



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MND, FF

### **Introduction**

This is the Landlord's application for a Monetary Order for damages to the rental unit and to recover the cost of the filing fee from the Tenants.

The Landlord gave affirmed testimony at the Hearing.

### **Preliminary Matters**

The Landlord testified that the male Tenant is the female Tenant's father, who did not live at the rental unit. The Landlord testified that the female Tenant moved out of the rental unit without providing a forwarding address. The Landlord testified that he served the Tenants with the Notice of Hearing documents and copies of his evidence by sending each Tenant a separate envelope to the male Tenant's address for service. He stated that he mailed the package to the male Tenant on May 9, 2011 and to the female Tenant on May 11, 2011. The Landlord provided tracking numbers for both of the registered mail packages. A search of the Canada Post tracking system indicates that both packages were received on May 17, 2011.

Based on the Landlord's testimony, I find that the male Tenant was served with the Notice of Hearing documents and evidence package pursuant to the provisions of Section 89(1)(c) of the Act.

The female Tenant was not served in accordance with the provisions of Section 89 of the Act, however, I find that the documents were sufficiently given or served upon the female Tenant pursuant to the provisions of Section 71(2)(c) of the Act.

The Tenants did not sign into the teleconference and the Hearing continued in their absence.

### **Issue(s) to be Decided**

Is the Landlord entitled to a monetary award for damages to the rental unit pursuant to the provisions of Section 67 of the Residential Tenancy Act (the "Act")?

## **Background and Evidence**

This tenancy began on July 10, 2009 and ended on July 30, 2010. The rental unit was new, with new appliances, when the tenancy started.

The Landlord seeks damages from the Tenants to replace damaged laminate floors in the rental unit. The Landlord testified that in August of 2009, the female Tenant told the Landlord that there was a problem with the floor in the kitchen which was probably caused by the dishwasher overflowing. The Landlord was not certain of the date, but stated that at some point he called the builder. He stated that it was hard to get a hold of the builder. In May of 2010, the Landlord contacted the manufacturer. The Landlord stated that he believes the dishwasher was regularly leaking because the Tenant was using too much soap, or the wrong kind of soap, or that the dishwasher was malfunctioning. The Landlord stated that he has not yet repaired the floors and has not made a formal insurance claim because he didn't want his premiums to increase. The Landlord provided two estimates for the cost of the repairs: one for \$11,121.69 and the other for \$7,295.51. The Landlord seeks compensation in the amount of the lesser estimate.

In his written statement, the Landlord states:

“At the moment, I reported the damages to my insurance company just in case but I prefer not to claim the insurance since I believe that either the manufacturer or [the Tenants] may be held accountable. That is, if the water problem occurred due to the tenant's misuse, then she could be held responsible. If the damages occurred due to dishwasher malfunction, then since the dishwasher is still covered by warranty, the company should take care of the problem.”

## **Analysis**

Section 67 of the Act provides:

### **Director's orders: compensation for 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.

Section 7 of the Act provides:

**Liability for not complying with this Act or a tenancy agreement**

- 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.

In order to be successful in a claim for damages or loss, the Landlord must prove, on the balance of probabilities, four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred **due to the actions or neglect of the Tenants** in violation of the Act or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by **taking steps to mitigate or minimize the loss or damage being claimed.**

I find that the Landlord has not met the burden of proof for the following reasons:

1. The Landlord did not establish that the Tenants' actions or neglect caused the damage to the floors. The Landlord's evidence was that he believed **either** the female Tenant caused the damage, **or** the dishwasher was faulty. Therefore, I find that the Landlord has not proven the second element as outlined above.
2. The Landlord did not provide sufficient evidence that he took sufficient steps to minimize the loss or damage being claimed. The Landlord's evidence was that the female Tenant told him about the problem with the dishwasher in August of 2009. The Landlord did not provide sufficient evidence that he took reasonable steps to minimize the loss. He could not recall what steps he took immediately after the Tenant told him about the damage and did not contact the manufacturer of the dishwasher until May of 2010. Therefore, I find that the Landlord has failed to prove the fourth element as outlined above.

The Landlord's application is dismissed in its entirety.

**Conclusion**

The Landlord's application 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: August 22, 2011.

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Residential Tenancy Branch