



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: **MNDCT, LRE, FFT**

Landlord: **MNDL, FFL**

### **Introduction**

This reconvened hearing was scheduled following the adjournment of a hearing originally scheduled for November 06, 2023. The original hearing was adjourned so that evidence could be properly exchanged. On November 6<sup>th</sup>, the tenant testified that she was unable to view the digital evidence given to her by the landlord.

On November 6<sup>th</sup>, I determined that I would hear testimony from both parties regarding the tenant's dispute and adjourn the landlord's cross application to a reconvened hearing since the landlord acknowledged having received the tenant's evidence.

The tenant applied for:

- A monetary order for damages or compensation pursuant section 67;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearings on November 6<sup>th</sup> and November 30<sup>th</sup>.

Issue(s) to be Decided

Should either party be compensated for damages?

Should the landlord's right to enter the rental unit be suspended?

Can either party recover the filing fee?

Background and Evidence

At the commencement of the original hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties given on both dates, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The following fact are not disputed:

- The rental unit is located on the fifth floor in a newer highrise building
- The tenancy began on June 21, 2018 with a previous landlord.
- Rent is currently \$1,827.00 per month, and the current landlord holds a security deposit and pet damage deposit
- On January 18, 2023, the tenant sent a video to the landlord regarding a leak in the kitchen. The tenant didn't know if it came from her tap or the dishwasher.
- The landlord came with a contractor on January 21, 2023 and the contractor checked the dishwasher for leaks, finding none.
- On or about April 16<sup>th</sup>, the occupant in the unit below the tenant's called the strata about a leak in their unit coming from above.
- The tenant was not home at the time and the tenant's friend did not allow the technician access to the unit.
- The technician came back the following day, ran test cycles on the washing machine and dishwasher, but found no leaks.
- A contractor hired by the landlord also checked the dishwasher on May 6<sup>th</sup> and found no leaks again
- Based on an investigation by the landlord's insurer, it was determined that the dishwasher itself is not malfunctioning, but was caused by excessive detergent and overloading of the dishwasher by the tenant during washing cycles.
- The landlord's insurer paid to have the repairs done to the rental unit and to the unit below

The tenant alleges that a massive rainstorm with wind and water could have led to the water in the unit. She alleges that there was water damage in the entire building, although she acknowledges that the windows were not left open during the wind and rainstorm.

The tenant testified that when the landlord's contractors came to repair the damage, they caused damage to her possessions. Her chest freezer sustained key marks. An ikea dresser got scratched. A floating shelf she put up is now shaky and things slide off. Her record player lid got scratched. The place was dirty, and she had to clean it herself. Her very expensive speakers were damaged with a broken leg and scratched panels. She had to pay for additional AirBnB costs when the repairs took longer than expected. Lastly, her mental health was affected as she could not sleep and she felt her tenancy would be threatened.

The landlord testified that there are no scratches on the freezer; the ikea dresser is old and the tenant cannot prove any damage was caused by his workmen. The shelf was incorrectly installed without the landlord's permission and without anchors. The rental unit was cleaned very well after the job was done. He acknowledges the restoration company he hired mistakenly put the tenant's possessions in the bedroom and he apologized for it. The record player was never touched, and everything was covered by cloths during the restoration.

Regarding the speakers, the landlord acknowledges a worker he hired broke a leg on it. The landlord took photos of it and sent it to the tenant immediately. The landlord spoke to a lawyer and was advised to sue the tradesman for the broken speaker. Regarding the tenant's mental health, the stress was on the landlord as well as the tenant. She causes a lot of problems for the landlord and he responds to her needs immediately.

Lastly, the landlord and the tenant made arrangements to do the restoration while the tenant was away on vacation. The tenant delayed her trip and the landlord started the job on May 4<sup>th</sup>, completing it by May 10<sup>th</sup>. The work was completed in a week and the timeline agreed to was only verbal between the parties.

The landlord contends that the technicians who came to investigate the flood determined that it was caused by the tenant using too much soap. The tenant's misuse of the dishwasher damaged the flooring, cabinets and caused additional damage to the suite below which the landlord's insurance had to pay for. The insurer also paid for the damage done to the rental unit however the landlord alleges he paid some of the bills

himself. The landlord claims he paid a contractor \$1,500.00 cash to get the work done more quickly. The landlord also alleges that because the tenant gives him a hard time, he should be entitled to compensation.

### Analysis

Section 7 of the Act states that 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

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

[the 4-point test]

I begin first with the cause of this dispute, the flood in the unit on April 16<sup>th</sup>. Based on the fact that the dishwasher functioned normally each time when it was inspected by the landlord's two technicians and the later conclusion made by the landlord's insurer after their investigation, I find it more likely than not that the cause of the flood was due to the tenant's misuse of the dishwasher by using too much dishwasher detergent. I find the tenant's explanation that the unit had somehow gotten wet during a storm with the windows closed is improbable and likely just conjecture on her part.

