



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            **MNDL-S, FFL; MNDCT, MNSD, FFT**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the Act.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- A monetary order for compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67 of the Act.
- An order for the landlord to return the security deposit pursuant to section 38.

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord S.M. attended for the landlords (the landlord). The tenant attended with the advocate T.B. and agent R.F. (the tenant).

The parties acknowledged service by the other party of all documents. No issues of service were raised. I find each party served the other in compliance with the Act.

#### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation for damages, authorization to apply the security deposit to the award and reimbursement of the filing fee?

Is the tenant entitled to the return of the security deposit and reimbursement of the filing fee?

#### Background and Evidence

Considerable disputed testimony was submitted during the hearing. I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

#### *Nature of Applications*

This application is a cross-application.

The landlord has applied for compensation for damages and resulting expenses caused by several water leaks from the rental unit's bathroom which damaged the unit below and caused the landlord to incur expenses of \$10,707.97. The water leaks came from the bathroom because of the tenant's misuse of the components, such as the toilet or bathtub-shower. The landlord claimed the tenant caused all the water leaks by allowing

the tub to overflow or by allowing water to get on the floor and drain through to the unit below.

The landlord claimed that all components of the bathroom were in good condition when the tenant moved in and the tenant must have damaged them to cause the water damage.

The tenant denies they did anything to the bathroom or its various components except to use it normally. They did not cause the leaks.

The tenant in turn brought an application claiming compensation. They claim a rent reduction for the period they lived in the unit without use of its sole bathroom. They submitted a list of days in which they were without a bathroom on six occasions and requested a pro-rated return of their rent for these periods in the amount of \$1,465.33.

The tenant also claims reimbursement of double the security deposit ( $\$825.00 \times 2 = \$1,650.00$ ).

### *Tenancy*

The parties agreed as follows. The tenancy lasted nine months. The tenant, a woman and her teenage son, moved in on December 1, 2022. The parties mutually agreed to end the tenancy on September 30, 2023 because of the repeated water leaks.

### *Landlord's Claims*

The landlord testified as follows.

1. The building in which the rental unit is located was built in 1981. The landlord purchased the unit in 2016 and the unit was always rented.
2. This tenancy began in December 2022. The first water leak from the unit's bathroom onto the unit below began on February 16, 2023. Subsequent similar water leaks occurred, and invoices were submitted dated March 10, June 12, August 30, September 4, September 10, and September 19, 2023.

3. The landlord's submitted the following invoices with corresponding dates and amounts, all paid by the landlord.

	<b>Invoice Date (2023)</b>	<b>Amount</b>	<b>Description (Landlord's Evidence)</b>
1.	February 16	\$1,127.42	<ul style="list-style-type: none"> <li>• Invoice related to water leaking from the unit's bathroom into the unit below.</li> <li>• Work included: turning water off, searching for leaks, installing shower head, cutting tile, sealing wall with bags to prevent leaking.</li> <li>• The invoice describes work that was done but does not state cause for leaking.</li> </ul>
2.	March 1	\$918.75	<ul style="list-style-type: none"> <li>• Tiles and walls needed to be fixed after plumber replaced faucet.</li> <li>• Invoice describes work done but does not state cause of leaking.</li> </ul>
3.	March 10	\$194.25	<ul style="list-style-type: none"> <li>• Invoice states leaking occurred into unit below the rental unit.</li> <li>• Invoice states "faucet was bent by the tenant."</li> </ul>
4.	June 12	\$4,135.75	<ul style="list-style-type: none"> <li>• Emergency services due to water damage</li> <li>• Toilet overflowed into unit below, restoration company came, flushed the toilet, and clogged cleared.</li> <li>• Invoice does not state what caused the clogging and resultant water leaking.</li> </ul>
5.	August 30	\$500.00	<ul style="list-style-type: none"> <li>• Water leaking from bathtub into unit below.</li> <li>• Invoice describes work done but does not state cause of leaking.</li> </ul>

