



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND MNSD FF

### Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant 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 and present evidence. The landlord had submitted some video evidence which was too large to be uploaded to the online evidence portal. The landlord's counsel was prepared to proceed without this video evidence. No other issues were raised with respect to the service of the application and respective evidence submissions.

### Issues

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on August 1, 2018 with a monthly rent of \$3500.00 payable on the 1<sup>st</sup> day of each month. The rental unit was a penthouse unit of an apartment building. The tenancy ended on July 29, 2019. The tenant paid a security deposit of \$1750.00 at the start of the tenancy which the landlord continues to hold.

The landlord originally filed a claim for \$14,922.60 for damages to the rental unit. On September 20, 2019 the landlord filed an amendment to increase the monetary amount requested to \$20,300.54.

The landlord submitted a "monetary order worksheet" which provides a detailed breakdown of the landlord's claim. The landlord called two property managers, a plumbing contractor and the owner of the building to testify in this hearing.

The landlord is claiming \$280.00 for cleaning the rental unit at the end of the tenancy. This claim was not disputed by the tenant.

The landlord is claiming \$420.00 associated to move-out repair work. This claim was for patching and painting holes and stains on walls throughout the unit including holes made by curtain rods installed by the tenant. The landlord submitted pictures in support of the damage and an invoice for this work. The property manager A.M. testified that the tenant asked him to take down the curtains at the end of the tenancy because she could not reach them. A.M. testified that the curtains are reported in the move-out condition report.

The tenant's counsel argued that any alleged damage was normal wear and tear and that the tenant was told she could leave the curtains in place at the end of the tenancy.

The remainder of the landlord claim is for compensation for repair work required to restore the unit and the building from damage caused by a major flood. The landlord submits that the tenant had the landlord install a bidet hose and the tenant's misuse and negligence resulted in a major flood causing extensive damage. There was no dispute that the tenant requested and paid for cost of the bidet installation which was carried out by the landlord. There was also no dispute that there were two sperate incidents involving the bidet. On December 8, 2018 there was a leak from the bidet hose which was caught right away so no damage resulted. Then on June 6, 2019 a major flood occurred as a result of the bidet hose leaking again. The leak occurred overnight and was not caught until the next morning resulting in extensive damage not only in the unit but also to the units and common areas directly underneath the unit. The water damage travelled several floors down. Pictures of the damage were submitted as well as invoices for the repair work. The extent of the damages from the flood and subsequent repair work involved was not disputed by the tenant.

The property manager A.M. testified that both leaks occurred due to the tenant pulling at and stretching the bidet hose too far and being negligent in not turning off the shut off valve. A.M. testified that he contacted the tenant the day after the second leak and the first thing she said to him was that she forgot to turn off the shut off valve. A.M. testified that the tenant had been told to turn the valve off at time of installation and after the first incident. A.M. testified that the shut off valve is accessible on the right side of the toilet and the requirement is to shut it off after each use.

The owner M.M. testified that they sent in a licensed plumber after the first incident to fix the leak. M.M. testified the initial install was also done by the licensed plumber. M.M. testified that there was extensive damage after the second incident and that he had originally called insurance to deal with the issue. He was advised that the deductible for water damage would be \$10,000.00. M.M. made the decision to do the repair work himself as the insurance claim would affect his premiums. M.M. testified that he is experienced in construction work and was familiar with the building as he did the initial construction of the building. M.M. testified that he also wanted to start the work immediately and couldn't wait for the insurance adjusters to start due to concerns over mold growth.

The plumbing contractor S.R. testified that he installed the bidet at the request of the tenant and the tenant's unit was the only one in the building to make such a request. S.R. testified that he replaced the burst hose after the first incident. S.R. testified that he explained to the tenant that the valve should be shut off after each use. S.R. testified that the tenant and her daughter seemed to understand and "nodded". S.R. testified that the hose appeared to be stretched and damaged after both incidents and he has not seen these types of hoses stretched like that before. S.R. testified that the hose was replaced with a new one after the first incident. S.R. testified that if the valve had been shut off there would not have been any flood. S.R. testified that the design specs for this type of bidet installation require it to be shut off after each use and that the valve is accessible while sitting on the toilet.

The property manager G.R. also testified that the tenant was informed to turn the off the valve after each use and that the tenant appeared to understand. G.R. testified that he has spoken to the tenant in English on other occasions. G.R. also testified that both leaks occurred from the hose which appeared to be stretched to far.

Counsel for the tenant submits that the tenant and her 16-year-old daughter were in the country for the first time and are just learning to speak English. Counsel submits that the tenant's husband has hardly been here. Counsel argued the tenant should not be liable for the flood damage as the hose was purchased and installed by the landlord. Counsel argues the hose was defective. Counsel argues the landlord did not submit any receipt to prove the hose was replaced after the first leak. Counsel submits that the hose was 6 feet long, so it doesn't make sense for the tenant to need to stretch it nor has the landlord submitted sufficient proof of the hose being stretched as alleged. Counsel submits that his client denied saying to the landlord that she forgot to shut off the valve. Counsel submits the landlord did not provide any breakdown of the repair costs if they were to go through the insurance company.

### 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.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord is awarded \$280.00 for cleaning the rental unit at the end of the tenancy which was not disputed by the tenant.

The landlord is awarded \$420.00 as claimed for move-out repair work. I find the evidence submitted by the landlord including the pictures and the move-in/move-out inspection reports support the landlord claim that the rental unit was damaged beyond normal wear and tear. I accept the testimony of A.M. and find the tenant was not told she could leave the curtain rods but rather asked for A.M. to deal with them as she could not reach them. The tenant failed to attend the hearing to provide testimony on this point.

There was no dispute that a leaking bidet hose caused extensive damage. Counsel for the tenant argued that the hose was faulty; therefore, the tenant should not be liable. I find that irrespective of whether the hose was faulty, the damage would not have been so extensive had the tenant turned off the shut off valve. The landlord presented multiple witnesses who all testified that the tenant had been instructed to turn off the valve after each use especially after the first incident. The landlord's witness A.M. also testified that the tenant stated she forgot to turn off the valve when contacted after the second incident. The tenant's counsel stated that his client denied making this statement; however, the tenant did not attend the hearing to provide testimony on this point. I accept the testimony of the landlord's witnesses and find the tenant understood the instructions provided to her. Further, since it was the tenant who requested the bidet hose, the tenant likely would have been familiar with the operation of such. I find the tenant was negligent in not turning off the valve therefore the tenant is liable for the damage caused.

The landlord is claiming \$19,600.54 is damages as a result of the flood. However, the landlord testified and presented evidence that the insurance deductible for water damage would have been only \$10,000.00. The landlord did not present any supporting evidence in support of the argument that making a claim through insurance would have increased its premiums or by how much. The landlord also did not present any supporting evidence that making a claim through insurance would have resulted in delays and higher losses. Therefore, I find the landlord failed to mitigate losses and the landlord's claim is restricted to \$10,000.00 which is the loss the landlord would have suffered had it gone through insurance.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$10,800.00.

The landlord continues to hold a security deposit in the amount of \$1,750.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$9,050.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9,050.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 08, 2020

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Residential Tenancy Branch