



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cheer Real Estate Development and [tenant name  
suppressed to protect privacy]

## **DECISION**

### Dispute Codes

tenant:  
landlord: MNDCT, FFT  
MNDCL, MNRL-S, FFL

### Introduction

On June 29, 2020 the personal representative of the estate of the tenant applied for dispute resolution for compensation for monetary loss or other money owed. Additionally, they applied for reimbursement of the application filing fee.

On July 21, 2020 the landlord applied for compensation for monetary loss, for unpaid rent, and reimbursement of the application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 19, 2020. The tenant attended the telephone conference call hearing; the landlord did not attend.

### Preliminary Matter

The *Act* section 1 defines “tenant” as including the estate of the deceased tenant. The personal representative for the deceased tenant is so named as “tenant” throughout this decision.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the notice of this hearing. This means they must provide proof that the document was served in a verified manner allowed under section 89 of the *Act* and I must accept that evidence. In the hearing they provided that they served a copy of that document registered mail to the landlord. The tenant’s

representative followed up with the landlord on October 2, in advance of the hearing, to ensure evidence was properly received by the landlord.

Though the landlord did not attend, I am satisfied from this evidence they received proper notice of this hearing in a method that is prescribed within the *Act*. On this basis, the hearing proceeded.

The landlord also cross-applied for monetary compensation; however, they did not attend the hearing. The call with the tenant was left open until 2:15 p.m. to enable the landlord to call in to this teleconference hearing scheduled for 1:30 p.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the landlord applied. I also confirmed throughout the duration of the call that the landlord was not in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the landlord's application for monetary compensation. The landlord does not have leave to reapply on this issue.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

#### Background and Evidence

The tenant provided a copy of the tenancy agreement that the parties signed on June 5, 2019. This is for the tenancy that started on June 29, 2019, for the fixed term ending on June 30, 2020. The monthly rent was \$2,000.00 payable on the first of each month. The deceased tenant paid a security deposit amount of \$1,000 on June 5, 2019.

The tenant presented the following timeline in their submissions dated October 14, 2020 and a June 26, 2020 letter:

- in February 2020 the deceased tenant attempted to contact the landlord for a leak in the roof but was unable to contact the landlord;
- the deceased tenant passed away on April 14, 2020 – their belongings were not removed;
- the roommates still in the unit informed the landlord of the leaking ceiling – the Residential Tenancy Branch ordered the landlord to repair the ceiling;
- the tenant sent a one-month advance notice to end the tenancy on May 11, 2020, effective June 30, 2020 – the tenant stated they gave a forwarding address to the landlord at this time;
- on May 22, 2020 the unit roof collapsed – the tenant raised concerns of asbestos;
- the Residential Tenancy Branch, in decision dated June 19, 2020 set out the parties' agreement that the landlord would inspect the unit for asbestos by a certain date, provide a report thereof, and provide for the tenant's removal of belongings should the report advise of that measure;
- The landlord hired a contractor who attended on June 22; however, that contractor attended and advised they were mis-informed of the test to perform, and then left. The tenant then ordered their own asbestos testing because they felt "[they] could not trust [the landlord] to do [their] diligence and get a proper company to come out" – this cost \$483.
- asbestos inspection results stated the unit was "seriously contaminated" and that work should proceed immediately – the landlord then advised the tenant on June 26 that abatement work would proceed after the end of tenancy;
- on June 30, 2020 the tenant provided a unit key to the landlord with the deceased tenant's belongings still inside – two roommates occupied the unit until this date;
- from July 7 – 9, the landlord requested the deceased tenant's belongings be removed from the unit – the tenant was not provided with an abatement report or air quality report stating that the unit was safe to enter;
- on July 18, the landlord disposed of the deceased tenant's remaining belongings by hiring a junk removal company.

