



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The tenant AS appeared. The landlords did not appear. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The tenant was affirmed.

The tenant testified that he served the dispute notice and materials personally on the landlords by process server on January 9, 2023. He provided an affidavit from the process server in evidence. Based on the tenant's evidence the landlords are deemed served on January 9, 2023 in accordance with sections 88, 89 and 90 of the Act.

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

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

The tenancy commenced on April 1, 2021 and is currently on a month to month basis. Rent is \$2,250.00 per month due on the first of the month. The landlords hold a security

deposit in the amount of \$1,125.00 in trust for the tenant. The tenant ended the tenancy on May 3, 2022.

The tenant is seeking compensation as follows:

1. One half of the rent for April 2022 totalling \$1,125.00
2. Hotel cost for two nights totalling \$449.74
3. Moving fee totalling \$1,109.66
4. Replacement of the tenant's sofa and rugs totalling \$2,159.31
5. Return of the security deposit of \$1,125.00

He testified that the rental unit initially flooded on April 15, 2022 as a result of a sewer pipe blockage. Three days later a restoration company attended and fixed the sewer problem. The rental unit flooded again on April 19, 2022. On April 19, 2022 the restoration company attended at the unit a second time, started removing the damaged portions of the rental unit and placed a dehumidifier in the rental unit. The tenant stayed in a hotel on April 19 and 20, 2022. The tenant testified that he did not believe the flood was due to actions of the landlords. The tenant provided photos in evidence of the condition of the rental unit when the flood occurred.

### 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. As noted in Policy Guideline #16, 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, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

The tenant has suffered damage and loss as a result of the sewer back up into the rental unit. However, I find that the tenant has not established that the sewer back up and the resulting damage and loss to the tenant resulted directly from a breach by the landlords of the Act or the tenancy agreement. The tenant did not establish how the sewer blockage and subsequent backup was a breach of the Act or tenancy agreement that led to the tenant's loss and damage.

Section 32 of the Act states in part:

- 32 (1)**A landlord must provide and maintain residential property in a state of decoration and repair that
- (a)complies with the health, safety and housing standards required by law,

The tenant testified that the landlords brought a restoration company into the rental unit three days after the first flood and then again the same day of the second flood. The tenant further testified that steps were taken by the restoration company to remediate the rental unit. It is clear from the photographic evidence provided by the tenant that the necessary remediation was significant in nature. Based on the evidence of the tenant I find that the landlords were responsive to the flood and took reasonable steps to remediate the rental unit.

I find that the tenant has not established that he is entitled to compensation from the landlords due to the flood. The tenant's application is dismissed. As the tenant was unsuccessful in his application, he is not entitled to recover the filing fee for the application.

### Conclusion

The tenant's application is dismissed.

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: January 25, 2023

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Residential Tenancy Branch