



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property.

The landlord and both tenants attended the hearing and the parties provided evidentiary material in advance of the hearing. The landlord and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

### Background and Evidence

**The landlord** testified that this tenancy began around the end of August, 2012 and the tenants still reside in the rental unit. The landlord sold the rental unit in May, 2015 and a new tenancy agreement has been made by the tenants and the purchaser.

Rent in the amount of \$1,600.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which was transferred to the purchaser. The rental unit is an apartment-style condominium in a complex containing multiple units built in 2003, and a copy of the tenancy agreement has been provided.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy but has not provided a copy. However, in June, 2013 the landlord received a call from the building manager asking if he and a plumber who

was working in the unit next door could inspect the rental unit to see if a water leak was originating from the rental unit. The landlord gave permission, and it was determined that the shower head was pointed in the wrong direction. The landlord referred to a Summary he had prepared dated September 19, 2015, that states: "...they noticed the shower head was positioned at an angle which sprayed water onto the opposite wall near the shower curtain and water then collected outside the tub area on the floor. Then the water flowed to the other side of the tub and collected there. It was clear that water was also escaping from the shower head side which is why it was recommended the tenants replace their shower curtain with a new curtain that had suction cups and to also install a shower guard. Once the tenants did that, there wasn't any more evidence of water collecting..."

The landlord has also provided copies of emails, including one from the building manager to the landlord company stating that the building manager inspected the bathroom of the rental unit and noticed that it needed a shower guard, the shower head needed to be adjusted, the seal around the bathtub need replacement, and he noticed water damage on the baseboards.

The landlord received a letter dated October 4, 2013 from the strata council stating that the Strata Corporation paid the amount of \$4,228.40 on the landlord's behalf in full payment of an invoice from the restoration company for the landlord's resultant damage to a neighbouring unit from a leak in the shower of the rental unit. A copy of the letter has been provided as well as copies of the invoices for the restoration work. The first is from Roto Rooter Plumbing and Drain Service dated 8/11/13 in the amount of \$636.77 billed to the neighbouring unit, which states:

"Guarantee – 90 Days

On my first visit I found a flapper leaking on the toilet in (the neighbouring unit) causing extreme condensation dripping off toilet. I fixed the problem and opened 2 small holes to monitor a pool of water under the tub that seemed to have no specific source at that time."

"Guarantee – No Guarantee

On my second visit the water under the tub had not evaporated. After searching I found no source from above – the tenants have installed small diverters on the edge of the tub walls to stop any spillage. I siliconed a small crack on the tub silicone just as a precaution. I gained access to the unit next door... and ran all the washroom fixtures (they share a wall) in no time (under 10 minutes) the entire bathroom floor was covered in water."

The other invoice provided is from the restoration company dated 08/09/13 in the amount of \$4,228.40 for: "repairs for attached scope of work, drywall and paint, underlay, hardwood and baseboards."

The landlord did not believe the tenants were the cause and there had to be another reason. He believed at the time that the contractor for the neighbouring unit was trying to get someone else to pay for their damage, and the landlord didn't believe that showering would cause that much damage. The landlord fought the bill and tried to get insurance to pay for it, but because it was not a flood or a one-time event and was continual over a period of time that caused the constant leaking into the neighbouring unit, the insurance company wouldn't cover it. The strata council relied on the information provided by the building manager, which indicated that the water damage was caused by the bathroom in the rental unit.

However, once the landlord saw the gap and took photographs, he realized and suspect that the tenants were taking showers without due care. Copies of close-up photographs have been provided, and the landlord testified that the damage was due to excess water caused by the tenants. Constant showers over a period of time broke down the silicone seal in the corner.

The restoration fellow told the landlord he would silicone around the tub in the rental unit, but he obviously didn't and the landlord never received a bill for that.

The landlord claims the amount of \$4,228.40 as against the tenants.

**The tenant** testified that this is the third hearing with respect to this water issue. The first was on July 11, 2014 which was adjourned to September 23, 2014 to allow the landlord more time to provide evidence. On September 23, 2014 the Arbitrator dismissed the landlord's application with leave to reapply because the Arbitrator thought that if the landlord wasn't sure that the damage was caused by the tenants, the landlord should try to deal with the neighbours.

The tenant further testified that he received an email from the landlord's agent on June 13, 2013 asking that the tenants install a shower guard. The tenants bought a shower guard on June 15, 2013 and installed it, and also purchased a new shower curtain. The tenants never received any complaints from the neighbours, never noticed any issues in the bathroom of the rental unit, and were not aware of work being done on the neighbouring unit prior.

The Roto Rooter Plumbing & Drain Services document states that the plumber ran all fixtures in the rental unit and in 10 minutes the bathroom was covered in water,

although no one else was there at the time, and no one was actually in the bathtub. The tenant states that it is a structural problem. There was also a sticky flapper issue in the toilet of the neighbouring unit. The tenant denies that the tenants caused any of the water issues by being negligent in their showering habits and did what they were asked to do. The tenants have tested it and there was no pooling and no water issues. The documentation provided by the parties also speaks of calking and silicone replacement, none of which are the responsibility of the tenants, but normal wear and tear. The silicone was not replaced as the landlord was told it was, but the landlord ought to have followed up considering he never received a bill for it.

The tenant also testified that the landlord's photographs are zoomed-in but there are none from before the tenancy began. Water could have been accumulating long before the tenants moved in.

### Analysis

In order to be successful in a claim for damages, the onus is on the landlord to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate any loss or damage suffered.

A tenant is required to repair any damage caused by a tenant, but is not required to repair damages caused by normal wear and tear.

I have reviewed the evidentiary material provided by the parties, and I am satisfied that the landlord has established elements 3 and 4 in the test for damages. I am also satisfied that the landlord has established the amount of the bill.

With respect to element 2, I accept the landlord's testimony that once the shower guard and shower curtain with suction cups were installed the problem stopped, however there is also evidence that other work was being conducted at the same time, which may have contributed to the fix. There is also evidence that the cause of the water damage in the neighbouring unit was due to a sticky flapper in the toilet which had been an issue for some time, and that calking between the 2 units as well as silicone had broken down over time.

In the circumstances, I am not satisfied that the landlord has established that the tenants were negligent causing such damage simply by showering. I am not satisfied that the landlord has established that the tenants failed to comply with the *Residential Tenancy Act*, or that the tenants caused the damage to the neighbouring unit, and I dismiss the landlord's application.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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: March 31, 2016

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Residential Tenancy Branch