6. September 4 \$ 760.20
    - Invoice stated what work was done, that water was coming from the unit into the lower unit.
    - Invoice states "toilet was not sealed with silicone" and, "This leak could have been caused by [rental unit's] shower."
    - Invoice states landlord was planning on renovating bathroom soon.
  7. September 10 \$1,253.70
    - Leak from unit to lower unit.
    - Invoice stated tenant had spilled water on the floor around the toilet; no leaks found.
    - "In addition to previously siliconing the toilet, siliconed the inspection gap at the back of toilet to prevent further leaking into the unit below." [sic]
    - "Occupant of [rental unit] is flooding the bathroom causing leaks in the unit below, the only way to prevent further leaking is for the occupant to no longer flood the bathroom."
  8. September 19 \$1,817.90
    - Leaking from unit onto ceiling below
    - Invoice stated work was "emergency service work," leaking onto ceiling in lower unit.
    - Invoice does not state cause of leaking.
4. The building in which the unit was constructed was built in 1981. The components, except for the faucets, were original to the building.
  5. In an email of August 30, 2023, a copy of which was submitted, the landlord said they were "baffled" by the water leaks. The landlord said water could have been leaking from the unit's shower onto the floor of the bathroom and then seeping down through the floor.

6. In the correspondence, the landlord cautioned the tenant to keep the shower curtain within the shower, not to put too much water in the bathtub and to make sure no water got onto the floor. The email states in part (emphasis added):

The moisture noted dripping from the fan was minimal, but we believe that this could have been because of water leaking from the shower onto the floor in the bathroom and then seeping down through the floor and dripping out of the vent.

Please note, that when you are showering you must use the shower curtain to ensure that all water stays within the shower. As well, the bathtub is only to be filled to below the overflow drain and not above.

This unit has never experienced any moisture issues prior to you moving in and **we are all baffled at the number of issues** over the past few months, it has been expensive for the strata and for myself.

If water does get onto the floor in the bathroom, please ensure there is a bathmat and a towel there to catch any water prior to it dripping below into the other units ceiling.

If this does happen again, the strata will be forced to have someone gain access to the suit on an emergency basis and if the result of the moisture is found to be from yourself, we will be passing on any assumed costs to you as we have covered all of the prior water leaks (the faucet leak, then the faucet being bent 2 weeks after being fixed and causing another leak and then the toilet overflowing).

7. As stated in the invoice related to #3 ("faucet was bent by tenant") and # 7 (occupant is flooding the bathroom) above, the only possible explanation for the water damage is the negligent escape of water caused by the tenant's actions, such as allowing the tub to overflow or clogging the toilet through misuse.

8. The landlord denied the tenant is entitled to any compensation for loss of use of the bathroom as they caused the problem to begin with.

The tenant testified as follows:

1. The tenant acknowledged the landlord incurred the expenses described for water leaks from the bathroom. However, the tenant is not responsible for any of the leaks. The tenant did nothing except use the bathroom normally. The tenant is not accountable for any overflow of water or clogging of the toilet.
2. The tenant did not damage any component of the bathroom or overfill the bathtub. They promptly notified the landlord when they learned of a problem, they cooperated with repairs during which they were unable to use the bathroom on six occasions for varying lengths of time. They did everything they could to minimize the damage. They did nothing to cause the damage or contribute to the severity of the leaks or resultant damage. The landlord is fully responsible as they failed to respond in a responsible, timely, careful and efficient manner to get to the root of the cause.
3. The tenant called a witness R.F. who stated he is a close friend of the tenant. He has observed the tenant and her son using the bathroom normally. They never used the bathtub, only the shower. He believed the most likely cause of the water leaking and clogging is the malfunctioning of aging and nonfunctioning component parts of the bathroom which were original to construction in 1981.
4. The tenant said the bathroom was old and not working properly. For example, the tenant observed (and the witness R.F. testified) that the base of the toilet was not sealed with silicone. This is a maintenance oversight which allows any water on the floor to seep into the sub-floor and onto the ceiling of the unit below. The tenant pointed to invoice #6 above (September 4) which stated that the toilet was only then properly sealed with silicone to prevent drainage through the floor.
5. The components of the bathroom were mostly over 40 years old. They were worn out and had little or no useful life remaining. They were not working properly as they were old.

