



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Grand Elephant Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MND; MNDC; FF; O

### **Introduction**

This is the Landlord's application for a Monetary Order for damages; for compensation for damage or loss under the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Tenant; and for other Orders.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent (GT) testified that he hand delivered the Notice of Hearing documents and some of his documentary evidence to the Tenant on April 5, 2013. He testified that he sent the remainder of his documentary evidence to the Tenant, by registered mail, on April 11, 2013. The Landlord provided the receipt and tracking numbers in evidence.

The Tenant's agent (RS) testified that copies of the Tenant's documentary evidence were sent to the Landlord, by registered mail, on April 16, 2013. The Tenant provided the receipt and tracking numbers in evidence.

### **Preliminary Matter**

The Landlord's Application for Dispute Resolution indicates that it is seeking "other" relief; however, the Landlord did not provide sufficient details in its Application with respect to what other relief it is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlord's application is dismissed.

### **Issues to be Decided**

- Is the Landlord entitled to compensation for loss of revenue and administrative charges?
- Is the Landlord entitled to a monetary award for damage to the toilet?

### **Background and Evidence**

This tenancy began on August 10, 2012, and ended on September 30, 2012. The Landlord re-rented the rental unit for October 1, 2013.

At the end of the tenancy, monthly rent was \$730.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$375.00 at the beginning of the tenancy. The rental unit is shared, furnished accommodation.

In October, 2012, the Tenant filed an Application for Dispute Resolution seeking return of the security deposit. That Hearing took place on January 22, 2013. The Tenant was successful in her application and was awarded double the amount of the security deposit pursuant to the provisions of Section 38(6) of the Act. The Landlord was advised that it was at liberty to make its own application for damages, if it intended to pursue such a claim against the Tenant. The Landlord filed its application claiming damages on April 4, 2013.

GT testified that the Tenant damaged the toilet, which had to be replaced. He testified that he did not realize that the toilet was broken at the time of the condition inspection, but discovered it afterwards when the toilet could not be flushed. GT said that the repairman found some parts were damaged and missing and that the whole toilet had to be replaced because he could not find new parts. The Landlord seeks a monetary award of **\$425.00** for the cost of replacing the toilet. The Landlord provided a copy of an invoice in evidence.

GT stated that the new occupant could not move in to the rental unit until "October 4 or 5, 2013", and that he had to arrange accommodation for the new occupant until the toilet was replaced. The Landlord seeks compensation in the amount of **\$425.00** for the cost of housing the new occupant until October 4 or 5, 2013, and "administrative costs".

RS testified that he was present at the move out inspection with GT and the Tenant. He stated that GT was advised that the handle was broken on the toilet at the time of the inspection. RS took photographs of the broken handle, which were provided in evidence. RS submitted that the plastic flushing mechanism was broken due to reasonable wear and tear and therefore the Tenant is not responsible for the cost of repair.

GT stated that he could not be sure that the toilet depicted in RS's photographs was the toilet that was replaced. He stated that his copies were in black and white and that it could have been any toilet in the pictures. GT stated that the toilet that was replaced was red/orange.

RS testified that he provided the Landlord with colour photographs.

GT stated that there is a clause in the tenancy agreement that states that the Tenant is responsible to pay for all damages incurred over the term of the tenancy.

### **Analysis**

The clause in the tenancy agreement that requires the Tenant to be responsible for repairing all damages does not comply with the provisions of the Act. Section 32(3) of the Act requires tenants to repair damage that is caused by the actions or neglect of the tenant or a person permitted on the residential property. Section 32(4) specifically states that tenants are not required to make repairs for reasonable wear and tear.

Section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act and that any attempt to do so is of no effect. Section 6 of the Act states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act. It is important to note that there are other clauses in the tenancy agreement that are not enforceable; however, they are not relevant to this application and therefore I have not described them in this Decision.

This is the Landlord's application and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the **damage or loss exists**,
2. Proof that the damage or loss occurred **due to the actions or neglect of the Tenant in violation of the Act**,
3. Proof of the **actual amount required to compensate** for the claimed loss or to repair the damage, and

4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find, on the balance of probabilities, that the Tenant did not neglectfully damage the toilet. GT stated that he could not verify that the toilet in the Tenant's photographs was the damaged toilet. He stated that his photographs were in black and white, and that the toilet was red or orange in colour. The toilet in the Tenant's photographs is red, which is a very unusual colour, and I find that it is most probably the same toilet. The photographs indicate that the plastic flushing mechanism is broken. The invoice indicates that the toilet is old. I find that this is normal wear and tear and therefore the Tenant is not required to make repairs or to pay for the repairs pursuant to the provisions of Section 32(4) of the Act.

I find that the Landlord has failed to meet the requirements of part 2 of the test for damages above. This portion of the Landlord's claim for damages in the amount of \$425.00 is dismissed.

With respect to the Landlords' claim for loss of revenue and administrative charges in the amount of \$425.00, I find that the Landlord did not provide sufficient evidence to prove this claim. The Landlord provided no documentary evidence to support his claim for the cost of housing the new occupants. His request for "administrative charges" is vague and there are no provisions in the Act for this part of his claim. In any event, I have found that the Tenant is not responsible for the cost of fixing or replacing the toilet. Therefore this part of the Landlord's claim is also dismissed.

The Landlord has been unsuccessful in its Application and I find that it is not entitled to recover the **\$50.00** filing fee from the Tenant.

### **Conclusion**

The Landlord's Application is **dismissed without leave to re-apply**.

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: July 17, 2013