



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on February 7, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for damage; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf. The Tenant attended the hearing and was represented by M.G., legal counsel. Both the Landlord and the Tenant provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package were served on the Tenant by registered mail. M.G. acknowledged receipt on behalf of the Tenant. No issues were raised with respect to service or receipt of these documents during the hearing. The Landlord was permitted to submit the documentary evidence received by the Tenant after the hearing. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary & Procedural Matters

During the hearing, the parties agreed that the Tenant should be added as a party to the proceeding. Pursuant to section 64 of the *Act*, I so order.

In addition, M.G. submitted that the Tenant, in his capacity as executor of the Estate of L.K., should be removed. The Landlord testified that L.K. moved into the rental unit on or about September 1, 2004. The Tenant testified that he and L.K. were married on July 18, 2016. Although the parties disagreed about the date the Tenant moved into the rental unit, both agreed it was before L.K. died on September 24, 2018. According to the Landlord's written submissions, the Tenant asked the Landlord to continue the tenancy after the death of L.K. The Landlord agreed. The Landlord's written submissions state: "I acknowledged his presence and made no amendment to the tenancy." However, the Landlord asserted that the tenancy continued unchanged and that the Estate of L.K. remained liable for damage that occurred after her death. I disagree. I find the parties entered into a new, oral tenancy agreement after the death of L.K., which tenancy was subsequently reduced to writing on February 25, 2019. Accordingly, I find that the Estate of L.K. is removed as a party.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

As noted above, the parties entered into a new, oral tenancy agreement after the death of L.K. The parties subsequently entered into a written tenancy agreement dated February 25, 2019. A copy of the written tenancy agreement was submitted into evidence. The parties agreed that rent in the amount of \$1,443.00 per month is due on the first day of each month. The parties disagreed with respect to the amount of the security deposit held although nothing turns on that determination.

The Landlord claims \$36,315.00 but confirmed during the hearing his intention to waive entitlement to any amount in excess of the monetary jurisdiction of the director.

The Landlord testified that on or about February 23, 2019, a flood occurred in the rental unit which resulted in water damage in the rental unit. The Landlord testified that the washing machine was left unattended by the Tenant while operating, contrary to the “common sense” understanding he had with L.K. The Landlord testified that the extent of the damage was such that the Tenant must have left the washing machine unattended for longer than the 17 minutes the Tenant said he was in the shower.

The Landlord also testified that the Tenant did not take steps to mitigate the damage as requested by the Landlord. Specifically, the Landlord testified the Tenant was directed to disconnect the water supply, deal with the water, and call a restoration company to address the damage.

The Landlord testified that he attended the rental unit the next day and testified that the Tenant agreed to compensate the Landlord at that time. The Tenant denied making any such agreement. In any event, the Landlord testified that he was accompanied by someone who examined the washing machine and found there was nothing wrong with it. The Landlord suggested the flooding was likely caused by an unbalanced load, a large object blocking the drain, or something stuck at the valve.

The Landlord acknowledged the flooding was not intentional but submitted it was caused by the Tenant’s negligence. The Landlord claims \$35,000.00, the amount of the insurance deductible payable as a result of the water damage. A copy of a letter from the strata dated April 26, 2019, and an invoice from the restoration company dated April 12, 2019 were submitted in support of the amount claimed. The Landlord testified that he paid \$10,000.00 to the strata and that his insurer paid the remaining \$25,000.00. Copies of a bank draft and a cheque dated May 28, 2019 were submitted in support of the \$10,000.00 payment. Although the Landlord has not reimbursed his insurer the remaining \$25,000.00 and acknowledged he is under no contractual obligation to do so, the Landlord is claiming the \$25,000.00 out of a “moral obligation” to pay the balance due. The Landlord submitted a copy of a copy of his “strata account” showing no balance due to the strata as of April 1, 2020.