The tenant makes the following claims:

#	Item(s)	\$ Amount Claimed
1	breach of entitlement to quiet enjoyment	5,000
2	waiver of May and June rent	4,000
3	return of May rent paid by roommates	1,000

4	deceased tenant's disposed belongings	8,050
5	x2 Application fees	200
Total		18,250

1. The tenant's written submission gives their summary on their claim for breach of entitlement to quiet enjoyment. This is due to the landlord "frequently appearing to the property without providing proper 24 hours' notice." This was to demand payments for roof repairs.

Further, the landlord undertook to repair the roof without proper asbestos control measures. The landlord took no action in advance to remedy the situation – they only took action after the roof collapsed despite the deceased tenant's requests.

The tenant states the hazardous exposure was prolonged due to the hired contractor's improper method of controlling asbestos exposure. This was "a preventable hazard." This prevented the opportunity for the tenant to remove the deceased's tenant's personal belongings.

2. The tenant asks for May and June rent to be waived due to needed repairs, a leaky roof, and asbestos exposure. In the landlord's cross-application (dismissed above), they made a monetary claim for each of the May and June rent amounts, at \$2,000 each month. The tenant's claim here is for the landlord not maintaining the unit in a state that was "suitable for occupation . . . given that the unit was seriously contaminated with asbestos. . ."
3. The roommates paid \$1,000 rent for May 2020. This was paid on May 9, 2020. The tenant requests return of this amount.
4. The roof collapsing resulted in damage to the deceased tenant's belongings. The landlord then disposed of these personal items "without proper storage or proper notice as required." The tenant provides that section 26(3) of the *Act* dictates that the landlord must not seize property or interfere with the tenant's access to personal property.

An appointment to remove the belongings was cancelled by the tenant "due to the existing [asbestos] risk". This did not leave a reasonable amount of time to collect the deceased's tenant's belongings, and removal was not completed before the landlord disposed of the items separately.

The tenant provided a spreadsheet listing 18 items, along with the cost for each. This totals \$8,250.

5. The previous arbitration order of June 19, 2020 ordered \$100 deducted from a future rent payment, as reimbursement of the tenant's application filing fee for that hearing. The tenant requests this monetary amount "if the rent for May and June are not required to be paid as previously that was ordered to be taken off of any amount owing for rent."

### Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* sections 32 and 33 set out the landlord's obligations to repair and maintain standards, and emergency repairs. As the subject of previous hearings and arbitrator decisions, I find the landlord did not undertake high priority repairs in a suitable fashion, or full the obligation of providing an inspection report or the opportunity for the tenant to remove belongings. Further, the landlord disposed of the tenant's personal property without regard to the Regulations, which prescribe obligations on the storage of a

tenant's personal property. On this basis, I find there were violations of the *Act*, the regulations, and the tenancy agreement by the landlord.

The tenant here claims the amount of two months' rent for May and June "to be waived due to needed repairs, a leaky roof, and asbestos exposure." The deceased tenant's roommates paid \$1,000 to the landlord on May 9, 2020. Given that the deceased tenant was the sole party who signed the tenancy agreement, I find the tenant here is making a claim for this amount on this basis.

I award the amount of \$1,000 to the tenant, and also waive their obligation to pay the remaining amount of \$3,000 rent.

I find the tenant's right to quiet enjoyment was significantly impeded where entry to the unit was effectively barred due to the high risk of asbestos contamination. This risk is verified in the report provided by the tenant here. I find the lack of access constitutes a damage or loss. Essentially, the unit was not suitable for occupation due to contamination.

Further, I find the evidence is sufficient to show there was a request for repairs to the landlord focusing on the roof, which later collapsed. I find this was preventable, pointing back to the landlord not taking steps to resolve the deceased tenant's request. This pattern of communication continued after the roof collapse, prompting the tenant to then seek arbitration to resolve the matter. These were considerable efforts to rectify the situation and the evidence shows the landlord was not fulfilling their obligations under the *Act*, in line with a previous arbitrator decision.

I find this portion of the claim equals the same amount as the rent amount left outstanding, for which the tenant asked for a waiver. This is the amount of \$3,000, so awarded to the tenant.

