



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDC MNR MNSD FF  
Tenant: MNSD FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 3, 2022. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. The Landlords confirmed receipt of the Tenant’s application and evidence, and the Tenant confirmed receipt of the Landlord’s application and evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

#### Tenant

- Is the Tenant entitled to the return of the security deposit?

#### Landlord:

- Is the Landlord entitled to compensation for damage or loss under the Act and for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit?

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified on the application. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy started in early October 2021.
- The Tenant moved out on February 1, 2022, and returned the keys that same day. The move-out inspection was also completed this day.
- The Landlords still hold \$1,100.00 as a security deposit.
- Rent was \$2,200.00 per month and was due on the first of the month.
- The tenancy was a fixed term tenancy agreement, ending on September 30, 2022.

### *Landlord's application*

The Landlords stated that they are seeking the following items:

- 1) \$4,400.00 – Rent for February and March 2022

The Landlords stated that there was a flood in the rental unit on or around December 7, 2021. The Landlords explained that sometime in the morning of December 7, 2021, they were informed that there was water leaking from the rental unit into adjoining units in the building. The Landlords stated that they immediately attended the unit and saw that the Tenant was not home, and had left her bathroom faucet running, on full. The Landlords stated that the bathroom sink had overflowed, and had flooded the floors, the lower part of the walls, and had drained into adjoining rental units and common space. The Landlords stated that a restoration company was immediately called to help mitigate the damage.

The Landlords explained that they tried to notify the Tenant as to what happened. However, she was at work, so the flood remediation went ahead without her present. The Landlords tried to accommodate the Tenant's request that someone be present during the remediation to supervise the restoration company. However, the Landlords

stated that this proved difficult as the Tenant was out of town from December 11, 2021 – January 9, 2022, and the Tenant's appointed contact was not always available to be present when the Landlord or contractor was wanting to attend.

The Landlords explained that the Tenant was still involved, remotely and largely by email, while she was away, but progress was slow due to availability of contractors, working around the Tenant's contact's schedule, and also due to the time required to properly dry and restore the saturated building components. The remediation continued through December, and the emergency mitigation part of the restoration completed around December 28 or 29, 2021. The Landlords further explained that the fans were removed at that time.

The Landlords explained that following this emergency mitigation work, they had to wait for the insurance company to determine the scope of repairs and approve quotes. The preferred contractor began scoping and planning repairs in early January 2022. The Landlords stated that they kept the Tenant in the loop as much as possible. Some emails were provided into evidence, and the Landlords explained the process that should be expected following the Tenant's return home around January 9, 2022.

The Landlords stated that once the Tenant returned, she brought up concerns about the shower head not functioning correctly, and the Landlords repaired that issue the same day. The Landlords explained that on January 18, 2022, a flooring contractor came to go over flooring options with the Landlord. The Landlords stated that the flooring contractor confirmed that since the damaged flooring could not be matched with some of the pre-existing flooring, all of the flooring in the main part of the rental unit would need to be replaced (the hardwood). The Landlords stated that at that time, the contractor informed them that it would take at least 3 weeks to repair the flooring, and that the Tenant would need to move her belongings off the affected area.

The Landlords stated that they never told the Tenant that she could not remain living in the rental unit, or that they wanted to end the tenancy. Also, the Landlords stated that it was the Tenant's decision to not get renter's insurance. The Landlord opined that the rental unit was always livable, as the Tenant still had a functioning sink, toilet, kitchen and bedroom. The Landlords stated that most of the remediation was in the bathroom, the adjacent flooring, and repairs to the affected cabinets, baseboard, and drywall.

The Landlords explained that on or around January 19, 2022, the Tenant also complained about the slow draining of water in her shower, and when they came to look, there was a significant amount of the Tenant's black hair in the drain. The

Landlords stated that on January 26, 2022, the Tenant emailed the Landlord to say that she was moving out as of February 1, 2022. The Landlords provided a copy of the email into evidence, which shows that the Tenant had several concerns. They were as follows:

- 1. Since December 28, 2021, the unit which I rent has been without a bathroom vanity, bathroom sink, and flooring in the hallway area. The sink is currently leaning against the bathroom wall with sharp materials and there are nails that are poking through the floor.*
- 2. I was with the understanding that your insurance company was to let you, and in turn me, know whether this unit was habitable during this whole repair process. I have not heard any news regarding this. I think the current living situation is unacceptable and unsafe.*

The Landlords stated that the Tenant never informed them before giving this above noted “notice” that there were any safety concerns or that the unit was not habitable. The Landlords stated they were never given a chance to address the Tenant’s safety concerns before she said she was moving out. The Landlord denies that there were any legitimate safety concerns.

