



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenants – MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

One of tenants and the landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing; however, the tenants' evidence was provided late to the landlord and this office and this evidence has not been considered. All documentary evidence of the landlords and testimony of the parties have been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the tenants' security and pet deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties attending agree that this tenancy started on July 01, 2013 for a fixed term tenancy which was due to end on July 01, 2014. Rent for this unit was \$1,100.00 per month and was due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$550.00 and a pet deposit of \$550.00 on June 03, 2013. Both parties attended a move in and a move out condition inspection of the rental unit and the tenants provided a forwarding address via email on December 27, 2013.

**The landlord's application**

The landlord testifies that the landlord agreed the tenants could end their tenancy on December 15, 2013 as the tenants had found another tenant to take over the lease. The day before the tenants moved out they called to inform the landlord that the toilet was blocked. The tenants informed the landlord that they had not flushed any tampons down the toilet. The landlord tried to unblock the toilet but was unable to do so. The landlord called a plumber who said the sump pump was either blocked or burnt out.

The landlord testifies that this sump pump has fitted in the property by a plumbing company on August 23, 2012 as the old one had previously burnt out. This was only 10

months prior to the tenants moving in. The landlord testifies that the tenants had been verbally told at the start of the tenancy not to flush tampons down the toilet or any other solid items such as que-tips. The sump pump may have still been under warranty and the landlord called the plumbing company who had fitted it. This company had said they would come and look at the sump pump. However, they had not come out within five days so the landlord had to call another plumber as the new tenant was waiting to move into the unit but could not do so without the sump pump working.

The plumber found the sump pump was blocked with tampons, he cleared these out and the pump worked for a day but then stopped again. The plumber had warned the landlord that this might occur as the motor may have been damaged due to user error. The plumber had to put in a new sump pump and this was completed on December 22, 2013. The landlord has provided a copy of the plumbers invoice for \$1,070.89. This invoice indicates that the sump pump was full of tampons.

The landlord testifies that they lost rent from the new tenant for seven days as she was unable to move into the rental unit until December 22, 2013. The new tenant also incurred some costs for not being able to move into the unit so the landlord agreed the new tenant would not have to pay rent from December 22, 2013 to January 01, 2014. The landlord therefore seeks to recover a loss of rent from the tenants of \$550.00. The landlord testifies that as they have cashed the tenants rent cheque for December for \$1,100.00 the landlord seeks to retain the amount of \$550.00.

The landlord testifies that one of the tenants agreed in writing that the landlord could retain \$50.00 from the security deposit for garbage removal at the end of their tenancy. This is documented on the move out condition inspection report.

The landlord seeks an Order to keep the balance of the security deposit of \$500.00 and the pet deposit of \$550.00 in satisfaction of the landlords claim. The landlord also seeks to recover the \$50.00 filing fee.

The tenant disputes the landlords claim. The tenant testifies that neither of the tenants use tampons and have other devices fitted that do not require the use of tampons. The tenant testifies that the landlord did not verbally inform the tenants not to put anything solid down the toilet and there is nothing documented on the tenancy agreement or addendum to the agreement. The tenant testifies that if the landlord had experienced a previous problem with the sump pump burning out, the landlord should have documented what could be flushed down the toilet.

The tenant testifies that the sump pump was not maintained or inspected during the tenancy and had not been emptied or even looked at prior to the tenants moving in. The tenant testifies that there were two females living in the unit before the tenants moved in and this could have been an issue that came from their tenancy. The tenant raises the issue that they had with a wood rat in the unit which shows that the landlord did not do regular maintenance of the unit.

The tenants dispute the landlords claim for the sump replacement and for a loss of rent due to the sump pump repair. The tenant testifies that the landlord did not have to wait seven days to get the pump repaired and has not mitigated the loss of rent by waiting that long.

### **The tenants' application**

The tenant testifies that the landlord had agreed the tenants could move out and end their lease agreement if a new tenant was found for the unit. The new tenant was found and was due to move into the unit on December 15, 2013. The tenants had provided a rent cheque to the landlord so agreed the landlord should cash the rent cheque for December of \$1,100.00 and then return the amount of \$550.00 to the tenants as the new tenant would start to pay rent from December 15, 2013. The tenant testifies that the landlord did not return the rent of \$550.00 to the tenants and as the tenants are not responsible for the damage to the sump pump the tenants seek to recover the rent of \$550.00 from the landlord.

The tenant testifies that the landlord has not returned the security or pet deposit and the tenants only agreed in writing that the landlord could retain \$50.00 of the security deposit. The tenants therefore seek to recover the balance of the security deposit of \$500.00 and the pet deposit of \$550.00.

The landlord disputes the tenants claim in its entirety and testifies that the new tenant could not move in due to the tenants actions or neglect and the security deposit and pet deposit should be awarded to the landlord.

The tenant asks the landlord why the landlord waited seven days before getting the pump fixed. The landlord responds that they were waiting to hear from the original plumbing company to see if the sump pump was under warranty. As they didn't get back in to do the repair the landlord then had to contact another plumber. The landlord testifies that as it would be deemed to be user error for the damage to the sump pump it would be unlikely that any warranty would have been upheld.

The tenant asks the landlord if he has provided pictures of the tampons in the pump to determine if how old the tampons were. The landlord testifies that the plumber did take a picture but this has not been provided in evidence.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this matter I find the landlord has shown that the sump pump was blocked with tampons however the tenants have testified that they do not use tampons due to the contraceptive devices used by the tenants. I therefore find that it is equally probable that these tampons may have been in place from a previous tenancy and therefore the landlord has not shown that these tenants are responsible through their actions or neglect for the failure of the sump pump. Consequently the landlord has not met the burden of proof and the landlord's application to recover the cost of the replacement sump pump is dismissed.

Even if the landlord had met the burden of proof that the tenants had placed tampons in the toilet; the landlord has not shown that the tenants were specifically notified not to do so and many feminine products can be flushed down a toilet without harm. If the tenants

were not informed in writing not to do so then the landlord would not be able to hold them responsible for any damage caused.

With regard to the landlords claim to keep the \$550.00 in rent for the balance of December; I find as the landlord has not shown that the tenants are responsible for the failure of the sump pump then the landlord cannot hold the tenants responsible for the loss of rent from the incoming tenant. This section of the landlords claim is therefore dismissed.

As the landlord has been unsuccessful with their claim I find the landlord's application to keep \$500.00 of the security deposit and \$550.00 of the pet deposit are dismissed. These deposits must be returned to the tenants. The landlord is however entitled to retain \$50.00 of the security deposit as this was agreed in writing by one of the tenants.

The tenants are therefore entitled to a Monetary Order for **\$500.00** for the security deposit and **\$550.00** for the pet deposit pursuant to s. 38(6)(b) of the *Act*.

With regard to the tenants claim to recover \$550.00 for the payment of rent for December, 2013; as the landlord has not met the burden of proof that the tenants are responsible for the damage to the sump pump which prevented the new tenant being able to take possession of the unit from December 15, 2013. I find the tenants are therefore entitled to recover the rent paid from December 15, 2013. Consequently I find in favour of the tenants claim for a Monetary Order for **\$550.00** pursuant to s. 67 of the *Act*.

As the tenants have been successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. As the landlord has been unsuccessful with their claim the landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed without leave to reapply.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,600.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court 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 24, 2014

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Residential Tenancy Branch



