



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MND, MNSD, 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 is a request for a monetary order for \$5,764.00 and a request for recovery of the \$100.00 filing fee.

### Background and Evidence

The applicant testified that:

- The tenants plugged the toilet in the rental unit with a large plastic bottle cap, and as a result when the toilet was flushed it overflowed.
- The toilet flapper in the rental unit was also damaged and not working properly and as a result the water did not turn off when the tank was full and continued to overflow into the rental unit.

- The toilet flapper was working fine when the tenants moved into the rental unit.
- The water overflowed for a long period of time and caused an extensive amount of damage to the strata property.
- The tenants also breach the noise bylaws in the strata property and as a result they, the landlords, have had to pay fines totaling \$100.00, however they had only applied for \$50.00 on the application for dispute resolution.

They are therefore requesting an order as follows:

strata insurance deductible	\$5,000.00
Emergency plumber callout	\$376.32
Restoration services	\$337.60
Noise penalties \$50.00 X 2	\$100.00
Filing fee	\$100.00
Total	\$5,913.92

They are also requesting an order for the tenant to pay a pet deposit, as the tenants have brought a pet into the rental unit without the authority to do so.

The respondents testified that:

- On October 10, 2012 he poured some water into the toilet not realizing there was also a plastic disc in the water.
- When they realized the plastic disc had gone into the toilet he called the plumber and assumed the plumber and resolve the issue.
- About one week later he flushed the toilet and left the bathroom not realizing the toilet was plugged.
- The toilet did overflow and caused extensive damage, however the reason the water kept running was because the flapper in the toilet was broken, and they were unaware of the problem.
- Had the flapper been functioning properly the toilet may not have even overflowed, and if it had it would only have been a very small amount of water and likely contained to the bathroom.
- They do not believe they should be held liable for this damage, as they had no idea that the flapper in the toilet was not functioning properly, and they caused no damage to the flapper.

- They also believe that the landlord should file a claim on their insurance and have even offered to pay the landlords deductible, but the landlord refused to file a claim.
- They are willing to pay the fees for the noise penalty.

### Analysis

It's my finding that the landlords have not met the burden of proving that the toilet flapper in the rental unit was damaged due to any willful or negligent actions on the part of the tenants.

It's also my finding that the landlords have not shown that the tenants were aware of the problem with the toilet flapper.

When the toilet is plugged normally it will not even overflow, or will overflow only slightly, because the flapper in the toilet tank shuts off the water to stop any further water from flowing into the toilet bowl.

The extensive damage in this situation was the result of a faulty flapper, had the flapper been functioning properly the water would have shut off and the extensive overflow would not have occurred.

Therefore even though the plugged toilet was likely caused by the negligence of the tenants, they cannot be held liable for the extensive damage that resulted.

I therefore will not allow the landlords claim for the strata insurance deductible of \$5,000.00, \$376.32 restoration services.

I will allow the majority of the plumbers cost, as most of that related to unplugging the toilet. I have deducted off \$71.68 to cover the cost of replacing the flapper, and the tenant must pay the remaining \$266.00.

The tenant is not disputing the claim for the \$100.00 noise fines and therefore that portion of the claim is also allowed.

I will also allow one half the \$100.00 filing fee for a total of \$50.00.

### Conclusion

I have allowed \$416.00 of the landlords claim, and the remainder of the claim is dismissed without leave to reapply.

The landlords requested that I order the tenant to pay a pet deposit, however I have no authority to issue such an order.

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: January 28, 2013

---

Residential Tenancy Branch

