



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOMUS MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, RR

### Introduction

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

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue

Although the tenant made an application under section 65 of the Act, she herself clarified during the hearing she was seeking monetary compensation under section 67 of the Act. Both parties submitted their evidence under that provision. Based on the above I amend the application pursuant to section 64(3)(c) of the Act to reflect the tenants intention of monetary compensation. The hearing proceeded and completed on that basis.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The tenant gave the following testimony. The tenant testified that she has resided in the subject unit since May 1, 2013 and that her current rent is \$985.00 per month. The tenant testified that on November 4, 2018 the tenant came home and noticed water in the common hallway and into her suite. The tenant testified that a third of her living room carpet was soaked and that she contacted the resident manager. The tenant testified that the landlord and the resident manager attended immediately and began to address the problem. The tenant testified that the carpets were pulled back and fans were set up to dry it out. The tenant testified that she thought the matter would be remediated in 3-4 days but the matter was not resolved until November 13, 2018. The tenant testified that she was unable to use her living room for ten days. The tenant seeks monetary compensation. The tenant provided a calculation of the pro-rated amount of her rent; \$32.80 per day X ten days= \$328.00. The tenant also seeks the recovery of the \$100.00 filing fee for a total claim of \$428.00.

The landlord gave the following testimony. The landlord testified that they dispute the tenants claim. The landlord testified that they acted quickly and appropriately under the circumstances. The landlord testified that the area in the living room had to be sufficiently dry before new underlay could be installed and then have the carpets professionally cleaned to ensure that mould or mildew would not form. The landlord testified that the affected area is about 100 square feet of the 640 square foot apartment and that the tenant had the majority of the living room to use and the rest of the apartment. The landlord testified that the tenants' claims should be dismissed.

### 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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant seeks compensation in this matter. The landlords testified that the water leak was not a result of their actions or failure to maintain the property but just an unfortunate incident. The landlords testified that the parties were subject to the timelines of the carpet and cleaning company and their work schedule. As noted above, a party making a claim must satisfy **all four factors** to be granted an amount under Section 67 of the Act. In the tenants own testimony she stated that the matter was well addressed and the landlord came immediately to correct it. The tenant has not provided sufficient evidence that the landlord was negligent or reckless to cause the flood. Furthermore, I find that the landlord acted reasonably, responsibly and expeditiously under the circumstances. Based on the insufficient evidence before me, I dismiss the tenants' application in its entirety.

### Conclusion

The tenants' application is dismissed in its entirety 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 14, 2019

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Residential Tenancy Branch