



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, MND, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$10,728.40 and a request for recovery of the \$100.00 filing fee.

The tenant's application is a request for a monetary order for \$1895.00 and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The landlord testified that:

- On December 30, 2011 the tenants informed her that the toilet was plugged and a flood had occurred.
- She therefore asked a plumber to come and investigate, and the plumber found that the sewage pump was clogged by a 4 to 5 rolls of paper towels and toilet paper. (Photos attached)

- As a result of the large amount of paper towels and toilet paper the sewage pump had burnt out and stopped working.
- She believes that the tenants had purposely put full rolls of paper towels and toilet paper into the toilet causing the failure of the sewage pump.
- She does not believe that this build-up of paper towels and toilet paper could have been there from previous tenants, because according to the US National Park Service laboratories, paper towel decomposes in two to four weeks and this tenancy was already five months old.
- On the move-out inspection report the tenants also admitted to a missing table light and a broken bulb.

The landlord is therefore requesting a monetary order as follows:

|   |             |
|---|-------------|
| Plumbing cost to replace pump                   | \$918.40    |
| Restoration company insurance deductible        | \$250.00    |
| Loss of insurance discount for three years      | \$285.00    |
| Loss the rental income to end of the fixed term | \$9,220.00  |
| Missing table light                             | \$50.00     |
| Broken bulb                                     | \$5.00      |
| Filing fee                                      | \$100.00    |
| Total   | \$10,828.40 |

The landlord further requests an order allowing her to keep the full security deposit towards this claim and requests a monetary order be issued for the difference.

The tenants testified that:

- First of all they were never informed that there was a sewage pump through which all toilet paper and sewage past.
- Secondly, they never ever flushed any paper towels down the toilet, as they did not even purchase paper towels.
- Thirdly, they only flushed toilet paper down during normal use of the toilet and never in large quantities all at once.
- The plumber's report even states that there was a "build-up" of paper towels/toilet paper, and it is their belief that this build up occurred over quite some time.
- There were no full rolls of toilet paper and paper towels as suggested by the landlord, as it would be impossible to flush a full roll down the toilet, it just would not fit.

- This clog was not the result of any negligence or wilful actions on their part and they believe the landlords claim should be dismissed and their full security deposit, and rent for the month of January 2012, should be returned less the \$50.00 deduction for the missing table lamp, and the \$5.00 deduction for the broken bulb.

### Analysis

It is my decision that the landlord has not met the burden of proving that the clogged sewage pump was a result of any negligence or wilful actions on the part of the tenants.

The photos provided by the landlord show a large build up of toilet paper or paper towels, however I am not convinced that they are full rolls, nor do I see how it would be possible for full rolls to be inserted into the sewage pump.

Even the letter from the handyman service that replaced the pump states that this was a build-up of four to five whole rolls of paper towels and toilet paper, and I therefore believe it's possible that this build up occurred over time from normal use of the toilet.

It is also my decision that the landlord has not met the burden of proving that the paper towels/toilet paper would have decomposed had they been in the septic system for any length of time, because the chart provided refers to paper towels out in the environment, and not in an enclosed septic system.

I therefore will not allow any of the landlords claim, other than the \$55.00 deductions agreed to by the tenants.

I allow the tenants claim for return of the security deposit less the \$55.00 in deductions to which they agree.

I also allow a portion of their claim for return of the January 2012 rent, because the tenants did not have the use of the rental unit from January 4, 2012 to the end of January 2012. And therefore they are only responsible for three days rent.

January rent was \$1300.00 which works out to \$41.93 a day for a total of \$125.79 and therefore the landlord must return the remaining \$1174.21.

I also order recovery of the tenant's \$50.00 filing fee.

Conclusion

Landlord's application

The landlord may retain \$55.00 of the tenant's security deposit and the remainder of the landlords claim is dismissed without leave to reapply.

Tenant's application

I have allowed \$1819.21 of the tenant's application and the remainder of the claim is dismissed 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: March 20, 2012.

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Residential Tenancy Branch