



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- recovery of the filing fee paid for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of hearing and evidence, and the tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award for compensation for loss? Are the tenants entitled to recover the cost of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence and the parties confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began August 1, 2016 with a scheduled end date of July 31, 2017.
- Monthly rent of \$1,500.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$750.00.

The tenants gave written notice to end the tenancy on June 28, 2017, providing July 31, 2017 as their move out date. The tenants initially mistakenly thought they did not have to pay the last month's rent, however, this misunderstanding was corrected. As a result, the tenants paid \$750.00 and the landlord retained the \$750.00 security deposit towards the last month's rent. As such, I find that the last month's rent and security deposit has been addressed between the parties.

The tenants claim sought reimbursement of rent paid for four months, from March 16, 2017 to July 15, 2017, at a monthly rent of \$1,500.00, for a total of \$6,000.00 as compensation due to flooding of the basement portion of the rental unit as it impacted the tenants use of the space.

There was no dispute between the parties that the flood occurred March 16, 2017, as a number of homes in the area had been affected.

There was no dispute between the parties that the landlord discounted the tenants' rent by \$200.00 for each of the months of March and April 2017 due to the inconvenience of the flood.

There was no dispute that the flood only affected the basement level of the rental unit. The tenants testified that two bedrooms in the basement were mostly affected by the water ingress as the use of the bedrooms was impacted.

The landlord submitted into evidence an estimate from a real estate that the rental unit comprised a total of 2080 square feet, divided equally at 1040 square feet for each of the upper and lower levels. I note in the landlord's documentary evidence the size of the smaller bedroom was estimated at 100 square feet. No estimate was provided for the size of the larger bedroom. The tenants did not provide any contradictory evidence regarding the landlord's estimates.

The tenants confirmed that the affected areas were dry by mid-April 2017, however they claimed that they were unable to use the areas due to a residual smell of mold and urine, and the fact that there was no flooring in the rooms.

The landlord acknowledged she attended with the tenants to clean the affected areas of the rental unit with bleach the first week of April 2017.

The landlord testified that the tenants never informed her of any issues of smell preventing them from using the affected areas of the rental unit after that. Further the landlord testified that she had tried to get the flooring done earlier but it was delayed at the request of the tenants. The landlord referred to a text message exchange with the tenants on May 23, 2017 in which the landlord offered to have someone attend that week for the flooring, and the tenants responded by asking to wait a few more days.

I note that in the tenants' own evidence, text messages between the landlord and tenants dated April 27, 2017 indicate the landlord offering to arrange to have the flooring fixed or offering the tenants a delay in case they wanted to pick their own flooring out as they were considering buying the property at that time.

### Analysis

Section 67 of the *Act* provides that, in cases where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in detail, and explains as follows:

*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. In order 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 applied the above test to the claim for compensation put forward by the tenants regarding loss of use of a portion of the rental unit due to a water ingress. I have referred to the tenants' claim as outlined on their Monetary Order Worksheet regarding four months rent at \$1,500.00, as the tenants failed to set out or provide any other evidence to support a claim for any specific amount of damages or loss incurred for personal belongings damaged, etc.

Under section 28 of the *Act*, a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6. Entitlement to Quiet Enjoyment provides further explanation as follows:

*In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*

It was undisputed that the rental unit experienced an episode of water ingress beginning March 16, 2017, and therefore I find that the tenants suffered a loss of quiet enjoyment of a portion of the property even though the landlord made reasonable efforts to minimize disruption to the tenants. The parties disputed when the rental unit was

restored to full use by the tenants. The tenants claimed they were unable to fully use the space until mid-June 2017, however they acknowledged that the rental unit was dry by mid-April 2017.

As the onus for proving a claim for damages is on the party seeking compensation, the tenants must prove their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Based on the evidence and testimony presented to me, on a balance of probabilities, I find that the tenants provided sufficient evidence to demonstrate that they experienced considerable disruption preventing the use of two of the bedrooms in the lower level of the rental unit from March 16 to the end of April 2017. I find that the tenants' failed to provide sufficient evidence to dispute the landlord's evidence that the tenants failed to notify the landlord that there continued to be issues of smell and lack of flooring preventing the tenants from fully using the basement of the rental unit for the month of May until mid-June 2017. I find sufficient evidence presented that the landlord had attempted to arrange for the flooring to be replaced by the end of April 2017, hence why I have only allocated from March 16 to April 30, 2017 as the period for which use of the bedrooms was affected.

I find that based on the evidence presented by the landlord, the smaller bedroom encompassed approximately 100 square feet. Given the lack of any estimates provided by either party regarding the actual size of the second bedroom that was affected, I have made a finding that a reasonable estimate for the size of the second larger bedroom to be 200 square feet, which is double the size of the smaller room. Therefore, I have based my determinations in this hearing on a finding that the use of 300 square feet in total space within the rental unit was affected. Accordingly, I find that 14.4% [300 sq ft/2080 sq ft] of the rental unit was affected for a full month and one-half of a month, which is the equivalent of \$2,250.00 [\$1,500.00 + \$750.00] total monthly rent. I have applied this percentage to the total monthly rent to determine that the tenants are entitled to a monetary award of \$324.00 [14.4% x \$2,250.00].

However, the landlord already reduced the tenants' rent by \$400.00 for this period. As such, after reducing the monetary award to the tenants by the amount of rent already reduced by the landlord, I do not find that there is any further compensation owed to the tenants by the landlord.

As the tenants were not successful in obtaining a monetary award through their dispute, they are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The tenants' application is dismissed in its entirety.

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: September 26, 2019

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Residential Tenancy Branch