



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND FF

### Introduction

This hearing addressed the corporate landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary award for damage to the unit, site or property pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both tenants and agent G.T. for the corporate landlords attended the hearing. Both parties were provided a full opportunity to present submissions, testimony and evidence to the hearing.

The tenants confirmed receipt of the landlords' evidentiary package and application for dispute resolution. I find that the tenants were duly served with these documents in accordance with sections 88 & 89 of the *Act*?

### Issue(s) to be Decided

Are the landlords entitled to a monetary award?

Can the landlords recover the filing fee?

### Background and Evidence

Testimony was presented to the hearing by agent G.T., who explained that this tenancy began on August 1, 2013 and ended on January 31, 2018. Rent was \$1,650.00 per month, and a security deposit of \$750.00 paid at the outset of the tenancy, continues to be held by the corporate landlords. The parties explained that this tenancy was a continuation of other expired tenancies which were made for the same rental unit.

The landlords are seeking a monetary award of \$2,937.06 for a return of the insurance deductible and plumbing repairs that the landlords incurred as a result of a flood in the

tenants' rental unit. Agent G.T. explained that on March 20, 2017 a toilet in the rental unit overflowed as a result of an unknown blockage. Immediate steps were taken to attend to this flood and as a result of the work that was undertaken to mitigate the flooding the landlords incurred expenses of \$2,937.06 for which they are seeking compensation. Agent G.T. said that she was informed by the Operations Manager with the plumbing company who attended the premises that, "the plumber was unable to determine exactly what the blockage was; however it was located within 2' of the toilet and very likely came from within the unit."

The tenants acknowledged that a flood had occurred in their unit as was described by agent G.T. but they denied that any action on their part led to the flooding. The tenants were at a loss to explain how the toilet had malfunctioned, saying that no children occupied the home, that no objects were ever put down the toilet, and they said they did not use wet wipes or other such cloths that might cause a blockage. The tenants said that the toilet was used in a normal fashion on the day where the flood had occurred. The tenants explained that they had suffered from one previous toilet blockage and had noticed other units in the building which suffered from similar problems. Agent G.T. disputed that other units suffered from flooding but agreed that an overflow had happened previously.

### Analysis

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 landlords to prove their entitlement to a claim for a monetary award.

*Residential Tenancy Policy Guideline #1* explains, "The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site...reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...an arbitrator may determine whether or not repairs

or maintenance are required due to reasonable wear and tear...or neglect by the tenant.”

The tenants testified that since the start of the tenancy they had only used the toilet in a “normal” fashion. Agent G.T. did not dispute this fact but argued that the tenants’ had allowed something to enter the toilet from their unit which led to the clogging.

I find that the nexus connecting the tenants use of the toilet and the flooding of the rental unit to be a delicate one. There is no doubt that a blockage in the drain led to the unit being flooded. There remains however, great difficulty in attributing this blockage to any action, or neglect on the part of the tenant. As *Policy Guideline #14* notes, “Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.” I find that the tenants used the toilet in a reasonable fashion and that the landlords failed to demonstrate that the tenants caused the damage, either deliberately or as a result of neglect. Evidence provided to the hearing by the landlords showed that the plumber was unable to determine exactly what the blockage was or how it originated. For these reasons I dismiss the landlords’ application.

As the landlords were unsuccessful in their application, they must bear the cost of their own filing fee.

### Conclusion

The landlords’ application for a Monetary Order is dismissed.

The landlords must bear the cost of their own filing fee.

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, 2018

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Residential Tenancy Branch