The Landlords stated that they continued with remediation and repairs throughout February, and given the shortage of labour and materials, it took until mid-March to have the unit repaired (flooring, vanity, plumbing fixtures, baseboards, paint, drywall). The Landlords stated that once the rental unit was repaired, they immediately posted the rental unit ad, and were successful in finding replacement renters as of April 1, 2022. The Landlords are seeking February and March rent of \$2,200.00 each month, due to the Tenant’s short notice, and the damage she caused, making the unit unfit to try and list for re-rental.

The Tenant provided a detailed accounting of dates and times for the events and communications between the Landlord, the Tenant, and the contractors. The Tenant generally took issue with the poor communication from the Landlords, and the improper and short notice she was often given to accommodate contractors. The Tenant did not refute leaving the taps on in the bathroom sink on December 7, 2021, but suggested that it was “odd” that the taps were running and overflowing after she left for work. The Tenant detailed the process she navigated with the insurance/remediation technicians, as well as the Landlord, and stated that she complied with requests as much as possible, despite how the Landlords were not always handling the process to her satisfaction.

The Tenant opined that it should be the Landlord who is responsible for letting people into the rental unit to complete the work, not her or her friend. The Tenant suggested that the Landlords were out of town over Christmas which added to the challenges letting contractors in, and is why her friend had to help with providing access. The Tenant became increasingly displeased with the progress and communication, particularly after she came back from her trip and saw the unsatisfactory living space. The Tenant also stated that she felt she had no other option but to leave and break her lease because of the condition of the suite, the fact that it was not livable, and that it was unsafe. The Tenant provided copies of emails into evidence regarding her interactions with the contractors, the insurer, and the Landlords.

The Tenant also suggested that there were other plumbing issues in the building which could have been to blame for the problem she had in her unit. The Tenant pointed to a Facebook post another person made about other plumbing issues in the building.

The Landlords stated that the only other plumbing issue was unrelated and involved a separate washing machine in the building.

## 2) \$500.00 – Landlord's Insurance deductible

The Landlords stated that because the Tenant left the faucet running, the flood is her responsibility. The Landlords provided a copy of their insurance documentation showing that they had to pay a \$500.00 deductible in order to have the building damage remediated.

The Tenant did not speak directly to this item, although she did not feel she should be liable for any of the Landlords' claim.

## *Tenants' application*

The Tenant is seeking the return of her security deposit, in full, because she does not feel she should have to pay for any of the damages sought by the Landlord. The Tenant opined that the rental unit was not in acceptable condition, after the flood and during repairs, to warrant her paying full rent for December, January, February or March.

The Landlords feel they are entitled to the security deposit, in full, as the Tenant caused the flood, then vacated before the end of her fixed term lease.

## Analysis

With respect to the Landlord's application to recover money for damage and loss, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Tenant has applied for the return of her security deposit, which the Landlords currently hold. The security deposit will be dealt with after the merits of the Landlords' application is discussed (at the bottom of the decision). The Tenant is not entitled to double the security deposit, since the Landlords applied for this dispute resolution within 15 days of the end of the tenancy and given there is no evidence either party extinguished their right to the deposit.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

First, I turn to the Landlords' application for monetary compensation and to withhold the security deposit to offset the amounts they are seeking.

I note there was a flood that took place on December 7, 2021. This does not appear to be in dispute. The Landlords and building manager attended the rental unit in the morning of December 7, 2021, after there were reports of water leaking from the subject rental unit. After entering the unit, it was noted that the Tenant's bathroom faucet was left "on full" and the sink basin was overflowing onto the floor in a significant way. Although the Tenant noted that it was "odd" that this could have happened, she did not refute leaving the faucet on. The photo provided by the Landlord shows a significant amount of water in the bathroom sink area on that day. It appears the Tenant left the sink on while she was getting read for work in the morning of December 7, 2021, and likely inadvertently left the faucet on. This issue was not discovered until the surrounding areas had flooded and significant damage had occurred.

