



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on May 15, 2021 and ended on October 1, 2021. During the tenancy rent of \$1,650.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$825.00 and the Landlord continues to hold this deposit.

The Tenant states that on September 27, 2021 the sump pump did not work, and a flood occurred caused by the overflow of the septic tank. The Tenant states that the flood was reported to the Landlord on the same day and that the Landlord came that

evening. The Tenant states that the Landlord laughed, said there was no problem and that the Tenant and upper tenant should urinate in the yard. The Tenant states that a repair person came the next day. The Tenant states that the smell in the unit was so bad that the Tenant had to stay with friends. The Tenant states that a couple of days after the flood the Landlord had a restoration company remove the floors and put fans in place. The Tenant states that the unit was a biohazard from the flood. The Tenant states that after three days of trying to get in touch with the Landlord or its property manager who did not return call to the Tenant, the Tenant asked to break the lease because the unit was not liveable. The Tenant states that the Landlord told the Tenant just to leave the keys. The Tenant states that on September 30, 2021 the Tenant was moved out of the unit and that the Landlord accepted the keys saying nothing to the Tenant.

The Tenant states that there were previous plumbing problems and that the sump had not been properly repaired prior to September 2021. The Tenant states that the upper tenant had a septic overflow in September 2021, and in April 2021. The Tenant states the repairs done on September 27, 2021 found previously existing items in the sump pump. The Tenant states that the sump pump had not been cleared from the April 2021 flood. The Tenant claims return of all rents paid for the duration of the tenancy for having unknowingly lived in a unit affected by biohazards. The Tenant states that they believe that their health was affected because during the tenancy the tenant experienced stuffy nose, difficulty breathing and a cough. The Tenant provides an email from the upper tenant as supporting evidence of the previous septic floods.

The Landlord states that while the sump pump was jammed in April 2021 there was no septic overflow. The Landlord states that the sump pump was cleaned at the time and the Landlord provides the plumbing invoice for the repairs. The Landlord argues that the Tenant has no supporting evidence to support previous septic tank floods or contaminates or problems with the sump pump. The Landlord states that after the September 2021 flood the Landlord had a mold inspection done and no mold was

found. The Landlord states that as there was no flooding from the April 2021 sump pump issue and therefore no basis for the Landlord to conduct a mold inspection. The Landlord states that the September 2021 flood was water that came from the sump pump only and that it is impossible for any septic seepage into the sump pump. The Landlord states that the repairs from the September 2021 flood was started on September 29, 2021 and completed by October 6, 2021. The Landlord provides a copy of a preliminary and final report from the restoration company.

The Tenant states that the original septic backup occurred in September 2020 leaving biohazards on the floor. The Tenant states that the plumber who attended at the time was distraught because the backup had not been cleaned. The Tenant refers to texts between the upper tenant and the previous agent for the Landlord about the flood in 2020. The Landlord states that there was no flood or issue in September 2020 and that the unit was renovated in January or February 2019 with all new flooring, septic tank and sump pump.

The Tenant submits that the Landlord believes the Tenant caused the flood in September 2021 and the Landlord states that they intend to bring a claim for damages caused by the Tenant.

### Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

While there may have been previous problems with flooding into the unit, given the Landlord's evidence of no floods from the septic tank, as the Tenant has no supporting evidence that the previous problems involved the septic tank or that any flood from the sump pump contained biohazards, I find on a balance of probabilities that the Tenant has not substantiated the presence of biohazards in the unit prior to the September 2021 flood. Even if there were previous issues the Tenant has no supporting medical evidence of any health problems caused by any exposure to something inside the unit. There is no evidence that the Tenant suffered any loss of use of the unit prior to the September 2021 flood. For these reasons I find on a balance of probabilities that the Tenant has not substantiated an entitlement to the recovery of all the rents paid during the tenancy.

However, it is undisputed that the flood on September 27, 2021 left the unit with foul odors and that the Landlord accepted the Tenant's move out of the unit without comment. I therefore accept that the unit was not habitable from this period until the Tenant moved out on September 30, 2021. The Tenant is therefore entitled to compensation for the loss in value of the tenancy for this period in the amount of **\$220.00**. This amount is calculated based on a per diem of \$55.00 (\$1,650.00 / 30 days) for 4 days (September 27 to 30, 2021 inclusive). As the Tenant's claim has met with some success, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$320.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$320.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 25, 2022

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Residential Tenancy Branch