



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC-S, FF

### Introduction

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

- a monetary order 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the named tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 28, 2018 and again on December 31, 2018. The named tenant stated that he served the landlord with the submitted documentary evidence by placing it in the landlord's mailbox on January 11, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, it was clarified with both parties that the landlord had only served the named tenant as the other two tenants had failed to provide their forwarding addresses for service. Neither party raised any service issues. The hearing shall proceed on the landlord's application.

Discussions at the outset revealed that the landlord's monetary claim is lowered from \$4,529.25 to \$3,312.90. I find that as the amount has been lowered there is no prejudice to the tenant in proceeding with the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 15, 2017 on a fixed term tenancy to end on August 31, 2018 as per the signed tenancy agreement dated September 15, 2017. The tenancy ended on August 29, 2018. The monthly rent was \$1,800.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$900.00 was paid. A condition inspection report for the move-in was completed by both parties on September 15, 2017. A condition inspection report for the move-out was completed by both parties on September 5, 2018.

The landlord seeks an amended monetary claim of \$3,312.90 which consists of:

\$688.37	Water Flood Restoration(s)
\$71.03	Baseboards and Casings material
\$475.00	Garbage Removal/ Cleaning
	\$125.00 Garbage Removal
	\$350.00 Cleaning
\$1,800.00	Loss of Rental Income, September 2018
\$178.50	Plumbing Inspection
\$100.00	Filing Fee
\$3,312.90	Total

During the hearing the landlord cancelled the \$178.50 claim for a plumbing inspection. The total monetary claim to be resolved is \$3,134.40.

The landlord claims that the tenant(s) failed to notify the landlord when water flooded the rental unit on July 8, 2018 caused from water overflowing from an upstairs washer. Both parties confirmed during the hearing that water from the upstairs unit laundry

washer flooded the basement unit. The landlord claims that this occurred on July 8, 2018 and that the tenant never notified the landlord at any time. The landlord stated that this was discovered on July 12, 2018 when it was reported by the upstairs tenant. The tenants provided affirmed testimony confirming the water flood, but that they did not see any damage(s) and as such did not report it to the landlord. The tenants argued that any notification or damage(s) are the responsibility of the upstairs tenant. The landlord argued that because of the lack of notification the landlord was unable to mitigate the damages by installing fans and dehumidifiers. The landlord stated mold resulted as no action was taken and that restoration work was required to remove the affected drywall, baseboards and casings and replace them. Both parties confirmed that the tenancy ended on August 29, 2018 and the landlord confirmed that restoration work began on September 11, 2018 and finished on September 25, 2018 before she was able to re-rent the unit for October 1, 2018. The landlord stated because of the restoration work, she suffered a loss of rental income for the month of September 2018. The landlord relies upon the submitted the completed condition inspection reports for the move-in and the move-out and the submitted photographs for the claims. The tenant has argued that the condition inspection report for the move-in refers to existing water damage to the flooring. The landlord referred to the move-in report which shows no damage to the walls and that the claim is only for water damage to the walls as noted in the move-out report.

The landlord also claims that the tenant abandoned personal property (furniture) that had to be removed and the rental unit was left dirty requiring cleaning. In support of these claims the landlord has submitted copies of the completed condition inspection reports for the move-in and the move-out by both parties for comparison. The landlord clarified that this was a furnished unit and that the tenants had removed some of the provided furniture and replaced it with their own. The landlord stated that she had to pay for the removal and the reinstallation of the original furniture. The tenants questioned the validity of the invoice provided by the landlord, but did not provide sufficient evidence to question its authenticity.

The landlord also stated that the tenants failed to adequately clean the rental unit at the end of tenancy requiring cleaning. The landlord has submitted an invoice for cleaning and has made reference to the submitted photographs showing the condition of the rental unit. The tenants argued that the rental premises were left cleaner than when they received it.

### 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 prove the existence of the damage/loss, and that it stemmed 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 that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed testimony of both parties that a water flood occurred in the upstairs unit which affected the basement unit. Both parties confirmed that the tenant did not notify the landlord of the water flooding into the basement. The landlord provided undisputed affirmed testimony that she was notified 4 days later by the upstairs tenant of the flood. The landlord provided undisputed evidence of mold damage and that restorations were required to replace the drywall, baseboards and casings.

Section 32 (2) of the *Act* states in part that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. I find in the circumstances that it is reasonable that the landlord to expect the tenants to notify her of a water flood to allow for an assessment of damage and what required repairs can be made.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part that a landlord or tenant has a duty to minimize the damage or loss. The landlord has argued that she was not given this opportunity as the tenants failed to notify her of the water flood from the upstairs unit into their basement unit. The landlord was not notified until 4 days later which resulted in mold in the drywall which had to be removed. In the circumstances, I find it reasonable that the tenants had a duty to notify the landlord of a water flood that could and did in this circumstances cause further damages that could have been prevented.

I find based upon the undisputed affirmed evidence that the landlord has established a claim for the damages as claimed for \$3,134.40. Although the water flood was not a directly caused by the tenant, the tenants upon realizing that water was flowing from the

upstairs unit to the basement had a duty to notify the landlord. The landlord provided undisputed evidence that she was not notified until 4 days later and as a result the restoration could not be managed and mold ensued. The landlord was forced to remove and replace the affected areas suffering damage costs. I also find that the landlord has provided sufficient evidence to satisfy me that the rental unit was left dirty requiring cleaning. Although the tenants argued that it was cleaner than when they received it, it is the tenant's duty and responsibility to address those issues at the time they occur.

I authorize the landlord to retain the \$900.00 security deposit in partial satisfaction of this claim and grant the landlord a monetary order for the balance of \$2,234.40.

### Conclusion

The landlord is granted a monetary order for \$2,234.40.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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: January 23, 2019

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Residential Tenancy Branch