



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFL MNRL-S

### **Introduction**

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

- a monetary order money owed or compensation for 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.

DG, articled student, appeared for, and represented the landlord in this hearing. RT, articling student, appeared with his client BW in this hearing. AH also attended the hearing. 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 tenants confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Preliminary Issue – Does this Matter Fall Under the Jurisdiction of the RTB?**

DG confirmed in this hearing that this application was brought forth by the landlord as a subrogated claim to recover money the landlord's insurer had paid out in relation to an insurance claim by the landlord for emergency repairs, damages, and losses associated with the rental property. The respondents are the former tenants.

Both parties confirmed that the former tenants had paid the landlord the \$2,000.00 deductible for the insurance claim, as well as compensation in the amount of \$750.00 in relation to the incident. The insurance company, however, is upholding their right to claim for the losses as a subrogated claim under section 36 of the *Insurance Act*. The position of the insurance company is that the former tenants failed to carry their own insurance coverage, and therefore should be responsible for the losses suffered by the insurance company in covering the landlord's claim.

Both parties confirmed that a settlement conference was held in April of 2019 in Small Claims Court regarding this matter, and the matter was adjourned generally by the Provincial Court Judge pending the outcome of this hearing.

The position of the landlord is that this matter may be heard by the RTB as this matter relates to a former tenancy. The tenants feel that they had fulfilled their obligations under the RTA as tenants by providing compensation to the landlord. The landlord's position is that the monetary payment does not extinguish the right of the landlord to file another claim for losses.

### **Analysis**

Section 58 of the *Act* states the following, in part:

*58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:*

*(a) rights, obligations and prohibitions under this Act;*  
*(b) rights and obligations under the terms of a tenancy agreement that*

*(i) are required or prohibited under this Act, or*  
*(ii) relate to*

*(A) the tenant's use, occupation or maintenance of the rental unit, or*  
*(B) the use of common areas or services or facilities.*

Although I accept the submissions of the landlord's representative that this application is a subrogated claim brought forth by the landlord in order to recover losses suffered by his insurer, and that the *Insurance Act* allows him to do so, I am not satisfied that this dispute falls under the jurisdiction of the RTB. I make my finding based on the fact that I only have exclusive jurisdiction to resolve disputes between landlords and tenants with respect to their rights and obligations under the tenancy agreement and the *Act*.

In this case, I find that the dispute is between the former tenants and the insurance company, and although the landlord filed the application on behalf of the insurer, this does change the fact that the dispute is between two parties who are not covered under the jurisdiction of the RTB. On this basis, I decline to hear this matter as I have no jurisdiction to consider this application.

### **Conclusion**

I decline to hear this matter as I have no jurisdiction to consider this application.

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 20, 2019

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Residential Tenancy Branch