



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' 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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package via regular mail. Both parties confirmed that the tenants served the landlord with the submitted via regular mail on October 13, 2018. Both parties confirmed that the landlord served the tenants with the submitted documentary evidence by placing it in the tenant's mailbox on October 11, 2018. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed this tenancy began on February 1, 2018 and ending on January 31, 2019 as per the submitted copy of the signed tenancy agreement dated January 17, 2018. The monthly rent is \$1,700.00 payable on the 1<sup>st</sup> day of each month and a \$850.00 security deposit was paid.

The tenants seek a monetary claim of \$895.00 for:

1. Loss of Use, 1 bedroom for 19 days
2. Loss of Use, 1 living room for 19 days
3. Cost of time for moving bedroom items
4. Cleaning the floor and washroom
5. Accessing the rental unit for repairs

The tenants provided written details stating,

There was a restoration happened to one of our big bedrooms from February 22<sup>nd</sup> to March 12<sup>th</sup> due to the water damage, I have no bedroom to live and I lived at the living for 19 days, thus we are making the following claims for our loss. 1. Loss of Use of our bedroom for 19 days. 2. Loss of use of our living room for 19 days. 3. Cost of our times for moving my bedroom stuff back and forth. 4. Cleaning for the floor and washroom. 5. Accessing our rental unit for fixing the rooms etc.

[Reproduced as written]

The tenants claim that the restoration work for the period February 22, 2018 to March 12, 2018 due to water damage caused by another rental unit in the building. The tenants stated that they suffered the loss of use of one bedroom and the living room was used as a bedroom during the 19 day period. The tenants based their calculations on compensation by pro-rating the monthly rent (\$1,700.00) by 30 days (\$56.66) and multiplying that for 19 days of loss of use (\$1,076.66). The tenants submitted an incomplete monetary worksheet (RTB-37) and did not clarify the calculation for the monetary claim of \$895.00 as filed. The tenants provided no monetary details for their cost of time "moving stuff", cleaning the floor and washroom and accessing the rental unit.

The tenants' claims that between February 22, 2018 and March 19, 2018 they were impacted by the water damage and suffered a loss of use of 1 bedroom and the living room.

The landlord disputes the tenants' claims, confirming that a water leak had occurred in the common area of the building which impacted the rental unit. The landlord argued that the tenants were only impacted for a 9 day period and not the 19 days claimed. The landlord stated that during inspections of the rental unit, it was found that the effected bedroom was still "usable", but that there was no carpet as it was removed as part of the remediation process. The landlord has submitted in support of her argument copies of email exchanges noting the work performed. The landlord also argued that the living room was not affected by the water damage, nor cleaning of the washroom and floor. The landlord stated that access for contractors did not require the presence of the tenants and that they chose to participate.

### Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the affirmed testimony of both parties and find that the tenants have failed to establish a claim for loss of use as claimed. It is clear that the rental unit was impacted by water damage in a common property area of the building which neither party caused. Both parties confirmed water damage affecting the carpet required removal and replacement as well as drywall replacement. I find based upon the emails provided that the tenants were affected by the water damage from February 22, 2018 to March 12, 2018 (19 days) based upon submitted emails provided by the tenants dated March 9, 2018. The landlord's email submission dated February 28, 2018 states in part, "February 22<sup>nd</sup>—Initial inspection for repair work..." which indicates the water damage occurred before this date, but that all significant remediation and wall replacement were completed by March 1, 2018 with the exception of carpet replacement. The tenants email submission provides for all completed work done on March 12, 2018. On this basis, I find that the tenants were impacted for the period between February 22, 2018 and March 12, 2018 for the 19 days as claimed, however, I note that the tenants submissions regarding the monetary calculations are sorely lacking and without merit. As such, I find that the tenants have failed to establish a claim for \$895.00 as applied, but have established a claim for loss of use. On this basis, I grant the tenants an

arbitrary monetary award of \$200.00 for the inconvenience and limited loss of use of 1 bedroom during the remediation process of the 19 day period.

The tenants having been partially successful is entitled to recovery for ½ of the \$100.00 filing fee for \$50.00.

The tenants are granted a monetary award of \$250.00.

### Conclusion

As the tenancy continues, I authorize the tenants to withhold one-time \$250.00 from the next months' rent upon receipt of this decision.

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: November 6, 2018

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Residential Tenancy Branch