On cross-examination, the Landlord testified that he waited until the day after the flooding was reported to him to inspect the damage because the Tenant told him it was “under control”. He confirmed the washing machine was already installed when he purchased the property. The Landlord testified to his belief that most washing machines are “prone to failure”. However, the Landlord testified that he “never” performed any maintenance to the washing machine because it was not necessary. In addition, the

Landlord acknowledged there was no term in the tenancy agreement that occupants had to monitor the washing machine during use, suggesting this was “common sense” and was “understood”. Indeed, the Landlord confirmed this oral term was never discussed with the Tenant. The Landlord testified that if the Tenant monitored the use of the washing machine more closely there would likely be no claim.

On direct examination, the Tenant testified that he moved into the rental unit with L.K. on December 15, 2015 and that they were married on July 18, 2016. The Tenant testified that he never saw the written agreement between the Landlord and L.K. The Tenant also testified that he never saw the Landlord perform maintenance to the washing machine. The Tenant testified that L.K. used the washing machine every day but that he only used it occasionally after her death. The Tenant described washing a small load on the day of the flood. Further, the Tenant testified that he washed a shower for about 10 minutes and had a shower for about 17 minutes while the washing machine was operating. When he got out of the shower, he observed 1-1/2” of water in the kitchen. There was also water in other areas of the apartment and down the corridor. The Tenant testified that he called the Landlord “really fast” and then called someone to deal with the water.

In closing submissions, M.G. suggested that damages should be limited to \$10,000.00 as the Landlord has not paid the remainder of the deductible and has no contractual obligation to reimburse the insurer. In addition, M.G. submitted that the washing machine was old and was never serviced by the Landlord. M.G. also referred to several issues regarding the agreement.

Finally, the Landlord claims \$100.00 in recovery of the filing fee.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application 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 for in sections 7 and 67 of the *Act*. 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

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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.

I find the Landlord waived entitlement to any amount in excess of the monetary jurisdiction of the director, in all fora.

With respect to the Landlord's claim for \$10,000.00 for a portion of the insurance deductible paid by the strata and reimbursed by the Landlord, I accept the flood occurred while the Tenant was in the rental unit. However, I find there is insufficient evidence before me to conclude the flood was caused either intentionally or due to the Tenant's neglect. There are several reasons I have made this finding. First, I find there was no term in the tenancy agreement that required the Tenant to monitor the washing machine while it was in use, and the Tenant denied that such a term was ever discussed or agreed to. Even if such a term was included in the agreement, I find it would create an unreasonable burden on the Tenant and would likely not be enforceable.

Second, section 32 of the *Act* places the burden to repair and maintain the rental property on landlords. However, based on the Landlord's testimony under cross-examination, I find that the washing machine was in place when the rental property was purchased. I also note that the Landlord testified that he has never performed any

maintenance to the washing machine, even though the Landlord testified washing machines are “prone to failure”.

Third, I accept the testimony of the Tenant who advised that he washed a small load on the day of the flood. I also find that the Tenant took immediate steps to report the flood to the Landlord. However, rather than address the flooding right away, the Landlord merely gave the Tenant instructions. The Landlord did not attend the rental unit until the following day and thereby failed to minimize his losses as required under section 7 of the *Act*.

Finally, I find there is insufficient evidence before me to confirm the Tenant agreed to pay for the damage as alleged by the Landlord. I was referred to no documentary evidence which contains an agreement to pay for the Landlord’s losses.

With respect to the Landlord’s claim for \$25,000.00 for the balance of the insurance deductible, I find there is insufficient evidence before me to grant the relief sought. In addition to the reasons provided above, the Landlord confirmed in his testimony that he has not incurred this loss but that his insurer has paid this amount. The Landlord also testified on cross-examination that there is no contractual obligation requiring him to pay this amount but that he intends to do so out of a moral obligation. However, in this case, I accept the Tenant’s submission that a moral obligation does not support a claim for compensation.

Considering the above, I find that the Landlord’s claim is dismissed without leave to reapply.

### Conclusion

The Landlord’s claim 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: July 21, 2020

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Residential Tenancy Branch