



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The hearing first convened on March 16, 2012. On that date, only the landlord attended. The landlord had personally served the tenant with the application for dispute resolution and notice of hearing on January 12, 2012. The tenant's address on the landlord's application is the forwarding address that the tenant gave the landlord.

The landlord requested an adjournment because they believed the tenant intended to submit their own evidence and participate in the hearing. I granted the adjournment and a notice of reconvened hearing was sent by the Residential Tenancy Branch to the landlord and the tenant, advising the parties that the hearing would reconvene on April 13, 2012.

The hearing reconvened on April 13, 2012, and again only the landlord attended. I accepted the landlord's evidence regarding service of notice of the hearing and the forwarding address of the tenant where the notice of reconvene was sent, and I proceeded to hear the landlord's claim in the absence of the tenant.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on April 1, 2011. The rental unit is a condo in a strata building. At the outset of the tenancy, the tenant paid a security deposit of \$650 and a pet deposit of \$250. The tenancy ended on August 31, 2011.

During the tenancy, there was a flood in the rental unit. The flood occurred due to an overflow of the toilet. The flood damaged five other condos in the building. The strata charged the landlord a \$5,000 insurance deductible and \$658.10 for emergency plumbing services.

The landlord stated in the hearing that the overflowing occurred because the tenant flushed a paper towel after being told not to do so. In their written evidence, the landlord

indicated that the flood occurred because the tenant did not use the toilet properly and broke the flush handle. The landlord submitted a written statement from a plumber/handyman, M, who usually services rental units for the landlord. The landlord had requested that M attend the rental unit after the flood. In his written statement, M wrote, in part, "I also saw the handle to flush the toilet was broken and the way it was broken was that the handle was missing a plastic piece, to me it seems like someone hit the handle and broke it into two pieces, its not because of age or usual tear and wear."

The landlord has claimed the \$5,000 insurance deductible and the costs for the emergency plumbing services.

### Analysis

I find that the landlord's evidence was contradictory and fell far short of establishing that the tenant negligently caused the flood. I therefore find that the landlord is not entitled to any part of their monetary claim.

As the landlord's claim was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

### Conclusion

The landlord's application is dismissed.

The landlord holds the tenant's security and pet deposits in trust, and must return them to the tenant. I grant the tenant an order under section 67 for the balance due of \$900. This order may be filed in the Small Claims 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: April 30, 2012.

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Residential Tenancy Branch