



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 13, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on November 18, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlords and their Agent appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the care owed to her under the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Landlord testified that the parties entered into their first tenancy agreement effective October 1, 2008 and entered into this second agreement effective October 1, 2009 for a month to month tenancy. Rent is payable on the first of each month in the amount of \$1,320.00. The Tenant paid \$660.00 on September 9, 2008 as the security deposit.

The female Landlord advised that on August 28, 2010 she received a telephone call from the building manager advising her there was water leaking out of the Tenant's rental unit and the Tenant was not answering the door. The Landlord first sent a text message to the Tenant and then called her. The Tenant immediately told the Landlord that her toilet was plugged. The Landlord told the Tenant to let the building manager into the unit. She then called the building manager back and told him the Tenant was in the unit and he could go in.

The Landlord did not attend the unit August 28, 2010 as she was working afternoons. When she contacted the Tenant on August 31, 2010 the Tenant told her the restoration company had already been inside the unit and she was going to call her insurance company to make a claim so the Landlord did not need to attend the unit.

The Landlords confirmed that their insurance does not cover the cost of damages caused by their Tenant. They have not had any previous issues with this Tenant however since filing this application for dispute resolution other issues have happened.

A brief discussion followed whereby the Landlords and their Agent stated the toilet was plugged and not leaking water, as supported by their evidence which included a copy of the plumber's worker order and invoice. The plumber needed to auger out the toilet to unplug it and get it operational again. Therefore the Tenant must have continued to flush the toilet, over and over again, to try and unplug it, which caused an excessive amount of water to flood out of her bathroom, into the living room, and down into two floors below her. Two units were damaged in the floor directly below the Tenant and one unit was damaged two floors down. The Tenant would have to have "repeatedly allowed the toilet to overflow" to cause that much damage.

The Landlord has since been billed \$596.38 for the cost of the plumber to unplug the toilet and \$7,500.00 for the Strata's insurance deductible to have the restoration company repair the four units affected by the flood. She is seeking reimbursement for the total amount of \$8096.38 less \$100.00 which the Tenant has already paid towards the bill. The Landlord and Tenant had a verbal agreement that the Tenant would begin to pay off this debt at \$100.00 per month. The Tenant has failed to uphold this agreement and has not made a claim through her insurance company to cover these costs.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant, who did not appear despite being properly served with notice of this proceeding in

accordance with the Act, I accept the version of events as discussed by the Landlords and their Agent which is corroborated by their documentary evidence.

Section 7(1) of the Act provides that 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32 (3) of the Act provides a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In this case the evidence supports the Tenant's toilet became plugged and overflowed. The amount of water that would overflow from a toilet is equal to the amount of water that would be in the toilet bowl and tank at the time the toilet was flushed, which could be up to approximately 6 gallons of water depending on the size of the toilet and tank. I accept the testimony that the amount of water that caused the damage to the units on three separate floors (the Tenant's unit and two floors below) in this case is in excess of what would be contained in the toilet bowl and tank. Therefore, on a balance of probabilities, it would be reasonable to conclude that the Tenant continued to flush the toilet, in attempts to unplug the toilet, causing up to 6 gallons of water to overflow onto the floor each time she flushed the toilet; and therefore breaching the duty of care extended to her to maintain the rental property, in accordance with the Act. A reasonable person ought to have known that if the toilet was plugged and they continued to flush the toilet more water was going to be spilled onto the floor and leak into the units below.

Based on the aforementioned, and after careful consideration of the evidence before me, I find the Landlords have met the test for damage or loss, as listed above, and I hereby

approve their request for monetary compensation in the amount of **\$7996.38**. (\$596.38 + \$7,500.00 - \$100.00).

The Landlords have been successful with their application, therefore I award recovery of the **\$100.00** filing fee.

### Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$8096.38** (\$7996.68 + 100.00). The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: March 16, 2011.

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Residential Tenancy Branch