6. The comment in #3 ("faucet was bent by tenant") is nonsensical. A faucet is durable and designed to withstand bending from normal use. The tenant was incapable of bending a faucet. The witness R.F confirmed the tenant was incapable of bending a faucet.
7. The invoices submitted by the landlord do not point to a cause of the water leaking except for the erroneous and unsubstantiated claim that they "bent" the faucet or put a lot of water on the floor, which reflects an effort to find any explanation, no matter how unlikely, when there is none yet discovered. There was no professional assessment of the bathroom and a reliable determination of the cause for the leaking was not made.
8. It is the landlord's responsibility to maintain the bathroom. The landlord is trying to get the tenant to pay for expenses which are the landlord's obligation.
9. The tenant claimed compensation for loss of use of the bathroom during the time it was not working well or at all. The tenant submitted a Monetary Order Worksheet listing the dates for a total pro-rated requested rental return of \$1,465.33. The tenant set out the dates for lack of availability of the bathroom, although some of the dates may refer to partial unavailability.
10. The tenant requested the return of double the security deposit as there was no condition inspection report on moving in, they did not consent to the landlord retaining the security deposit, and they did not return it within 15 days of the later of the provision of the forwarding address or the end of the tenancy.

*Condition inspection reports, security deposit, and forwarding address*

The parties agreed as follows.

1. The landlord and tenant did not meet for a condition inspection report on move-in as the tenant was out of the country.



2. The parties met for a condition inspection report on move-out. The tenant signed a statement saying she disagreed with the report.
3. The landlord holds the security deposit without the tenant's consent.
4. The tenant provided her forwarding address at the time of moving out on September 30, 2023.
5. The landlord brought this application within 15 days on October 3, 2023.

### Analysis

I do not refer to all the evidence submitted by the parties. I refer only to relevant evidence in support of my findings of fact and my conclusions.

I refer to all incidents of water leaking, whether from the toilet or bathtub/shower, as "water leaks".

### *Credibility*

In considering the application, I weighed the credibility of the parties.

In the absence of reliable report saying the tenant is responsible for the leaks, I give little credence to the landlord's assertion that the tenant failed in their responsibility to take care of the bathroom or are in any way responsible for the water leaks and resulting damage. I find the landlord is attempting to pass a cost of maintenance onto the tenant for which the landlord is responsible.

I give little weight to the landlord's inadequately supported claim that the tenant is responsible for the bathroom malfunctioning or any water leaks.

I find the tenant's testimony to be supported in all material aspects by the witness R.F. I accept as believable that the tenant and her son used the bathroom normally and are not responsible for any malfunctioning or water leaks.

As they lived in the unit, I find the tenant's description of the effect of not having a fully functioning bathroom to be direct, accurate and believable.

### *Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to each party to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

### *Four-part Test*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the party proven the amount or value of their damage or loss?
4. Has the party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act.,

For the following reasons, I find the landlord has failed to meet the burden of proof in the claim against the tenant for damages.

*Landlord's Claim --Obligations under the Act*

Under the Act, the landlord is responsible for regular repairs and maintenance, such as plumbing. The tenant is required to pay for repairs where damages are caused, either deliberately or because of neglect, by the tenant or guests. The tenant is not responsible for reasonable wear and tear. These obligations are discussed in *RTB Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*.

I find the landlord was responsible to maintain the bathroom in good, working condition. Simply because there is damage to the unit, does not mean the tenant is responsible. The landlord has an obligation to maintain the unit in a reasonable condition, suitable for occupancy. The landlord is responsible to carry out adequate investigation to determine the cause of any malfunctioning and to repair in a timely manner.

After reviewing all the evidence, I find the tenant did not cause the damage to the bathroom; the tenant did not act or fail to act in any way to cause the water leaks. Any suggestion to the contrary (such as comments in invoices #3 and #7) are conjecture and not based on a reliable examination accompanied by professional findings.

