



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, FFT**

### Introduction

This hearing dealt with the tenant'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
- recovery of the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant AG (the "tenant") primarily spoke on behalf of all the applicants.

The tenant gave evidence that they served the landlord with the notice of application and evidence by registered mail sent on August 20, 2020. The tenant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenants' materials on August 25, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

This tenancy began on August 1, 2020. The monthly rent was \$2,700.00 payable on the first day of each month. When the tenants took possession of the rental suite they noted numerous deficiencies with the suite making it unsuitable for habitation. The issues included disconnected smoke alarms, water seeping onto the floors, mold throughout the suite, torn up floorboards, missing bathroom tiles and exterior facing windows that could not be shut or locked.

The tenants submit that they were unable to occupy the rental unit due to the numerous issues making the suite unsuitable for habitation. The tenants found alternate accommodations while the suite was uninhabitable at their own expense. The total amount the tenants paid for alternate accommodations is \$536.30. The tenants provided a receipt showing the cost of alternate lodging for the period of August 2<sup>nd</sup> to August 7<sup>th</sup>.

The tenants advised the landlord of the issues but no repairs or work was done in a reasonable timeframe. The parties subsequently signed a Mutual Agreement to End the Tenancy as of August 7, 2020. The landlord has not returned any portion of the rent paid for the month of August, 2020.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 32(1) of the *Act* provides that a landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation.

Based on the evidence I find that the landlord breached their duty of care by failing to maintain the rental unit in a state of repair. I find the testimony and documentary evidence to be sufficient to demonstrate that the rental unit was not simply in need of cleaning but had major issues with water ingress, plumbing systems, structural issues

and safety measures so that it was not suitable for habitation. I find that the tenants acted in a reasonable and prudent fashion by not residing in a rental unit with such major issues and that the costs of alternate accommodations were reasonable under the circumstances. I accept that the tenants found lodging and incurred costs of \$536.30. I find the invoice and cost incurred to be reasonable. I further accept that while the tenants paid rent for the rental unit for the month of August, 2020, the landlord failed to provide them with a rental unit that could be inhabited.

Based on the foregoing, I issue a monetary award in the tenants' favour in the amount of \$3,236.30 as against the landlord.

As the tenants were successful in their claim they are also entitled to recover their filing fee from the landlord.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$3,336.30. The landlord must be served with this Order as soon as possible. Should the landlord 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: December 7, 2020

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Residential Tenancy Branch