



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNDCL-S MNDL-S

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided by the parties 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?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for insurance deductible, loss of use of a portion of the landlord's home, and increased insurance premiums?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this tenancy began as a fixed term tenancy on April 1, 2017, expiring on March 31, 2018, however the tenancy ended by mutual agreement on

October 15, 2017. Rent in the amount of \$1,450.00 per month was payable on the 28<sup>th</sup> day of each month, in advance, for the following 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 \$725.00 as well as a pet damage deposit in the amount of \$362.50. The rental unit is a basement suite, and the landlord and family live upstairs, but use a portion of the basement. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that an Addendum to the tenancy agreement provides that the tenants will not flush any items down the toilet except toilet paper, however the tenants put other items into it causing it to clog in the septic pump, resulting in a flood to the basement on September 20, 2017. A plumber was called within an hour of the landlord learning of the flooding, and the plumber pulled out tampons, cat litter, hair and sanitary items. When the landlord was in the rental unit he saw wipes beside the toilet, and the landlord's family does not have any pets.

The restoration company had to remove the basement toilet and sink in the landlord's portion of the home, rip up 2 feet of drywall, replace door jams and baseboards, rebuild the closet that held the septic pump, pull up the sink and toilet in the bathroom of the rental unit and replace cabinetry on the landlord's side as well as the rental unit. Photographs have been provided as evidence for this hearing which the landlord testified were taken on the day of the flood, and some during the restoration work. The landlord testified that the home was built in 2015.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$1,008.00 for emergency plumbing services;
- \$1,144.00 for an increase in the landlord's home insurance;
- \$500.00 for the insurance deductible;
- \$500.00 for the landlord's time and that of his wife for cleaning feces and the other mess caused by the flooding for over 20 hours;
- \$5,500.00 for loss of use of the landlord's portion of the basement.

The landlord also testified that the plumbing invoice also contains an extra charge for a high water alarm, and that the claim as against the tenant for plumbing services should be decreased to \$581.42.

The landlord received the tenants' forwarding address in writing on October 15, 2017 and returned \$342.50 of the pet damage deposit to the tenants, and testified that the tenants agreed verbally that the landlord could keep \$20.00 of it for scratches caused

by the tenants' cat and agreed that the landlord could keep the full security deposit for damages, but not in writing. A move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy. The tenants participated in both. The tenants cleaned the rental unit, and there were no damages caused. The landlord's claim is with respect to the flooding caused by the tenants' failure to comply with the Addendum respecting what could be put in the toilet.

The landlord had a previous tenant who did not have pets.

The rental unit was re-rented for March 1, 2018.

**The first tenant** (MM) testified that the tenants never put anything into the toilet. The previous tenant was there for a year, and she gave the tenants the key when they moved in.

The tenant further testified that a high water alarm is necessary for sanitary systems, which starts when the water rises. The tenant is familiar with the noise, and it made no noise, and therefore there was no alarm as required.

The tenant refers to evidentiary material provided for this hearing and testified that the contents are true to the best of his knowledge, and I accept the evidence as the tenant's testimony. In that evidence, the tenant provides responses to the landlord's claims, a copy of the bylaw, copies of photographs and text messages, and a portion of a manual for an alarm system.

**The second tenant** (CT) testified that tampons, wipes, cat litter or hair was never put in the toilet. The tenant knows that a sump pump requires that nothing goes in there, and the tenants never heard an alarm. The tenant's parents have such alarms and the tenant knows the sound, but never heard it.

The landlord had asked the tenant's husband to take the cat litter to work with him to dispose of because it smelled too strong, or to put it out the day before garbage day. The text messages provided as evidence for this hearing will corroborate that, and the tenant testified that the contents of the evidentiary material is true to the best of her knowledge.

There is nothing to prove that it was the tenants who caused a clog.

The tenant verbally agreed that the landlord could keep the security deposit and \$20.00 of the pet damage deposit because the tenants just wanted to move on.

## Analysis

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, the parties agree that the rental unit had been rented previously, however I also consider the testimony of the landlord that the previous tenant had no pets, nor does the landlord. I also consider the Invoices and work order of the plumber that some of the items removed from the sump pump include wipes which the landlord saw on the back of the toilet. The tenants' evidentiary material and responses to the landlord's claim deny putting anything in the toilet and reiterate that the alarm didn't sound. That may have reduced the amount of high water and ultimately damage caused, however given that the clogs also include cat litter, I am satisfied that the landlord has established that the tenants failed to comply with the tenancy agreement specifying that nothing could be put in the toilet.

I have also reviewed the insurance documentation, and I find that the landlord has established the reduced claim for plumbing services of \$581.42, \$1,144.00 for an increase in the landlord's home insurance; and \$500.00 for the insurance deductible.

The landlord's evidentiary material also states that the tenants didn't assist when the landlord and spouse were cleaning sewage. Having found that the tenants failed to comply with the tenancy agreement, I am also satisfied that the landlord has established the claim of \$500.00 for the landlord's time and that of his wife for cleaning.

The landlord also claims \$5,500.00 for loss of use of a portion of the landlord's home. I am not satisfied that such a claim is within the jurisdiction of the Residential Tenancy Branch. Under the *Residential Tenancy Act*, a person may make an application in relation to a dispute with the person's tenant in respect of the rights, obligations and prohibitions under the *Act* or the tenancy agreement that are required or prohibited, and there is no obligation by a tenant to ensure a landlord's right to privacy or maintaining the landlord's home. A landlord could claim loss of rental revenue, however could only be successful if the landlord provided evidence of what efforts were made to re-rent.

The second tenant testified that the tenants agreed that the landlord could keep \$20.00 of the pet damage deposit and all of the security deposit, albeit not in writing. The landlord has returned the balance of the pet damage deposit to the tenants. Since the tenant agreed while under affirmation, I find that the tenants have agreed that the landlord can keep the security deposit.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Having found that the landlord has established a claim of \$2,825.42 (\$581.42 + \$1,144.00 + \$500.00 + \$500.00 + \$100.00), I order the landlord to keep the \$725.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlords for the difference in the amount of \$2,100.42.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$725.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,100.42.

This order is final and binding and may be enforced.

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: September 21, 2018

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Residential Tenancy Branch