



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND

### Introduction

Some documentary 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 is a request for a monetary order for \$1379.42

### Background and Evidence

The applicant testified that:

- The toilet in this rental unit leaked through the ceiling of the unit below causing extensive damage and as a result the Strata Council charged the landlord \$1229.42 to cover the repair.
- The plumbers report suggests that the wax seal in the toilet may have failed from hot water having been put down the toilet.
- The landlords therefore believe that the tenant should be responsible for this strata council charge.
- The landlord also failed to pay the charge back for a period of three months as she did not know why this was being charged to her and as a result the property management company filed a lien against the property.
- The landlord therefore believes the tenant should also pay the \$100.00 that was paid to discharge the lien.

- The landlord was also charged a \$50.00 bylaw fine that resulted from the tenant failing to stop and wait for the gate to close when she exited the arcade which is an infraction of the Strata bylaws.

The landlord is therefore requesting an order as follows:

Cost of repair caused by leaking toilet	\$1229.42
Cost of bylaw infraction	\$50.00
Total	\$1379.42

The tenant testified that:

- At no time did she ever put any hot water, or any liquids of any type down the toilet.
- This is a warranty issue as there is still a new home warranty in place and this charge should be levied against the new-home warranty.
- She therefore does not feel she should have to pay for the repair caused by the leaking toilet or the cost to discharge the lien of the property management company as this leak was not the result of any negligence on her part.
- She also believes that she should not have to pay the bylaw fine, because as she approached the parking area gate another vehicle approached from the other side, and she did not know whether the gate was opening as a result of her approaching, or the other vehicle approaching. Further she had no way of stopping the other vehicle from entering anyway.

### Analysis

It is my finding that the applicant has not met the burden of proving that the leak from the toilet in this rental unit was the result of any negligence or willful actions on the part of the respondent.

I have read the plumbers report and the plumbers report states “the wax seal was a problem because of thickness of the ceramic tile. Standard seal does not make a lasting seal”, and although it states “especially if a hot liquid is poured into the toilet”, it does not conclude a hot liquid had been poured into the toilet.

The burden of proving a claim lies with the applicant, and since in this case the tenant denies ever pouring any hot liquid down the toilet, the applicant has not met the burden of proving that this damage was caused by the tenant.

I therefore deny the claim for the repair needed as a result of the leak, and I also deny the fee for discharging the lien.

I also deny the claim for the Strata fine of \$50.00, because again it is my finding that the landlord has not met the burden of proving that the tenant was at fault with regards to this parking issue.

The tenant has explained what happened when she approached the parking gate, and I find her explanation to be reasonable.

### Conclusion

This application is dismissed in full 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: September 20, 2012.

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Residential Tenancy Branch