



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order for damages as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2016 and will be ending tomorrow; February 28, 2017. The tenant is obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The landlord testified that the tenant plugged her toilet with female "sanitary items" and paper towels. The landlord testified that he had to call a plumber to remove this items and it cost him \$162.75. The landlord testified that the tenant should pay for this and also his \$100.00 filing fee for this hearing.

The tenant gave the following testimony. The tenant testified that the landlord had a water main break in her unit; which was below hers, one day prior to her toilet plugging.

The tenant testified that the water main break caused the blockage in her unit and that she should not be responsible for that cost.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage.

The landlord testified that the water main breaking did not cause or contribute to the tenants' toilet getting plugged. The landlord testified that the water main break occurred a day prior and was resolved the same day. In addition, the landlord testified that the water main was the supply line, not the drainage line that the toilet empties into. The landlord provided documentation from the plumber to support his claim. The landlord was clear, concise, and credible when giving testimony. I find that the water main breaking and the tenants' toilet getting plugged the following day are not related. Furthermore, the tenant was the only one that had access to her toilet since June 2016. Based on the testimony of the parties, the documentation before me and on a balance of probabilities, the landlord is entitled to the amount as claimed.

The landlord is also entitled the recovery of the \$100.00 filing fee.

### Conclusion

The landlord has established a claim for \$262.75. Although the landlord has not applied to retain the deposit, applying section 72 of the *Act* to "offset" any costs owed, I find that the landlord is entitled to retain \$262.75 from the deposit. The remainder of the deposit can be addressed by the parties at the end of tenancy.

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: February 27, 2017

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Residential Tenancy Branch