



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”). The Landlords applied for the following:

- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused during the tenancy pursuant to 67; and
- authorization to recover the application fee of the Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 2:14 pm in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 pm. The two Landlords (“SL” and “SY”) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that SL, SY and I were the only ones who had called into this teleconference.

Preliminary Matter – Service of NDRP and Landlord’s Evidence on Tenants

SL stated the Landlords served the NDRP and their evidence (“NDRP Package”) on the Tenant in-person on November 10, 2022. Based on the undisputed testimony of SL, I find the NDRP Package was served on the Tenant in-person in accordance with the provisions of sections 88 and 89 of the Act.

SL stated the Tenant did not serve any evidence on the Landlords for this hearing.

Issues to be Decided

Are the Landlords entitled to:

- a monetary award for damage arising out of this tenancy?
- recovery of their filing fee for the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

SL testified the tenancy commenced on December 15, 2020, with a fixed term ending December 31, 2021, with rent of \$2,000.00 payable on the 1st day of each month. SL stated the Tenant was to pay a security deposit of \$1,000.00 by December 11, 2020. SL stated the Tenant paid the security deposit and the Landlords were holding it in trust for the Tenant. SL stated the Tenant vacated the rental unit on July 15, 2021. SL stated the Tenant has not served the Landlords with a written notice providing his forwarding address.

SL stated that, on or about July 3, 2021, the Tenant's girlfriend left the water running in the bathtub in the rental unit. SL stated the bathtub overflowed for 3 to 4 hours which resulted in damages to the rental unit and to apartments located on the two floors below the rental unit. SL stated a tenant on a lower floor alerted authorities to water running everywhere including the elevators. SL stated the Landlords are seeking compensation of \$16,157.01 to reimburse them for amounts paid, and estimated expenses to be paid, by them for repairs the rental unit and residential property as follows:

Amount Paid and Estimated Expenses to be Paid for Repairs	Amount
Invoice 1 – July 29, 2021	\$183.75
Invoice 2 – September 1, 2021	\$7,133.04
Invoice 3 – October 22, 2021	\$3,170.22
Estimate – October 25, 2021	\$5,670.00
Total:	\$16,157.01

SL submitted a detailed breakdown of the charges for each of the three invoices and a breakdown of the estimated labour and materials to complete the repairs to the rental unit.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove their case, on a balance of probabilities, is on the Landlords.

Sections 7 and 67 of the Act state:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlords must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

The undisputed testimony of SL was the Tenant's girlfriend left the water running in the bathtub, it overflowed and the water caused significant damage to the rental unit and the residential property. SL submitted copies of three invoices for \$10,487.01 for

amounts the Landlords have paid to the strata corporation for repairs to the rental unit and residential property, together with an estimate for \$5,670.00 to complete the repairs.

Pursuant to section 7(1) of the Act, a tenant is responsible for compensating a Landlord for damages caused by the tenant's guests and pets resulting from a breach of Act, *Residential Tenancy Regulations* or tenancy agreement. I find the Landlords have provided sufficient evidence to prove she has satisfied the four elements set out in PG 16. As such, I find the Landlords are entitled to the entirety of their claim in the amount of \$16,157.01. Pursuant to section 67 of the Act, I order the Tenant pay \$16,157.01 to compensate the Landlords for their loss. Pursuant to section 72(2) of the Act, the Landlords may retain the security deposit of \$1,000.00 in partial satisfaction of the Monetary Order.

As the Landlords have been successful in the Application, pursuant to section 72 of the Act, I award the Landlords \$100.00 for the filing fee of the Application.

Conclusion

I order the Tenant to pay the Landlords \$15,257.01 as follows:

Description	Amount
Compensation awarded to Landlords	\$16,157.01
Recovery of Filing Fee of Application	\$100.00
Less Tenant's Security Deposit	-\$1,000.00
Total	\$15,257.01

It is the Landlords' obligation to serve this Monetary Order on the Tenant. If the Tenant does not comply with the Monetary Order, it may be filed with 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: June 19, 2022

Residential Tenancy Branch