



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC MND FF

### Preliminary Issue

Upon review of the application for dispute resolution the Landlord confirmed the Tenants vacated the property on July 31, 2012 and they have regained possession of the unit. As a result the Landlord withdrew their request for an Order of Possession.

The Tenant, G.D. who was guarantor to the tenancy agreement signed into the hearing late and was advised of the testimony provided by the Agent up to that point. The Tenant, D.D. attempted on two occasions to sign into the hearing from a cell phone in a moving car which caused excessive feedback on the line. D.D.'s telephone was disconnected twice due to problems with cell service at which point I informed G.D. that the hearing could not be conducted in that manner. G.D. confirmed that he wished to continue the hearing in D.D.'s absence as he would be representing the Tenants and himself who was signatory to the tenancy agreement.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony and confirmed receipt of the hearing documents and evidence served by the other.

### Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?

### Background and Evidence

The parties agreed that they entered into a fixed term tenancy agreement that began on March 1, 2012 and was set to end after one year. Rent was payable on the first of each month in the amount of \$1,575.00 and on March 6, 2012 a security deposit of \$787.50

was paid. The parties attended a move in inspection on March 6, 2012 and a move out inspection on August 1, 2012.

The Landlord has filed seeking \$4,905.60 in damages caused to the Tenants' rental unit and the rental unit located directly below the Tenants' unit. The rental unit is a two level town home that is located directly above a one level unit which is at ground level. There are units on either side and below on either side of the Tenants' unit. In support of the application the Landlord submitted 17 pages of evidence which included, among other things, copies of: a 1 Month Notice to end tenancy for cause, an estimate for flooring repair, an invoice for plumbing work, an estimate for repair and painting of a ceiling, photographs, and e-mails between the Agent and the Tenants.

The Landlord's Agent (the Agent) stated that on April 23, 2012 the Tenants called the resident maintenance person to advise they were being flooded from water coming out of the hot water tank located on the upper floor of their unit. The maintenance person attended the unit on April 23<sup>rd</sup>, the plumber attended April 24<sup>th</sup>, and the Agent attended a few days afterwards.

The Agent submitted that there were damages to the ceiling in the lower level of the Tenants' unit and to the ceiling and floor in the unit located directly below the Tenants. He confirmed that he did not provide pictures of the damages, rather he provided pictures of the Tenants' bathroom, toilet, and a picture of what he called "baby wipes" which he states were pulled out of the drain by the plumber. The Agent stated that he could not provide testimony regarding the extent of damages or why they have not yet been repaired. The Agent stated he did not know if the Owner had made a claim through insurance or if the owner even had insurance.

The Agent confirmed that the unit has been re-rented however he could not say when it was re-rented. The Agent also stated that he could not provide testimony regarding occupancy of the unit directly below the Tenants' unit.

The Guarantor to the tenancy agreement, (the Tenant) submitted evidence which included, among other things, a cd disc with photos, photos of the hot water tank, and a written statement.

The Tenant submitted that there was no evidence to prove that the Tenants flushed baby wipes down the toilet. Rather they deny doing such a thing as they have been raised around septic systems and know that nothing is flushed down a toilet except for toilet paper. He pointed out that the plumping drain or "stack" are shared amongst other units in the complex and therefore the baby wipes could have been flushed in another

unit. Also, he noted that the toilet did not overflow and that the Tenants had no problems with the operation of any of the other plumbing fixtures such as the toilet, shower or sinks as they were running and draining just fine.

The Tenant submitted that the flood was caused from either a faulty or weak spring in the hot water tank release valve or over pressure in the tank. He stated that when the leak first occurred the water was pumping out of the hot water tank and overflowed the drip tray because of the improper installation of the drain. He pointed to the photos in his evidence and noted how the white pvc drain pipe had a section cut out of it which would have caused the water to flow over the drip tray. He also noted that if the flood was caused from a plugged toilet the water should have stopped once the toilet refilled; however that was not what had happened and instead the water was pumping out of the hot water tank at 150 psi and therefore the drip tray could not hold the water as they are designed to accommodate a slow leak.

Neither party was able to provide testimony on who actually shut off the water however the Tenant noted that the maintenance person showed up at the unit without any equipment to deal with a major water leak. He also noted that the fire department attended because the carbon dioxide detector went off after water leak into the floor and inside the detector that was on the ceiling of the Tenants' first floor.

The Tenant submitted that he is somewhat of an expert on pressure relief valves as he has been a member of the CSA board for several years. He argued that it is his opinion that the baby wipes are a red herring as they could have come from any of the units connected to the common plumbing stack. He stated that he was of the opinion that the real cause of the flood was either a faulty spring on the hot water tank or a build up pressure in the tank causing the valve to release. He questioned the Landlord's lack of mitigation as they did not take proper action to remove the wet drywall or flooring to ensure everything was dried out properly nor have they made any attempt to repair the alleged damages which will only create a breeding ground for mold.

### Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the damages occurred from actions or neglect of the Tenants and the only evidence to support this was the Landlord's Agent's verbal testimony that the damage was caused by the presence of baby wipes in the drain. The Tenant argued the drain was a shared plumbing stack and that the baby wipes could have been flushed by another tenant in another unit.

Both parties agreed the water which caused the flood came out of the hot water tank. The Tenant argued that the flood and resulting damage was caused by a weak or faulty spring in the release valve on the hot water tank and not from the toilet water backing up through the hot water tank drain. Notwithstanding the plumber's invoice which was provided along with pictures showing that there were baby wipes in the plumbing stack/drain, I find there is insufficient evidence to prove that it was the Tenants' negligence or actions which caused the flood and subsequent damage.

Furthermore, there was insufficient evidence to prove the extent of the alleged damages or to prove that the Landlord attempted to mitigate his loss by seeking coverage through insurance.

### Conclusion

Based on the foregoing I find there to be insufficient evidence to meet the Landlord's burden of proof and I hereby dismiss the claim in its entirety.

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: October 23, 2012.

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Residential Tenancy Branch