



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HUNTINGTON COURT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages and for the recovery of the filing fee paid for this application.

The property owner and an agent for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing, as was the Tenant. The Tenant stated that she did not receive the Notice of Dispute Resolution Proceeding package or a copy of the Landlord’s evidence. She received the information about the hearing after she contacted the Residential Tenancy Branch following the receipt of an email from the Residential Tenancy Branch.

The Landlord stated that they sent the Notice of Dispute Resolution Proceeding package and a copy of their evidence to the Tenant by registered mail on September 4, 2018 at the address of the rental unit. The Landlord submitted the registered mail tracking information into evidence showing that the package was unclaimed and returned to the Landlord.

The Tenant stated that she was out of town during the time it was sent and had set up mail forwarding. She stated that the package was not forwarded to her and the post office did not send it to her after she requested it be sent to a different address. Regardless of what happened with the mail forwarding, I find that the Landlord sent the package to the Tenant’s current address in accordance with Sections 88 and 89 of the *Act*. Therefore, I find that the Tenant was duly served as required.

The Landlord confirmed receipt of a copy of the Tenant's evidence in person on or around December 24, 2018. Therefore, I also find that the Landlord was duly served in accordance with the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on June 1, 2004. A security deposit of \$375.00 was paid at the outset of the tenancy. Current monthly rent is \$1,024.00.

The Landlord has applied for monetary compensation in the amount of \$935.20. They provided testimony that in December 2017 they received complaints from two residents on the first floor of the rental building that water and soap suds were backing up into their bathtubs. They stated that this occurred approximately four times. To find out the cause of the water backup, the Landlord hired a plumber to investigate.

The Landlord submitted an invoice from a plumbing company, dated January 24, 2018 for an amount of \$1,075.20. The invoice states that an inspection and cleaning of the pipes was conducted. The Landlord stated that a cause of the water backup was not determined at this time.

Following this, the Landlord stated that they had another plumber attend the property to explore the pipes with a camera. They submitted the invoice from this visit dated

January 17, 2018 for an amount of \$210.00. The invoice states that a camera inspection was conducted, and no obstruction was found.

The Landlord stated that as they could not find the cause of the issue, they had a third plumbing company attend the building to investigate. This company did not charge for the visit. A letter from the third plumbing company, dated February 5, 2018 was submitted and states that since no obstruction was found, the issue is most likely a dishwasher or clothes washer in one of the units on the same pipe/drainage system.

It was at this time that the Landlord inspected the suggested rental units and found that the Tenant had a dishwasher in her unit. They stated that they provided her a letter to stop using the dishwasher and stated that the water backup issues have not occurred since, leading them to conclude that the water issues were due to the Tenant's dishwasher.

The first plumbing invoice was for \$1,075.20 and the second with the camera inspection was for \$210.00 for a total of \$1,285.20. However, the Landlord stated that as the pipes had not been inspected or cleaned for some time, they were willing to take responsibility for \$350.00 of this cost, leaving an amount of \$935.20 owing from the Tenant.

The Landlord submitted into evidence drawings of the pipe and drain system showing that although the Tenant is on the other side of the building from where the water backup issues were, that her rental unit is on the same system. They stated that this makes it possible for the water issues to come from her unit, despite being in a different area of the building. They also testified that there were no other dishwashers or washing machines found in the rental building.

The Landlord stated that the tenancy agreement signed with the tenant does not allow for dishwashers or other such machines in the rental units. The tenancy agreement was submitted into evidence and the Landlord referenced clause 15 which states in part the following:

*Heavy appliances or equipment of any kind may not be installed by the tenant without written permission of the landlord.*

Both parties submitted a letter into evidence, dated January 23, 2018. The letter states that a dishwasher was found during an inspection and that the Tenant was to stop using it. A second letter, dated March 6, 2018, was sent to the Tenant outlining the costs of \$935.20 that she would be responsible for.

The Tenant provided testimony that she has had a dishwasher in her rental unit since 2006 and never tried to hide it. She noted that there were many inspections of her unit during this time and nothing was ever said about the dishwasher. She stated that when she received the letter in January 2018 regarding not having permission to have a dishwasher, she stopped using it and hasn't used it since.

After receiving a letter from the Landlord requesting she pay them back a portion of the plumbing costs, the Tenant responded by letter dated March 20, 2018 requesting further information such as the dates and times of when the water backups occurred. She stated that she never received this information and therefore is not able to confirm whether she was home and using her dishwasher during these times.

The Tenant also questioned how her dishwasher on the fourth floor on the northside of the rental building caused a backup of water in southside first floor rental units. The Tenant stated that dishwashers use 5 gallons of water through three cycles which would not have caused 4 inches of water backup in another unit. She also noted that the water backup had soap suds which she stated dishwashers do not produce. The Tenant provided testimony that when she used the dishwasher she covered the drain in the sink, so the water would drain slowly and not all at once.

The Tenant submitted that the water backup seemed to be a maintenance issue that was not connected to her usage of the dishwasher. If the water backup was caused through use of a dishwasher or other equipment, the Tenant questioned how the Landlord was able to determine that it came from her unit and not another unit in the building.

### Analysis

The Landlord has claimed \$935.20 in compensation from the Tenant due to a breach of the tenancy agreement that resulted in the Landlord paying for plumbing services. Section 7(1) of the *Act* states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

*Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* provides further clarification by outlining a four-part test to determine if compensation is due:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

When there was a water backup in the rental building, the Landlord took reasonable steps to have the situation assessed and attended to by professionals. The plumbers did not find any blockages or other causes for the water issue and as such, it was suggested that it could have been caused by a portable dishwasher or washing machine in the rental building. As the Landlord inspected the units and found a dishwasher in the Tenant's unit, it was concluded that this was the cause of the water backup issues. However, there is no further evidence connecting the Tenant's dishwasher to the water backup issues.

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. This means that the party with the onus must prove that it is more likely than not that the events occurred as described. Therefore, in this matter the onus is on the Landlord. While the Landlord submitted evidence that shows that the water issues *may* have been caused by the Tenant's dishwasher, I am not satisfied that the Landlord met the burden of prove to establish that it is more likely than not that the water issues were a result of the Tenant's dishwasher.

The Landlord submitted documentary evidence from three plumbing companies, as well as information about the pipe system that indicates the Tenant's unit and the units where the backups occurred are connected. They also submitted the tenancy agreement as evidence that the Tenant did not have permission to have a dishwasher and thus was in breach of the agreement.

However, regardless of whether the Tenant was in breach of the tenancy agreement or not, the Landlord still must establish that a breach caused them to experience a loss for which the Tenant is responsible. The Landlord concluded that the Tenant's dishwasher caused the issues due to not finding any other dishwashers or washing machines in the rental building. However, as the cause of the backup was not determined by the plumbers and instead they suggested a possible cause, I find this to be a guess by the Landlord and not a determination of cause.

As such, I find that the Landlord did not meet the four-part test as they did not establish that the Tenant breached the tenancy agreement in a manner that resulted in a loss to the Landlord. Accordingly, I decline to award any compensation to the Landlord.

As the Landlord was not successful in their application, I decline to award the recovery of the filing fee. The Landlord's application is dismissed, without leave to reapply.

### Conclusion

The Application for Dispute Resolution 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: January 07, 2019

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Residential Tenancy Branch