The Residential Tenancy Branch Rule of Procedure 4.2 allows for an amendment to the Application at the hearing. The tenant stated they did not have an agreement with the landlord on their holding of the security deposit. To this, the landlord responded by asking for the tenant's forwarding address, then serving their cross-application for monetary amounts. I find the tenant had initially provided their forwarding address to the landlord on May 11 via email. In the hearing they provided that this was the date they advised the landlord of ending the tenancy; they included their forwarding address at this time. In the hearing, the tenant provided that there was no repayment of the security deposit amount, or any claim against the deposit made within 15 days.

By application of Rule 4.2 I amend the tenant's Application to include a claim for the return of the security deposit.

The *Act* section 38(1) provides that a landlord must either repay a security or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Section 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Here, there was a cross-application by the landlord in which they applied for a rental amount owing. Their Application specified they wished to hold the security deposit toward this unpaid rent. The landlord did not attend this hearing. As a result, I find the landlord neither pursued their claim against the deposit, nor did they repay that amount to the tenant within 15 days as required by the *Act*.

Section 38(6) sets out the consequences where the landlord does not comply with the requirements of section 38(1). These are: the landlord may not make a claim against either deposit; and, the landlord must pay double the amount of either deposit, or both.

By not returning the security deposit and not applying for dispute resolution on a claim against it within the legislated timeframe, I find the landlord's actions constitute a breach of section 38 of the *Act*. The landlord must pay the tenant double the amount of the deposit, as per section 38(6) of the *Act*. I so award the amount of \$2,000 to the tenant.

The tenant here claimed \$8,050 for "loss of [the deceased tenant's] possession due to asbestos." They provided a spreadsheet list of the items and cost of each. In their written submission, the tenant provides that the roof collapse with compound debris contaminated the unit and "resulted in the [deceased] tenant's belongings to be damaged."

I find direct damage to personal items from roof collapse and subsequent contamination is not proven. Instead, I find the claim more accurately focuses on personal items being disposed of without the tenant being afforded the ability to remove them, and also prevented from doing so with no information on the status of contamination. Moreover,

the landlord did not take necessary measures for the tenant's personal belongings as prescribed for in the Residential Tenancy Regulation.

The tenant has set out a list of each item, along with a cost. I find this does not establish the value for each item. A list of items and cost is not compelling evidence of the value of the loss in question.

The Residential Tenancy Policy Guideline 40 is in place to provide a statement of the policy intent of the legislation. This is particular to the useful life of building elements. Furniture is shown to have a useful life cycle of ten years. The tenant did not provide evidence for the useful life of particular furniture items, nor did they establish other sentimental or antique value.

At the same time, this is personal property belonging to the deceased tenant to which the tenant has every legal right of access and ownership. The landlord disposed of the items without proper communication or the provision of safe circumstances for the tenant to attend to them. I find the landlord incorrectly treated the items as abandoned; however, even with that being the case, the Residential Tenancy Regulation prescribes the landlord's obligations for storage in these circumstances. The landlord was not present to speak to the value of the items in their estimation; conversely, I find the tenant has established that the personal property has a market value of more than \$500, as specified in section 25(2)(a) of the Residential Tenancy Regulation.

While this significant loss is not proven by the tenant in terms of established value, I find there was an infraction of the tenant's legal rights. I find a nominal amount is in order. I so award the tenant \$2,000 for this portion of their claim.

The tenant was awarded \$100 as the filing fee in a previous arbitration. With the deduction from rent so ordered in the decision, and with the waiver of rent owed here, I so order the landlord to reimburse the tenant for this \$100 amount.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the landlord.



Conclusion

I order the landlords to pay the tenant the amount of \$8,200.00. I grant the tenant a monetary order for this amount. This order must be served on the landlord. Should the landlord fail to comply with this monetary order it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 18, 2020

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Residential Tenancy Branch