



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** FFL MNDL-S

### **Introduction**

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

### **Preliminary Issue—Amendment to Landlord's Application**

Although the landlord had originally made a monetary claim of \$2,729.10, the landlord submitted a monetary worksheet with an increased monetary claim of \$3,346.61. The landlord confirmed that no amendments have been filed.

Rule 4.6 states the following:

***As soon as possible***, copies of the *Amendment to an Application for Dispute Resolution* and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable *Act* and these *Rules of Procedure*.

*The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.*

***In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.***

It was undisputed that the tenant was never served with an amendment.

As this amendment was not received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment and supporting evidence, the amended claim was not considered as part of this application.

**Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or losses?

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

**Background and Evidence**

This tenancy began on October 1, 2016, with monthly rent set at \$2,450.00. The tenant paid a security deposit in the amount of \$1,225.00, which the landlord still holds. The tenant moved out on February 27, 2019.

The landlord is requesting monetary compensation as follows:

Wall & Baseboard Repair	\$535.50
Cabinets	2,043.20
Kitchen Cabinet Door	50.40
Cleaning	100.00
<b>Total Monetary Award Requested</b>	<b>\$2,729.10</b>

The tenant indicated in the hearing that they are not disputing the claims for the kitchen cabinet door and cleaning.

The landlord is seeking reimbursement for the cost of repairing the wall and baseboards, as well as replacement of the damaged cabinets. The landlord testified in the hearing that the rental unit is approximately 15 years old, but the unit was fully renovated in 2016 before the tenant had moved in. The landlord testified that the tenant

had damaged the rental unit due to the excessive condensation in the rental unit. The landlord testified that the tenant had reported the condensation in the rental unit, and the tenant was provided with guidelines on how to reduce the condensation. The landlord feels that the tenant failed to mitigate the damage by failing to follow the guidelines as directed, such as running the fans for a certain length of time. The landlord testified that the tenant was concerned about the cost and noise involved in ensuring that the fans were running, and that the rental unit be kept at a certain temperature.

The landlord submitted photos in their evidence to support the damage, as well as quotes, receipts and invoices. The landlord testified that in both bathrooms there was water damage to the cabinets. The landlord testified that there were too many people in the rental unit, which causes excessive condensation. The landlord included email communication with the concierge and strata, who gave recommendations on how to deal with the issue. The landlord testified that the condensation and damage were due to the tenant's failure to use the fan for extended periods of time, and failing to keep the heat on in the rental unit.

PW, agent for the landlord, testified in the hearing that the strata could not figure out the cause of the condensation, but did determine that there was no external cause. PW testified that the strata informed them that the condensation was a result of poor ventilation. PW testified that the condensation and mould was in the closet, and not in areas close to the exterior of the building.

The tenant does not dispute the condensation and damage, but disputes that the damage is due to their failure to follow the suggested guidelines. The tenant testified that they had followed all the guidelines given to them, and there was still water damage in both bathrooms, which were used by two different people, one of whom was not home as much. The tenant feels that they had lived in the rental unit, and the condensation formed despite their normal, daily use.

The tenant testified that they never had this issue in previous rental units they had lived in.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Based on the evidence before me, I find it undisputed that the rental unit was damaged due to severe condensation issues. Condensation and mould are serious issues in many residential properties. Attaching responsibility for damage of this type is exceedingly difficult. A monetary award would be considered in the event that evidence is provided to demonstrate that the damage was solely due to the tenant's actions.

I have considered the written and oral submissions of both parties, and while the landlord had provided evidence to support that there was a severe condensation in the rental unit during this tenancy, the landlord did not provide sufficient evidence to

establish that the condensation and resulting damage stemmed solely from the tenant's actions.

Despite the fact that there was damage to the rental unit, I find that the tenant disputed the landlord's claim that they had contributed to the excessive moisture which caused the damage to the rental unit. In light of the conflicting evidence provided, and taking in consideration that the party claiming the loss bears the burden of proof, I find that the landlord has failed to provide sufficient evidence to support that the tenant was solely responsible for the damage claimed.

The landlord provided witness testimony confirming that strata had provided guidelines for the tenant and other occupants to follow, which the tenant testified that they had done. The landlord's witness also testified that the strata did not attribute the moisture to an external cause, but rather poor ventilation. I find that the absence of an external cause, combined with a finding of excessive moisture and poor ventilation, does not automatically mean that the tenant or other occupants are to blame. It is not disputed by either party that these issues existed in the rental unit during this tenancy. I find that the information and evidence provided did not sufficiently address the question of whether these issues had existed prior to the renovations in 2016, or whether these issues were limited to this tenancy only or unit only. Regardless, the onus is on the landlord to demonstrate that the damage was solely due to the tenant's actions. On this basis, I dismiss the landlord's monetary claim for damage to the walls, baseboards, and cabinets, without leave to reapply.

As the tenant did not dispute the landlord's monetary claim for cleaning and damage to the kitchen cabinet door, I allow these portions of the landlord's monetary claim.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$1,225.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

**Conclusion**

I allow the landlord's monetary claim for the cleaning and kitchen cabinet door, as well as recovery of half of the filing fee. The remainder of the landlord's monetary claim is dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim. The tenant will be issued a monetary order in the amount of \$1,024.60 for the return of the remainder of their security deposit.

Kitchen Cabinet Door	50.40
Cleaning	100.00
Half of Filing Fee	50.00
Less Security Deposit	-1,225.00
<b>Total Monetary Order to Tenant</b>	<b>\$1,024.60</b>

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 1, 2019

---

Residential Tenancy Branch