



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

The landlord filed an application for dispute resolution (the “Application”) on January 18, 2021 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. Additionally, the landlord seeks to recover the filing fee for the application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 6, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions. The landlord attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The tenant did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the Notice of Dispute Resolution for this hearing. This means they must provide proof that the document has been served in a manner allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord provided evidence showing their delivery of this dispute Notice via a messaging app on February 26, 2021. This was after they received an order from the Residential Tenancy Branch approving this means of substituted service via s. 71 of the *Residential Tenancy Act*.

Based on the submissions of the landlord, I accept they served the tenant notice of this hearing and their prepared evidence in a manner complying with s. 89(1)(e) of the *Act*. The hearing thus proceeded in the tenant’s absence.

Issue(s) to be Decided

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

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

Background and Evidence

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.

The landlord provided a copy of the tenancy agreement between the parties. Both parties signed the agreement on November 22, 2019 for the tenancy starting on December 1, 2019. The monthly rent was \$2,750 per month, and the tenant paid both a security deposit of \$1,375.

The tenancy ended after the duration of the fixed term specified in the agreement. The parties met together at the rental unit on November 30, 2020 to review the condition of the rental unit. This is documented in the Accommodation Inspection Report provided by the landlord. Both parties signed this document which notes specifically:

On the inspection day, water flood in the kitchen area. Upon rough inspection this is likely caused by loose water pipe underneath the sink. Floors in kitchen areas are all affected (cracked/damaged). The bottom of the kitchen counter is also cracked. The floor in dining area also seem to be damage/cracked. Photos are taken by both owner and tenants. Both parties will get quote for damage repair.

In their evidence the landlord provided photos that show: kitchen floor swelling due to liquid damage; swelling baseboards due to water damage; water seepage along the bottom of the kitchen island; resulting mould and rot inside the kitchen island cabinet.

In the hearing the landlord described their claim to their property insurer for this water damage. The insurer visited the unit at the start of December. On December 8, 2020 they issued a letter to the landlord, denying the claim because of “continuous or repeated seepage or leakage of water.”

The landlord provided the following document in line with repair for these damages caused by the tenant:

- an estimate for \$2,100 for countertop replacement, dated December 10, 2020
- an estimate for \$4,200 for the kitchen island replacement, included garbage haul-away and plumber, dated December 10, 2020
- an estimate for \$3,364.19 for flooring and moulding, dated December 16, 2020.

With reference to the Accommodation Inspection Report they provided, the landlord submitted that these represent the quotes for damage repair that each party agreed to provide. They queried the tenant on their promise to obtain quotes, as signed. When they made this query via telephone, the tenant hung up on the landlord.

In the hearing the landlord provided that they paid the invoice for floors on December 29, 2020. They then paid the invoice for the counter on January 2, with the actual work for this finishing on January 15, when the plumber finished re-installing the pipes. They verified these dates in their own records during the hearing.

The landlord also claims for monetary loss for \$4,125. This represents 1.5 months of rent lost due to their inability to re-rent the unit in a timely manner because of the repairs needed after this water damage. This was for the full month rent amount for December 2020, and one-half the amount for January.

As provided on their Monetary Order Worksheet, the total claim by the landlord is \$13, 789.19.

### Analysis

The *Act* s. 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Additional, s. 32 sets the parties' obligations to repair and maintain. Specifically, for a tenant, they must "repair damage to the rental unit. . . that is caused by the actions or neglect of the tenant. . ."

Under s. 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 s. 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.

In their evidence and oral testimony in the hearing, the landlord showed that this matter was discussed openly with the tenant at the end of the tenancy when the parties met to inspect the unit. I find the tenant's signature on the report is tacit acknowledgement of the damage. I find this is damage to the rental unit from the tenant's violation of s. 32 of the *Act*, where the tenant did not notify the landlord of the need for repair, which led to an ongoing problem causing more extensive damage. In sum, this was a case of neglect by the tenant here.

The work began for repair and restoration soon after the tenant moved out from the unit. I am satisfied the amounts presented by the landlord were paid for the work involved, and the receipts provided establish the value thereof.

Further, I find the landlord made the effort at mitigating the monetary loss involved by giving the tenant the opportunity to obtain a quote for the needed work. Additionally, the landlord presented that they consulted with their own insurer to determine if any of the damage was recoverable under their existing policy.

With my review of the four criteria listed above, I find the landlord is entitled to compensation for the full amount as claimed for the damage due to the tenant's neglect. This award amount is \$9,664.19.

For the landlord's claim for loss of rental income, I find this amount claimed is also tied to the damage resulting from the tenant's neglect. This was a significant amount of work involved to restore the rental unit, with the aim of having its condition in the same state as if the damage had not occurred. I find the landlord in their diligence consulted with their insurer, and canvassed for a contractor that could complete the work in a relatively short amount of time.

I find six weeks for the amount of work involved to restore the kitchen area is not unreasonable. For this, I award the landlord the claimed amount of \$4,125, representing income loss from not having the rental unit re-rented for at least that amount of time.

As the landlord is successful in this Application for compensation, I find that the landlord is entitled to recover the \$100 filing fee. This total monetary compensation order is \$13,889.19.

The landlord has made their claim against the security deposit. With the landlord holding this amount of \$1,375, I order this amount deducted from the recovery of the damage and rent recovery amounts totalling \$13,889.19. This is an application of section 72(2)(b) of the *Act*.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$12,514.19 for damage and other monetary loss, and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. 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 s. 9.1(1) of the *Act*.

Dated: July 8, 2021

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Residential Tenancy Branch