



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

At the outset of the hearing, the tenant confirmed that the matter of the security deposit was dealt with in a previous hearing so that part of the application is moot.

### Issues

Is the tenant entitled to compensation for loss of quiet enjoyment including recovery of the filing fee for this application?

### Background and Evidence

The tenancy for this apartment unit began in February 2017 and ended on July 15, 2019.

The tenant is claiming a 15% reimbursement of the rent paid over the course of the tenancy. The tenant is claiming that she, her son and guests were not able to use the bathroom since the beginning of the tenancy due to mold, bugs and a general unhealthy environment. The tenant testified that when she first moved in February of 2017, she notified the building manager of her concerns by way of an email. The tenant testified that when she first viewed the unit new floors were being installed and the bathroom was not finished at the time. The manager told her to not worry as it would get completed. The tenant testified that the bathroom tub was peeling, and the tiles were cracked. The tenant submits that she continued to communicate concerns to the manager and put in three separate work orders, but nothing was done and that manager is no longer there. The tenant testified that her son later noticed bugs coming from the rotten taps. The tenant submits she sent an email and a video of the bugs to the landlord on May 13, 2019. The tenant testified that she received an immediate response from the landlord and the work was done but completely. The tenant testified that she inquired about moving to a renovated suite but her request was denied as the landlord no longer permitted pets in the new suites. The tenant testified that she then gave notice to end her tenancy.

On behalf of the landlord, the senior property manager M.G. testified that 1<sup>st</sup> time the landlord heard anything about concerns with the mould or bugs in the bathroom was in May 2019. M.G. testified there were no work order or claims from the tenant in the first 2 years of her tenancy. M.G. testified the landlord keeps a detailed log of all the work orders for every unit but there is nothing in the tenant's file. M.G. testified that tenants are always provided with a copy of any work orders they submit. M.G. testified the landlord took immediate action after the May 13, 2019 e-mail from the tenant and the repair work was completed within 3 weeks.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Residential Tenancy Policy Guideline #16* “Compensation for Damage or Loss” provides the following guidance:

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 find the tenant has failed to provide little evidence in support of her claim that not only was she experiencing concerns with her bathtub but that she communicated these concerns to the landlord in a timely manner. The tenant initially sent an email at the beginning of the tenancy detailing general cleaning concerns but nothing is mentioned in this e-mail about mold in the bathroom. The e-mail submitted by the tenant does reference the bathtub but states as follows “I don’t care that its discolored I could fix that my issue is that the bathtub is actually peeling and that could be a major concern but we’re going to see what we can do I just wanted you to know”. Clearly this e-mail does not request any action be taken with the bathtub at that time.

The tenant provided insufficient evidence of any attempts made to contact the landlord in regard to the bathtub after this time until over 2 years later. I find the landlord took immediate action to begin the repair work after receiving the May 13, 2017 e-mail. The tenant provided notice to end her tenancy shortly after this time.

I find the tenant has failed to prove her claim. This application is dismissed in its entirety without leave to reapply.

## Conclusion

The tenant's application 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: December 13, 2019

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Residential Tenancy Branch