



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

The landlord applies to recover an amount charged to her by the strata council of this condominium apartment for water damage repairs to an electrical room below the rental unit. She also seeks to recover a \$200.00 fine imposed by the strata council resulting from the attendance of police at the rental unit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Did the tenant neglect to inform the landlord of a water leaking from the rental unit? Is the tenant responsible for the strata fine?

### Background and Evidence

The rental unit is a one bedroom condominium apartment in a three storey building.

There is a written tenancy agreement. The tenancy started November 1, 2018 for a one year fixed term. The monthly rent is \$1750.00. The landlord holds an \$875.00 security deposit.

In January the tenant was having difficulty with a guest and called the police. It appears that as a result of that police attendance the strata council imposed a \$200.00 fine on the landlord. It appears that the strata council did not notify either the landlord or the tenant of its intent before levying the fine and did not offer either of them an opportunity to address the matter before making its decision.

The landlord and tenant began a lengthy argument by text about whether the tenant should have to pay the fine.

In December the property manager for the building determined that water was leaking from the rental unit into an electrical room below. Workmen discovered that the seal or flange beneath the rental unit's toilet was the source of the leak.

The property manager had the lower room repaired and the seal replaced on December 12 and sent the landlord a bill for \$1608.66, which the landlord wants the tenant to reimburse her for.

The landlord has attended to some repair of the bathroom itself but makes no claim for that cost in this application.

The landlord says the tenant should pay for the repairs because she knew of the leak since December but neglected to inform her and as a result the damage was caused. In support of this contention she says the bathroom floor was spongy and the tenant should have noticed it. Secondly, she refers to the record of a restoration company hired to assess the bathroom damage by the landlord's insurer. That report indicates a "date of loss" as March 5. The restoration company report's author inspected the apartment and indicates the toilet has "been leaking since Dec per clients tenant."

The tenant says that she should not be responsible for the strata fine because it was she who called the police.

She says the bathroom floor is not spongy and that there was never any sign of a water leak from the toilet. She denies telling the restoration company man that the toilet had been leaking since December.

### Analysis

#### The Toilet Leak

Section 32(3) of the *Residential Tenancy Act* directs that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After considering the evidence I find that the landlord has not proven on a balance of probabilities that the tenant knew of the leak and its import or significance and neglected to inform the landlord of it. Whether or not the tenant told the restoration company man that the toilet had been leaking since December, the mechanical report filed by the landlord shows that the leak was discovered by the property manager on December 7 and that on December 12 it was determined the leak was from this rental unit's toilet seal and that the seal was fixed on that day. The tenant did not neglect the matter.

I dismiss this item of the landlord's claim.

#### The Strata Fine

The tenant signed the *Strata Property Act* Form K with her tenancy agreement. Accordingly she agreed to abide by the bylaws and rules of the strata corporation.

The tenant may have a very good reason why the strata council should not have imposed the fine in her circumstances but that is not a matter that can be reviewed or appealed in this forum. Vis a vis the landlord the tenant is responsible to compensate her for payment of the fine. The tenant may have recourse to an appeal to the strata council or perhaps an application to the Civil Resolution Tribunal but in the meantime, she must reimburse the landlord.

I award the landlord recovery of the \$200.00 strata council fine.

#### Other

The landlord also seeks recovery of various out of pocket expenses like mail costs and copying. A Residential Tenancy arbitrator's powers in regard to costs and disbursements incurred in dealing with a claim are limited to recovery of the filing fee and so these items of the claim must be dismissed.

Conclusion

In result, the landlord is entitled to an award of \$200.00. In light of her limited success I award the landlord recovery of \$50.00 of the filing fee. She will have a monetary order against the tenant in the amount of \$250.00.

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: May 07, 2019

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Residential Tenancy Branch