



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding A&T MANAGEMENT CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$2,910.37 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee.

Agents for the Landlord, H.W. and B.B. (the "Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 37 minutes and was monitored throughout this time. The only person to call into the hearing were the Agents, who indicated they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent, H.W., testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on August 7, 2019. The Agent did not have a copy of the tracking number for this package, but she said that the Tenant received it and texted her back an angry note, evidencing his receipt of the Application and Notice of Hearing. The Agent said she also sent a package via registered mail to the Tenant with the documentary evidence, but she said the package was sent back "refused". The Agent submitted a copy of the tracking number for this package.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing."

Accordingly, I find the Tenant was served by the Landlord with the Application, notice of hearing and documentary evidence in compliance with the Act.

### Preliminary and Procedural Matters

The Agent provided her email address at the outset of the hearing. She confirmed her understanding that the Decision would be emailed to her and mailed to the Tenant at his forwarding address from the condition inspection report, and that any Orders would be sent to the appropriate Party in this manner.

The Agent said that the amount claimed by the Landlord in this Application was not fully known when they applied for dispute resolution. However, the actual amount incurred by the Landlord is set out in the monetary order worksheet that was served on the Tenant. The Agent requested that the Landlord's Application for a monetary order be increased to the amount noted above to reflect the changing amount of this damage.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the failure of the Tenant to repair damage done to the rental unit during his tenancy. I find no prejudice to the Tenant, as he is aware of how much damage he caused, so he could have anticipated that the Landlord would claim reimbursement for the full amount of repairs required. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$712.07 to \$2,910.37.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Agent advised that the periodic tenancy began on December 1, 2015, with a monthly rent of \$750.00, due on the first day of each month, which had risen to \$797.19 by the end of the tenancy. The Agent said the Tenant paid a security deposit of \$375.00, and no pet damage deposit. The Agent said that in a previous hearing, the Landlord was awarded \$100.00 of the security deposit, so the Landlord currently holds only \$275.00 of a security deposit.

The Agent said the Landlord's claims in this Application mainly relate to the Tenant's habit of removing the overflow cover from the bathtub. She said the result was that the water would overflow the tub and soak the bathroom floor. Further, the Agent said that she lives in the suite below the rental unit and when the Tenant did this, the ceiling below the bathroom would leak. The Agent said: "We went up five or six times and replaced the overflow and put in a new cover."

The Agent submitted a monetary order worksheet ("MOW") with the costs the Agent said the Landlord incurred as a result of the Tenant's habit described above, in addition to other damage left by the Tenant to the rental unit.

	Receipt/Estimate From	For	Amount
1	[mechanical contractor]	Tub waste & Overflow	\$553.35
2	[restoration company]	Repairs for water damage	\$1,741.95
3	[hardware store]	Lock, screen, blinds, covers	\$311.07
4	Worksheet	Hours of labour not incl. plumb/paint	\$304.00
		<b>Total monetary order claim</b>	<b>\$2,910.37</b>

#### **#1 Tub Waste & Overflow → \$553.35**

The Agent said in the hearing that they had to replace the tub overflow and waste drain, which is the first thing that the plumber did. In terms of the age of these materials at the start of the tenancy, the Agent said: "The last landlord said there was work done in his suite. The vanity was totally upgraded and newer. He had new flooring put in the suite before he moved in. It was all new in 2015." The Agent submitted a receipt from a local plumbing company for the amount listed on the MOW.

#### **#2 Restoration Company Repairs for Water Damage → \$1,741.95**

The Agent said they obtained three estimates, which she said was difficult, since it is a fairly small job. She said they chose the least expensive quote for the job. The Landlord submitted an estimate from a restoration company for the repair to the residential property from the water leak. The Agent said that the bill for the work was the same amount as the estimate. The Agent offered to send me the receipt; however, since she had not sent a copy to the Tenant, I declined to consider the receipt over the estimate.

#### **#3 Hardware Store Receipts \$311.07 Re Lock/screen/blinds/covers/**

The Agent said that other repairs were needed in the suite. The locks had been changed, a screen door had to be replaced. One set of blinds in the living room had to be replaced, because they would not work. Outlet covers were replaced, because the Tenant had them painted a colour that would not come off. There was no shower head left in the bathroom. The Agent said that the flooring in the bathroom had to be replaced, as it had been soaked. She said this was new flooring when he moved in.

The Agent submitted a condition inspection report, which indicated that these items were in good condition at the start of the tenancy and missing or damaged at the end of the tenancy. The Agent submitted receipts from the hardware store for these claims.

#### **#4 Worksheet → \$304.00**

##### **Re Hours of labour/Not including plumbing or painting**

The Agent said: "My partner did the actual labour and kept track of his hours." The Agent submitted a list of these hours, which amounted to 37.5. However, this indicates that the partner charged \$8.11 per hour. The Agent said that her partner was paid for the time he spent painting, so they did not charge for this amount. As such, the total number of hours claimed is reduced to 20 hours, which amounts to \$15.20 per hour.

#### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for Damages or Loss

A party who applies for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act and Policy Guideline #16.

Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

#### **"Test"**

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

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 claim and the claim fails. However, in the case before me, the Tenant did not attend the hearing, despite having been served with the Application, Notice of Hearing, and documentary evidence by the Landlord. I find this makes the Landlord's evidence undisputed.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

#### **#1 Tub Waste & Overflow → \$553.35**

The Agent explained that the Tenant's behaviour in allowing the bathtub to overflow caused damage to the rental unit and the suite beneath the rental unit. Section 37 of the Act states that a tenant must leave the rental unit undamaged except for reasonable wear and tear. I find that the damage described by the Agent goes beyond reasonable wear and tear and I find that the Tenant caused damage that he was responsible to repair at the end of tenancy.

In PG #40, the useful life of a bathtub is 20 years. The evidence before me is that the bathroom fixtures were new in 2015, so they were approximately four years old at the end of the tenancy and had 16 years or 80% of their useful life left. The CIR indicates that the bathroom fixtures were in good condition at the start of the tenancy, but the Agent said in the hearing that the Tenant had modified the bathtub, requiring it to be repaired at the end of the tenancy. I award the Landlord with the equivalent to 80% of the repair cost or **\$442.68** for this plumbing claim.

#### **#2 Restoration Company Repairs for Water Damage → \$1,741.95**

The Agent said that they obtained three estimates, and that they chose the least expensive quote for the job. The Landlord's undisputed evidence is that the estimate she submitted from a restoration company for the repairs is the same amount as the company billed in the end. I am satisfied that the Landlord has established the third step in the Test of the value of the loss.

Again, I find that the overflow damage caused by the Tenant is more than normal wear and tear and that the Tenant was responsible for the repair to the residential property as a result. Therefore, I find that the Landlord has met the first two steps of the test.

Further, I accept the Agent's evidence that they obtained different quotes for this work in order to minimize the cost of the loss to them, therefore, all four steps of the test have been satisfied.

In PG #40, the useful life of drywall or gypsum is 20 years. The evidence before me is that the bathroom had been renovated in 2015, so it was approximately four years old at the end of the tenancy and had 16 years or 80% of the useful life left. I find it reasonable in this situation to award the Landlord with 80% of the cost of the bathroom restoration repairs or **\$1,393.56** for this claim.

**#3 Hardware store Receipts \$311.07**  
**Re Lock/screen/blinds/covers/**

The Agent said that other repairs were needed in the rental unit, due to damage left behind by the Tenant. The locks, a screen door, a set of blinds, outlet covers, a shower head, and flooring in the bathroom had to be replaced.

The Agent submitted a condition inspection report, which indicated that these items were in good condition at the start of the tenancy and missing or damaged at the end of the tenancy. The Agent submitted receipts from the hardware store substantiating these claims. The undisputed testimony before me is that these items were new at the start of the tenancy, so they were approximately four years old at the end of the tenancy.

In PG #40, the useful life of these items averages out to be 15 years. The evidence before me is that they were new in 2015, so they were approximately four years old at the end of the tenancy and had 16 years or 80% of their useful life left. I, therefore, award the Landlord with 80% of this claim or **\$248.86**.

**#4 Worksheet → \$304.00**  
**Re Hours of labour/Not including plumbing or painting**

The Agent said: "My partner did the actual labour and kept track of his hours." The Agent submitted a list of these hours, which amounted to 37.5. However, this indicates that the partner charged \$8.11 per hour. The Agent said that her partner was paid for the time he spent painting,

so they did not charge for this amount. As such, the total number of hours claimed is reduced to 20 hours, which amounts to \$15.20 per hour. I find that this work was necessary and documented and that the Landlord charged less than a standard rate of \$25.00 per hour for this work. Accordingly, I award the Landlord the full amount claimed in this matter or **\$304.00**.

### **Summary/Set Off**

I have awarded the Landlord the following amounts for this Application:

	<b>Receipt/Estimate From</b>	<b>For</b>	<b>Amount</b>
1	[mechanical contractor]	Tub waste & Overflow	\$442.68
2	[restoration company]	Repairs for water damage	\$1,393.56
3	[hardware store]	Lock, screen, blinds, covers	\$248.86
4	Worksheet	Hours of labour not incl. plumb/paint	\$304.00
		<b>Total monetary order claim</b>	<b>\$2,389.10</b>

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's remaining security deposit of \$275.00 in partial satisfaction of the Landlord's monetary claim. I, therefore, award the Landlord with a monetary order for the remaining amount owing by the Tenant of \$2,114.10.

As the Landlord has been successful in this Application, I also award the Landlord recovery of the \$100.00 Application filing fee for a total monetary award of **\$2,214.10**, pursuant to section 67 of the Act.

### Conclusion

The Landlord's claim for compensation for damage or loss against the Tenant is successful, as I found that the Tenant damaged the rental unit in a way that went beyond ordinary wear and tear. The Tenant was responsible for repairing the damage pursuant so section 37 of the Act.

The Landlord has established a monetary claim of \$ 2,389.10. I authorize the Landlord to retain the Tenant's full security deposit of \$275.00 in partial satisfaction of the claim. The Landlord is also awarded recovery of the \$100.00 Application filing fee. I grant the Landlord a monetary order under section 67 for the balance due by the Tenant to the Landlord in the amount of **\$2,214.10**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 13, 2019

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Residential Tenancy Branch