



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, 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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

The landlord and the landlord's assistant (collectively the "landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to 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?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2017 on a fixed term until April 30, 2018. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$800.00 at the start of the tenancy, which the landlord still retains in trust.

On an undisclosed date, the tenants advised the landlord they would be vacating the rental unit by the end of December 2017. The landlord advertised the unit throughout the months of November, December and January. The tenants vacated the rental unit on December 30, 2017 and the unit was re-rented.

During the hearing, the parties agreed that the hallway hardwood floor sustained some damage during the tenancy and that the floor was replaced in the third week of January 2018.

### Landlord

The landlord testified that although a new tenancy was secured, it was not effective until February 1, 2018 therefore the landlord seeks to recover January rent in the amount of \$1,600.00. The landlord provided a copy of the internet posting dated November 16, 2017 and a screenshot of email enquires of the unit.

The landlord seeks to recover the hardwood floor replacement costs in the amount of \$6,022.25. It is the landlord's position that the damage is not normal wear and tear. She testified that both her insurance agent and contractor determined elevated moisture levels beneath the floor. She testified that because both professionals eliminated all other potential causes; it must be the tenants' negligence that caused the water damage. The landlord provided assessments written by both professionals along with pictures of the hardwood floor and an invoice for the hardwood floor replacement.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

### Tenants Reply

The tenants contend that they should not be held liable for January rent as this loss is not a result of them ending their fixed term tenancy early but rather a result of the landlord having the floor replaced during the month of January.

In regards to the flooring issue, the tenants testified that they did not damage the floor and accordingly should not be held liable for it.

### Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on April 30, 2018. The tenants ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the Residential Tenancy Policy Guideline #30 neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties.

Because the tenants did not allege cause and the parties did not sign a mutual agreement to end tenancy, I find the tenants ended the tenancy contrary to the *Act*. In such circumstances, a landlord may be eligible to monetary compensation for loss of rental income provided the landlord can establish reasonable efforts were made to mitigate their loss. Based on the landlord's testimony and documentary evidence, I find the landlord began repairs three weeks after the tenancy ended and therefore did not mitigate her loss of January rent. Consequently, I find the landlord is not entitled to \$1,600.00 for loss of January rent and accordingly dismiss this portion of the landlord's claim.

Under 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. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

I find the landlord has provided inclusive evidence to establish the source of the water damage, or that the damage occurred solely because of the tenants' actions. The written assessment from the insurance company indicates the damage is topical whereas the contractor's written assessment explicitly states it is not topical water damage. Neither report identifies a definitive source of the water damage. While both reports recommend replacement, one report specifies that the alternative, that is sanding the floor, was not possible due to the thin wear layer. For these reasons, I find it more probable that the damage was a result of wear and tear rather than any action or neglect of the tenants. Consequently, I dismiss the landlord's monetary damage claim in the amount of \$6,022.25.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee.

### Conclusion

The landlord's entire application is dismissed 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: September 6, 2018

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Residential Tenancy Branch