Having reviewed the totality of evidence and testimony on this matter, I find it more likely than not that the Tenant inadvertently left the bathroom sink running when she left for work on December 7, 2021. While this may have been an inadvertent oversight, I find the flood is directly caused by the Tenant's actions. I do not find there is sufficient

evidence that the building plumbing, or that a general plumbing deficiency, substantially contributed to the flood.

I note the Tenant did not have renters' insurance. However, fortunately the Landlords had general building insurance to cover remediation and repair costs, despite it being caused by the Tenant's actions. I accept that it would have cost the Landlord \$500.00 to file the insurance claim, as per the insurance documentation provided. However, as this issue was directly caused by the Tenant, I find she is liable for the Landlord's insurance deductible paid to remediate the rental unit and abutting areas.

With respect to the Landlords' request for rental losses of \$4,400.00, I note this is for the months of February and March 2022. The parties both agree that the Tenant provided her written notice to end tenancy on January 26, 2022, effective February 1, 2022. Although the Tenant cited safety concerns in her email on January 26, 2022, I find there is insufficient evidence showing she clearly brought up these concerns before giving notice, to give the Landlords a chance to address the issues. Further, I am also not satisfied that the safety issues were such that the Tenant had cause to leave and end the tenancy early.

I also find there is insufficient evidence that the tenancy was frustrated by the flood. I turn to the following portion of the Act:

- 44 (1) A tenancy ends only if one or more of the following applies: [...]
- (e) the tenancy agreement is frustrated;

Next, I turn to the following portion of the Act:

- 92 The Frustrated Contract Act and the doctrine of frustration of contract apply to tenancy agreements.

Frustration is an English contract law doctrine that acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract.

If an event occurs which causes an inordinate delay in the performance of the contract, frustration may be held. However, it must be a serious delay which affects the intended purpose of the contract. Although the Tenant was clearly disrupted and inconvenienced, I find the interruption caused by the flood in the rental unit was relatively short lived.

Further, there is insufficient evidence that the rental unit was uninhabitable. I note there was partial demolition of some building materials and components in the rental unit (flooring, bathroom vanity, baseboards, drywall etc). However, there was still a functioning toilet, kitchen, bedroom, and sink. Overall, I am not satisfied that the tenancy agreement was frustrated.

I accept that the remediation and repair of a flood in a multi-unit building, when dealing with insurers and contractors, takes a significant amount of time. I am not satisfied that any of the timelines are excessive or unreasonable, given the nature of the issue and the repairs. Further, I also note the Landlords stated there were labour and material shortages, which did not help the progress and timelines. Ultimately, the emergency remediation portion for the water damage lasted until late December 2021, and the repair contractors took over in early January 2022. A variety of contractors were involved in repairs, and the repairs were not completed until “mid-March” 2022.

Although the Tenant gave written notice on January 26, 2022, I find she was not legally entitled to end the tenancy in the manner she did.

***Tenant's notice***

*45 (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a)is not earlier than one month after the date the landlord receives the notice,*

*(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

Even if the tenancy was month-to-month, at least one month notice would be required. However, given this was a fixed term tenancy until September 2022, I find the Tenant's notice violated section 45(2) of the Act. I note the Landlords were unable to re-rent the unit, due to the flood, and although the Tenant moved out on February 1, 2022, they suffered rental losses for February and March because they could not re-list the unit until the repairs were completed. I note the Landlords reposted the ad as soon as the repairs were done, in mid-March, and I find they mitigated as much as possible, given the situation. Ultimately, I find the Tenant is responsible for February and March rent for the above noted reasons.

I award the Landlords' claim, in full.



Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were substantially successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. The Tenant's request for the return of the security deposit is dismissed, without leave. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Rental Losses	\$4,400.00
Insurance Deductible	\$500.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$5,000.00
LESS: Security Deposit	\$1,100.00
<b>Total Amount</b>	<b>\$3,900.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$3,900.00**, as specified above. This order must be served on the Tenant. If the Tenant fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

The Tenant's application is dismissed, without leave.

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: October 7, 2022

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Residential Tenancy Branch