



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1442764 ALBERTA LTD. and

[tenant name suppressed to protect privacy]

Dispute Codes

FFL MNDL

## **DECISION**

### Introduction

This hearing dealt with the landlord'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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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

Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The parties both testified that a large crack occurred on a sliding glass door at the rental unit. Both parties testified that they were not present when the crack occurred.

The landlord testified that damage to the glass was not caused by a projectile such as a rock because the glass did have an indentation or sharp edges consistent with projectile damage. The landlord argued that the tenant was responsible for the damage.

The tenant testified that she was not home when the crack occurred. She testified that she was at work when it happened. She testified that she did not know how the damage was caused but she testified that it could have been caused by a neighbour who she saw outside operating a heavy duty weed remover when she discovered the damage to the door.

The landlord testified that it cost \$848.27 to repair the door. The landlord presented a receipt. The landlord requested a monetary order for \$848.27 and reimbursement of the filing fee. The tenant denied responsibility.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 32(4) of the *Act* states that a tenant must repair damage caused by the actions or neglect of the tenant. Accordingly, in order to prevail in their application for

compensation, the landlord must prove on the balance of probabilities that the tenant caused the damage to the sliding glass door.

In this matter, the parties have provided conflicting explanations regarding the cause of the damage. The landlord testified that the damage was likely caused by the tenant and the tenant testified that the damage was likely caused by a neighbor. I find both of these explanations to be equally plausible and I find both of these explanations to be equally speculative. However, as stated above, the landlord has the burden of proving their claim. In the absence of further evidence establishing the cause of the damage, I find that the landlord has failed to provide sufficient evidence to satisfy the burden of proving his claim. Accordingly, the landlord's application for monetary compensation is dismissed.

Since the landlord has not prevailed in this matter, I dismiss the landlord's application for reimbursement of their filing fee pursuant to section 72 of the *Act*.

### Conclusion

The landlord's application is dismissed.

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 19, 2019

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Residential Tenancy Branch