in the rental unit;
- A copy of a text message exchanged between the tenant's close family member and the property manager on January 08, 2018, in which the property manager states that they are working to solve the problems, apologizes for the inconvenience of the leak and offers for the occupants to move out early with the landlord reimbursing them for any amount the landlord receives back from the insurance claim;
- A copy of an e-mail dated January 08, 2018, from the property manager to the tenant stating that the landlord will "submit the claim under their insurance and reimburse what they will get back to you". The property manager also requests an official statement to submit to the insurance company; and
- A copy of a picture showing a fan blowing in the second bedroom closet.

The landlord stated that the lease for the rental unit was with the tenant but that the tenant's brother and his family were the ones who occupied it. The landlord submitted that there was damage which occurred to the rental unit due to a flood from a single occurrence of water from the shower and that this information was conferred to him from the plumber who inspected the rental unit

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The landlord testified that the repairs to the rental unit were finished around March 03, 2018, which is why the landlord is claiming for lost rental income. The landlord stated that the materials for the flooring are included in the invoice for the landlord's project coordination. The landlord stated that they were amending their monetary claim for painting from \$1,149.51 to \$474.77 as the invoice included the painting of another unit for the landlord.

The landlord submitted that the tenant's insurance information was not provided to the landlord and that there is a very high deductible for the landlord's insurance which is why all expenses were incurred directly by the landlord. The landlord stated that in addition to the plumber, there were two engineers involved in the repair to the rental unit.

The tenant confirmed with the landlord that the pictures titled 'Shower Spill Humidity' and 'Tile Removed' were taken at the end of February 2018, which matched the invoice for floor repair which indicated that the tile was removed on February 26, 2018. The tenant questioned why the floor was still wet almost two months from the time that the flooding was discovered, considering the amount of time that had passed and the fact that the restoration company's fans had been running to dry the floors for an extended period as shown by the landlord's evidence.

The tenant submitted that one of the occupants in the rental unit discovered the water coming from under the hardwood floor when walking in the hallway and noticing their feet getting wet. The tenant stated that the occupant could not determine the source of the water, called the concierge and fans were placed in the rental unit. The tenant submitted that the hallway is where the initial water was discovered as well as the 2<sup>nd</sup> bedroom closet flooring which was wet and both areas shared a wall with the shower.

The tenant questioned why there was a bill for the inspection done by a plumber but no actual report of what was inspected and found by the plumber. The tenant suggested

that there was an ongoing leak that continued to occur after the tenant's agreement ended and that the water damage was not due to the tenant's actions.

The tenant stated that if water had overflowed from the bathroom shower, the bedroom flooring would have been wet as well as the floor in front of the door of the bathroom as opposed to the closet area and the hallway area which are both adjacent to the shower as shown in the floor plans provided. The tenant submitted that the only areas directly affected when the flooding was first discovered were both adjacent to the shower.

The tenant stated that the Stata Corporation associated with maintaining the building that the rental unit is in would not give information to the tenant's agent but advised them that they would provide any statements requested about what occurred in the rental unit to the landlord and questioned why there were no statements provided from the strata corporation.

The landlord disputed that the Stata Corporation would provide any written statements for them if requested and stated that they had refused the landlord's request for a written statement.

### Analysis

I find that the landlord received the tenants' address on January 15, 2018. As the tenant did not agree in writing for the landlord to retain any amount from their security deposit, the landlord had until January 30, 2018, to make an application for dispute resolution and that the landlord actually did make their Application on that date in accordance with section 38 of the *Act*.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord bears the burden to prove that they incurred a loss and that this loss was due to the actions or neglect of the tenant or occupants in the rental unit in violation of the Act, Regulations or tenancy agreement.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find that it is undisputed that there was flooding and that the landlord incurred a loss; however, I find that the landlord has not demonstrated that it was the actions or neglect of the tenant, or any occupant in the rental unit, in violation of the Act, Regulation or tenancy agreement which caused the landlord's loss.

