



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STANMAR SERVICES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MMDCL, MNDL-S, MNRL, FFL  
                             MNRT, MNSD, FFT

### Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on December 21, 2018. The Tenant applied for a monetary order for loss due to the tenancy, for the return of the security deposit and the return of the filing fee. The Landlord’s Application for Dispute Resolution was made on March 29, 2019. The Landlord applied for a monetary order for compensation for damage caused by the Tenant, a monetary order for compensation for monetary loss or other money owed, permission to retain the security deposit and to recover their filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the 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 under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to a monetary order for monetary loss and compensation?
- Is the Tenant entitled to the return of her security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties testified that the tenancy began on May 1, 2018, as a month to month tenancy. Rent in the amount of \$950.00 was to be paid by the first day of each month and at the Tenant had paid a \$475.00 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement and five-page addendum to the tenancy agreement into documentary evidence.

The parties agreed that there had been a flood in the rental unit on September 23, 2018, and that due to the severity of the flood and the extensive renovations that were required after the flood, that the tenancy ended on September 30, 2018. Both parties also agreed that the flood was caused by a failure in the toilet fill valve.

Both also parties agree that the rental unit had been fully renovated before the Tenant moved in and that a new toilet had been installed. The Landlord testified that he had hired a renovation company to do the work and had told them to purchase a new toilet for the rental unit.

The Landlord testified that the flood resulted in damage to this rental unit and the two units below. The Landlord is requesting to recover his total cost, in the amount of \$5,616.22, to have the rental unit and the two lower units restored. When asked how the Tenant had damaged the fill valve in the toilet, the Landlord could not say how exactly the Tenant had damaged the fill valve but that he felt that Tenant was negligent in the care of the toilet and that resulted in the flood.

The tenant testified that he did not damage the fill valve, but that the fill valve failed because the Landlord had installed used plumbing parts when he had the toilet replaced. The Tenant was asked how he knew the Landlord had installed used parts. The Tenant answered that the Landlord must have known, as all you need to do was look in the back of the toilet, and you could see that the parts were old. The Tenant testified that he believes that the Landlord told the restoration company to use the old plumbing parts in the new toilet to save money and that it was that decision that led to

the flood. The Tenant is requesting to be compensated in the amount of \$2,870.47; consisting of \$150.00 in moving costs, \$1,000.00 for his insurance deductible, \$475.00 in loss of quiet enjoyment, \$1,142.57 in cost from the restoration company for storage and shipping, and \$102.90 for a storage locker.

The Landlord testified that he had ordered a new toilet for the rental unit and that he did not tell the renovation company to use old parts. The Landlord testified that as far as he knew the toilet in the rental unit was new.

Both parties agreed that the Tenant had given the Landlord his forwarding address in writing on December 5, 2018.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended due to a flood in the rental unit, which rendered the rental unit uninhabitable. I find that this tenancy became frustrated due to the flood that took place in the rental unit on September 23, 2018, and I find that this tenancy legally ended on September 30, 2019.

In this case, both parties are claiming for compensation due to losses they suffered as a result of the flood on September 23, 2019. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- 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.

I have reviewed the testimony and evidence submissions by both parties, and I find that neither the Landlord or the Tenant have proven that the other party had breached the *Act* in any way during this tenancy. Nor has either party provided sufficient evidence to prove to me, on a balance of probabilities, that either one of them had any prior knowledge of a pending failure to the toilet fill valve.

Although I do acknowledge that both parties suffered a financial loss due to the flood on September 23, 2018, I find that there is no evidence, before me, that proved that either of these parties knew, ought to have known or in any way contributed to the flood on September 23, 2018.

In the absence of evidence to show that there had been a breach of the *Act* by Tenant, I must dismiss the Landlord's claim for the recovery of his costs for the restoration of the rental unit and the two units below the rental unit, in its entirety.

Also, In the absence of evidence to show that there had been a breach of the *Act* by Landlord, I must dismiss the Tenant's claim for the recovery of his costs for moving, his insurance deductible, loss of quiet enjoyment, storage/shipping costs from Total Restoration and for the rent for a storage locker, in their entirety.

As for the security deposit, section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

**Return of security deposit and pet damage deposit**

**38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I have previously found that this tenancy ended on September 30, 2018, and I accept the testimony of both parties that the Tenant provided his forward address to the Landlord on December 5, 2018. Accordingly, the Landlord had until December 20, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, filed his application on December 21, 2018, one day after the statutory timeline.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

#### **Return of security deposit and pet damage deposit**

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenant has successfully proven that he is entitled to the return of double his deposit. I find for the Tenant, in the amount of \$950.00, granting a monetary order for the return of double the security deposit for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in his application to recover his security deposit, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

I find that the Landlord breached section 38 of the *Act* when he failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$1,050.00**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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.

The Tenant's application for compensation for monetary loss and the loss of quiet enjoyment due to the flood 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: June 6, 2019

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Residential Tenancy Branch