*RTB Policy Guideline # 40 – Useful Life of Building Elements* provides a guide for determining the remaining useful life of the bathroom components. The landlord has an obligation to provide evidence showing the age of the item. Bathtubs and toilets have a useful life of 20 years; faucets, 15 years. I may consider the age and any remaining useful life of the items when determining a tenant's responsibility for damages. Based on the landlord's evidence, I find the bathroom components were mostly or all past their useful life, except for faucets. The landlord has failed to establish that the material bathroom components (toilet and bathtub-shower) had any useful life remaining.

I accept the tenant's credible testimony they were normally using the bathroom when it started to leak. Their use of the bathroom accords with the concept of normal wear and tear. They did nothing to amount to neglect or negligence. The landlord has failed to prove the first step of the four-part test referenced earlier.

I therefore dismiss the landlord's application without leave to reapply.

*Tenant's claim*

I find the tenant has met the burden of proof for an award for compensation or a rent reduction as claimed. The landlord failed to provide a functioning bathroom throughout the nine-month tenancy.

Section 65(1) of the Act states that if a landlord has not complied with the Act, the director may order a reduction in past rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. *Policy Guideline 16 Compensation for Damage or Loss* provides guidance on the interpretation of this section.

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Whether or not the restriction of a service or facility is caused by negligence or through no fault of the landlord, an arbitrator may find there has been a breach of contract and award a reduction in rent if the tenant has suffered some loss or damage.

I accept the tenant's credible and reliable testimony in all respects. I find they were without a fully functioning bathroom for the six periods following the leaks when repairs were taking place. As there was only one bathroom in the rental unit, I find this was a considerable inconvenience.

I find the tenant has established that the lack of a functioning complete bathroom following the leaks had a negative impact on their enjoyment of the unit. I accept their testimony that their ability to enjoy the rental unit was diminished and the relationship with the landlord worsened. The tenant had a realistic expectation that they would have a functioning bathroom.

I find the tenant has established that they incurred the loss they described and that they did what they could to minimize their inconvenience. However, I am not able to quantify the loss.

I have considered the history of this matter, the testimony and evidence, the Act and the Guidelines. Under the circumstances, I find that a nominal monetary award which reflects that the tenant did suffer some loss in the value of the tenancy agreement is appropriate.

In consideration of the quantum of damages, I refer to the *Residential Tenancy Policy Guideline # 6* which states that in determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I therefore award the tenant nominal damages of \$500.00.

#### *Security deposit*

I find the tenant is entitled to a doubling of the security deposit as the landlord's right to claim against the deposit was extinguished as they did not carry out the required condition inspection on moving-in.

The parties agreed there was no condition inspection on moving in.

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the provision of a forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if:

- the tenant consented in writing that the landlord could keep some or all the deposit to offset damages (Section 38(4)(a)), or
- the tenant has been ordered to pay an amount to the landlord (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on September 30, 2023. The tenant provided a written forwarding address at that time which was received by the landlord.

The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

I find that the landlord extinguished their right to claim against the security deposit for damages, under sections 24 and 36 of the Act, for failure to complete a move-in condition inspection report.

Section 19 of the Residential Tenancy Regulation ("Regulation") requires that condition inspection reports must be in writing. Section 20 of the Regulation requires detailed, specific information to be included in the condition inspection reports.

In accordance with section 38(6)(b) of the Act and *Policy Guideline 17*, I find that the tenant is entitled to receive double the value of their security deposit of \$825.00 for a total of \$1,650.00.

I grant the tenant an award of \$1,650.00 under this heading.

#### *Filing fee*

As the tenant has been successful, I grant the tenant reimbursement of the filing fee of \$100.00. I deny the landlord's claim for reimbursement of the filing fee.

#### *Summary of Award*

ITEM	AMOUNT
Compensation	\$500.00
Security deposit – doubling	\$1,650.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$2,250.00</b>

I grant the tenant a Monetary Order of **\$2,250.00**.

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: February 28, 2024

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Residential Tenancy Branch