The landlord filed an application seeking to recover the costs associated with the flood, yet in evidence the landlord provided proof that his costs from the flood were covered by his insurer. When I asked the landlord if there were any costs over and above what the insurer paid, the landlord testified he paid an additional \$1,500.00 cash to a contractor

and that he has suffered stress. With respect to the cash payment, I find insufficient evidence to support this claim and I dismiss it. Regarding the landlord's claim for stress, the landlord provided no documentary evidence to support a deterioration of his well being due to the actions of the tenant. Nor did the landlord claim this in his application for dispute resolution. Consequently, I dismiss the landlord's application without leave to reapply.

In her application, the tenant claimed the following:

1. Chest freezer 2. IKEA Dresser 3. Floating shelf 4. House cleaning 5. Speakers 6. Record player 7. Mental health stresser (separate but requesting rent reduction) 8. Air bnb Cost

The tenant seeks the replacement cost of the freezer, dresser, shelf and record player due to the mistreatment of her possessions during the restoration following the flood. Turning first to the shelf which is loose and wobbly in the video provided as evidence by the tenant. Based on the evidence before me, I believe that the shelf was improperly installed by the tenant, likely without proper anchors. I find very little evidence to support the tenant's claim that the landlord or the contractors doing the work contributed to the wobble and I dismiss the tenant's claim to have it replaced.

The freezer, dresser, and record player have scratches on them; however I find it would be unreasonable to have them replaced. The tenant provided no evidence of seeking to have the scratches on any of her possessions repaired instead of replaced. I find that replacing these items is not an attempt to mitigate the damage. Moreover, I do not know the condition of the tenant's possessions when the restoration project began. No proof of purchase was provided for me to determine the age of the dresser, freezer or record player or to determine the condition of them before the restoration of the rental unit began. Third, while the tenant alleges the damage was caused by the contractors hired by the landlord, I can only speculate on this. I find insufficient evidence to support the claim that the tenant has suffered a loss due to the actions of the landlord and I dismiss these portions of the tenant's application.

The parties are in agreement that the people hired by the landlord to perform the restoration after the flood caused damage to the tenant's speakers. I read the letter given to the tenant from the restoration company dated May 16, 2023 that apparently acknowledges the damage to the speaker. In the letter, the project manager provides his number to work with the tenant's insurer about "tackling the problems". During the hearing, the tenant provided no testimony about following up on that offer.

The tenant may have a cause of action against the restoration company for damaging her speaker, however I do not find the landlord is directly responsible for it. I find insufficient evidence to satisfy me the damage or loss resulted from any non-compliance with the Act, regulations or tenancy agreement by the landlord and I dismiss this portion of the tenant's claim.

The tenant seeks compensation for "mental health stress" but did not claim any dollar amount for this claim, (point 3) and the tenant has provided insufficient evidence to establish any deterioration of her well being due to the actions of the landlord. The tenant didn't provide any psychological, psychiatric or medical reports to corroborate her deteriorated health. Nor has the tenant been able to attribute any diminished mental health on any failure of the landlord to uphold his responsibilities under the Act. (points 1 and 2). This portion of the tenant's claim is likewise dismissed.

Lastly, the tenant seeks to recover her hotel costs for what she testified was for taking longer than the landlord originally quoted her for the time spent away from the unit. First, I take into account the fact that the flood damage was caused by the tenant and not the landlord. The landlord has acted reasonably in having the work done as soon as he possibly could. While the tenant testified that her insurance denied paying for the extra days spent away from the unit during renovations, she provided no documentation of the claim being denied by her insurer. It would be reasonable to expect the tenant's insurance provider to supply temporary accommodation to the tenant when she is inconvenienced by a flood restoration.

Lastly, the landlord denies that he and the tenant had any firm agreement on how long it would take to have the restoration completed. On a balance of probabilities, I would find it unreasonable that the landlord would agree have the restoration completed on a certain date. I find the tenant has provided insufficient evidence to establish her claim for compensation for additional accommodation while the restoration of the flood caused by her own actions. For this reason, this portion of the claim is also dismissed.

No evidence was led by the tenant regarding her application for to suspend or set conditions on the landlord's right to enter the rental unit. As Rule 7.4 of the Residential Tenancy Rules of Procedure require the applicant to present evidence to support their claim, this portion of the tenant's claim is dismissed.

### Conclusion

The landlord's claim is dismissed without leave to reapply.

The tenant's claim is dismissed 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: December 04, 2023

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Residential Tenancy Branch