



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      MNDC FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

### Issues

Is the tenant entitled to a monetary order for compensation for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

The rental unit was a one bedroom basement suite. The tenancy began on September 1, 2015 with a monthly rent of \$500.00 payable on the 1<sup>st</sup> day of each month.

In early October 2016 there was a severe flooding of the rental unit resulting in the rental unit being uninhabitable. The tenant happened to be in Asia at the time of the flooding. The tenants' belongings were placed in the garage for storage. The tenant had originally planned to return from his trip in November 2016 but as the rental unit was uninhabitable he stayed in Asia until such time that the repairs were completed in February 2017. When the tenant returned from Asia, the landlord requested the tenant to accept a 25% increase in rent. The tenant requested the landlord issue a Notice to End Tenancy so on April 10, 2017 the landlord issued a 2 Month Notice to End Tenancy for landlord's use of property with an effective date of June 15, 2017. Upon being served with the 2 Month Notice, the tenant and landlord also signed a mutual

agreement to terminate the tenancy. As a part of this mutual agreement, the landlord also agreed to return the security deposit and rent payment for October 2016 to the tenant. The tenant did not physically occupy the rental unit or pay any rent at any time after the flooding incident in October 2016.

The tenant is seeking compensation for one month's rent as a result of the 2 Month Notice; various damaged personal belongings; gas and moving expenses; temporary mail forwarding costs; laundry expenses and re-imbursement for temporary accommodations.

The landlord disputes the tenant's entire claim. The landlord submits that the tenant should have had his own insurance coverage for his personal belongings. The landlord submits that he has reimbursed the tenant for October 2016 rent as a result of the flooding incident and has not charged the tenant any rent since.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four 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 other party in violation of the *Act*, *Regulation* 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.

There was no dispute that there was a major flooding incident that occurred in October 2016 by which the rental unit was uninhabitable for over a period of 4 months. There was no evidence presented as to the cause of the flooding incident specifically that it occurred due to the actions or neglect of the landlord. As the tenant has failed to establish that the flooding incident was due to the actions or neglect of the landlord, any of the tenants claims arising out of loss suffered as a result damage to personal items caused by the flood is dismissed.

Section 44 of the Act contains provisions by which a tenancy may end. Under this section, a tenancy may end if the tenancy agreement is frustrated.

*Residential Tenancy Policy Guideline 34* "Frustration" provides guidance in situations

such as this case. As per this policy guideline, a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned.

I find that this tenancy had actually ended due to frustration as a result of the major flooding incident in October 2016. The tenant testified that he never did return to live in the rental unit following the flooding incident. I find the 2 Month Notice issued by the landlord was only done at the request of the tenant and as a formality to terminate a tenancy which had in fact already come to an end months prior. As the tenancy had already been frustrated at the time the Notice was served, I find the 2 Month Notice to be of no force or effect. As a result, I dismiss the tenant's application for 1 months' compensation. As the tenancy ended due to frustration, I also dismiss the tenant's claims for gas and moving expenses; temporary mail forwarding costs; laundry expenses and re-imburement for temporary accommodations.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

The tenant's application is dismissed in its entirety 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: June 26, 2017

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Residential Tenancy Branch