I find that the correspondence between the landlord and the tenant, when the flooding first occurred, only mentions a leak and that there is no indication of any actions of the tenant or the occupants as being responsible for the flooding. I find that the landlord offers for the tenant to end their agreement early and for the landlord to submit that loss to their insurance company for reimbursement to the tenant. I find that if it was readily apparent that the actions of the occupants caused the damage to the rental unit, it would be unreasonable for the landlord not to mention that in the communications. I further find that it would be unreasonable to offer reimbursement to the tenant for time paid for the use of the rental unit which was not able to be fulfilled due to the leak.

I find that the condition inspection report only refers to leaks and that it indicates that all other aspects of the rental unit are in the same condition as it was when the occupants moved in. I find that it is unreasonable that the landlord would not indicate that they hold the tenant and occupants liable for the damage on the report if it was known that there was a single occurrence flood which occurred due to the tenant or the occupants' actions. I find that the landlord has not made any indication on the Condition Inspection Report that the damage in the rental unit was due to the actions or neglect of the tenant or other occupants.

In addition to the above, I find that the landlord has not provided any reports or written statements from qualified professionals or any other party involved in the repairs to support the landlord's testimony as to what had occurred to cause the flooding. I find that it is unreasonable for the landlord to have had a plumber inspect the rental unit and not provide the actual report as to what was inspected and what the plumber found. I find that the landlord conveying what the plumber had found is not sufficient and that the landlord

should have provided the inspection report or a statement from the plumber as to what caused the flooding as it is the landlord's burden to prove that it was the tenant or occupants' actions or neglect which caused the flooding.

I find that the reports from the restoration company do not actually give any indication as to what the source of the flooding is, that they only note the areas that were affected and list the equipment used by the restoration company to dry the rental unit. I find that it is unreasonable that the landlord was not able to procure a statement from the restoration company regarding what had occurred in the rental unit to cause the flooding as they were one of first professionals to take action to address the excess water in the rental unit.

I find that, based on a balance of probabilities, it is unreasonable for the water to have flowed around the corner down the hallway and then around another corner and reverse direction to go back the other way into the second bedroom closet. I accept the tenant's submission, which is supported with the landlord's pictures provided in evidence on February 01, 2018, when the landlord first made their application, that the areas that were initially the most heavily affected were directly adjacent to the shower which would indicate an internal leak as opposed to water traveling from the bathroom.

I find that it is unreasonable for the flooring in the bathroom to still be damp almost two months after the 'single incidence of flooding' occurred, in consideration of the fans in the rental unit and the amount of time that had passed. Based on the affirmed testimony and on a balance of probabilities, I accept the tenant's submission that there was a leak which occurred that was not due to the tenant or the occupant's actions or neglect.

Regarding the landlord's receipt for the cleaning of the rental unit, I find that the landlord did not note any areas as dirty on the Condition Inspection Report which would require the landlord to have the rental unit professionally cleaned and that they have not provided any evidence that the rental unit actually needed to be cleaned at the end of the tenancy.

I find that the burden of proof is on the landlord to prove that the flooding in the rental unit was due to the actions or neglect of the tenant or the occupants in the rental unit and the landlord has not actually provided any evidence to demonstrate this fact, only that flooding occurred and the landlord incurred a loss.

As I have found that the landlord has not proven that the monetary loss which they incurred was due to the actions or neglect of the tenant or occupants in the rental unit, the landlord's Application for a monetary order for damage to the rental unit and for money

owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement as well as the Application to retain all or a portion of the tenant's security deposit is dismissed, without leave to reapply. As the landlord has not been successful in their Application, the landlord's request to recover the filing fee from the tenant is dismissed, without leave to reapply.

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.

RTB Policy Guideline # 17 C 1. states that an arbitrator will order the return of a security deposit on a landlord's application to retain all or a part of the security deposit unless the right of a tenant has been extinguished under the *Act*.

As I have dismissed the landlord's Application to retain the security deposit, I find that the tenant is entitled to a monetary award in the amount of \$3,437.50 for the return of their security deposit.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenant's favour in the amount of \$3,437.50 for the return of the tenant's security deposit. The tenant is provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders 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: September 17, 2018

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Residential Tenancy Branch