



# 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* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Preliminary Issue

Pursuant to section 64(3)(c) of the Act, I amend the tenants' application to correct the spelling of the landlord's name. Both parties consented to these amendments during the hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to the recovery of the filing fee?

### Background and Evidence

MM gave the following submissions on behalf of her daughter, CS. MM submits that since the landlord gave a Two Month Notice to End Tenancy for Landlords Use of

Property, her daughter should be entitled to two months free rent, not one despite what the Act says. MM submits that the landlord should pay for her moving and dumping fees as he's ended the tenancy. MM submits that her daughter's clothes were ruined as a result of the landlord not dealing with a plumbing issue for many years causing her to lose \$500.00 worth of clothes. That plumbing issue caused a water backup in the unit resulting in the end of this tenancy. MM submits that her daughter was displaced for eight days and should be given \$168.00; a pro rated amount of rent for those days.

CS testified that she was afraid to tell the landlord about the water leak. CS testified that she noticed in September 2020 but didn't tell him until many weeks later.

The tenant is applying for the following:

1.	2 <sup>nd</sup> month of rent as compensation per section 49	\$619.00
2.	Moving & Dumping Costs	700.00
3.	Clothes	500.00
4.	8 Days of rent	168.00
5.	Filing Fee	100.00
6.		
	Total	<b>\$2087.00</b>

The landlord gave the following testimony. The landlord testified that the tenant lived in the unit for 14 years and that the monthly rent of \$619.00 was payable on the first of each month. The landlord testified that he agonized over ending the tenancy as he and the tenant had a good relationship for many years. The landlord testified that he wanted to take back the unit for about 18 months. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on October 28, 2020. The landlord testified that he already gave one months free rent to the tenant as required by the notice and returned her deposit.

The landlord testified that he was horrified to see the condition of the unit and the mould throughout. The landlord testified that the tenant did not advise him that the shower was continually overflowing and causing water damage in the unit. The landlord testified that he now has a large insurance claim pending and that the unit is still uninhabitable. The landlord testified that he doesn't understand why the tenant has made this claim as she is responsible for all the damage.

## Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim. MM was especially intent on arguing with the landlord rather than focusing on presenting the claim on behalf of her daughter. Although MM was given the vast majority of the 45-minute hearing to speak, she continually interrupted the landlord and stated his testimony was irrelevant and that he was wasting time. The hearing proceeded and concluded with each party having a **full opportunity to give submit their evidence and testimony.**

The principal aspects of each party’s claim and my findings around each are set out below. It is worth noting that MM was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. MM presented her evidence in a very disjointed and vague fashion. In addition, she would add and subtract items from her claim during the hearing and would alter the amount she was seeking. MM’s testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

### **3.7 Evidence must be organized, clear and legible**

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

*Compensation \$619.00*

Section 49 of the *Act* addresses this issue as follows:

**Tenant's compensation: section 49 notice**

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of **one** month's rent payable under the tenancy agreement.

MM confirmed that the landlord has already paid one month's compensation to the tenant, accordingly; I dismiss this portion of the tenant's application.

*Moving, Clothes & Loss of Use of Unit \$1368.00*

In CS's own testimony she stated that she noticed the water damage in early September and didn't tell the landlord until late October. I find that the tenants action caused the matter to escalate. Furthermore, she did not mitigate the loss by informing the landlord of the issue in a timely manner. In addition, the tenant has failed to show that the landlord was reckless or negligent to cause this water leak. Based on the above and on a balance of probabilities, I dismiss this portion of the tenant's application.

The tenant has not been successful in this application. The tenant is not entitled to the recovery of the filing fee.

**Conclusion**

The tenant's application is dismissed in its entirety 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: March 04, 2021

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Residential Tenancy Branch