



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      MNDCL, FFL

### Introduction

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

- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The hearing was originally convened via teleconference on January 31, 2019. I adjourned the hearing pursuant to my Interim Decision dated February 01, 2019, and it was reconvened on March 15, 2019.

The landlord's legal counsel and the tenants 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. Tenant A.S. (the tenant) indicated that they would be the primary speaker for the tenants during this hearing.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants are duly served with the Application and evidence.

The landlord acknowledged receipt of the tenants' evidence. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the tenants' evidence.

### Preliminary Matter – Jurisdiction

At the outset of the hearing, counsel submitted that they were seeking to subrogate costs associated to the loss suffered by the landlord's insurance company as a result of the tenants' actions, in addition to recovering the loss incurred by the landlord. Counsel confirmed that the landlord's only actual loss incurred was for the insurance deductible in the amount of \$1,000.00. Counsel stated that the landlord was compensated for their losses by the insurance company but that they are indemnified to the insurance company for the insurance company's loss.

The tenant submitted that they were not given an opportunity to complete the repairs themselves.

Section 2 of the Act establishes that it applies to tenancy agreements, rental units and other residential property.

The Act defines a tenancy agreement as an agreement between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

The Act defines a landlord as either the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Having considered the above, I find that the insurance company is not a landlord as defined by the Act. I find counsel has not provided any evidence or testimony that the insurance company has performed duties under this Act pertaining to the occupation of the rental unit and that they have a tenancy agreement with the tenants.

For the above reasons, I find that I do not have jurisdiction to consider the insurance company's monetary claim under the Act and I decline to proceed.

I will now consider the landlord's monetary claim for the insurance deductible.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage or loss under the *Act*, Regulations or tenancy agreement?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

Written evidence was provided that this tenancy began on March 01, 2015, with a monthly rent of \$1,800.00, due on the first day of each month and the tenancy is still ongoing.

The tenants submitted in evidence a written statement dated December 02, 2018, clarifying which specific tenant had caused a fire in the rental unit on August 25, 2016. The tenants confirm that they are aware that the landlord had to pay the insurance deductible in the amount of \$1,000.00 related to the damage caused by the fire.

Counsel submitted that the landlord incurred a loss in the amount of \$1,000.00 due to an insurance claim. Counsel stated that the insurance claim was a result of one of the tenant's negligent actions which resulted in fire damage to the rental unit.

The tenant confirmed that they caused the damage and did not dispute that they were obligated to pay the landlord for the insurance deductible in the amount of \$1,000.00.

### Analysis

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.

Section 32 (2) (3) of the Act states 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 and, that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Having reviewed the evidence and the testimony, I find that it is undisputed that the landlord paid \$1,000.00 for the insurance deductible related to fire damage in the rental unit. I further find that it is undisputed that this loss was due to the negligent actions of

one of the tenants in violation of the Act. I find that the landlord has mitigated their loss by submitting a claim to their insurance company.

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.

Residential Tenancy Policy Guideline # 13 establishes that:

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.*

Therefore, I find that the landlord is entitled to a monetary award in the amount of \$1,000.00 for the recovery of the insurance deductible. As the landlord was partially successful in their application, they may recover the filing fee related to this application.

#### Conclusion

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,100.00 for the recovery of the insurance deductible paid and to recover the filing fee from the tenant(s). The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with this Order, this 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: March 20, 2019

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Residential Tenancy Branch