



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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent in the amount of \$105 pursuant to section 67;
- a monetary order for damage to the unit in the amount of \$599 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant TS ("**TS**") attended the hearing on behalf of herself and tenant ML. The landlord attended the hearing, as did his property manager. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and TS confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. TS testified, and the landlord confirmed, that the tenants served the landlord with their evidence package by registered mail. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Landlord's Video File**

During the hearing, the landlord referred to a video file which he says he uploaded to Residential Tenancy Branch's evidence intake system. I could not locate such a file upon my review of the evidence uploaded. I did, however, find two .pdf files which bore the following titles:

- PlumberDescribingConditionAndInspectionVideo (condition and inspection 2).pdf
- PlumberVideoOfSecondFloodShowingWipeAndTheIssue (RTB - Dispute Access Receipt of Evidence 1 about Video).pdf

These files' titles appear to indicate they are video files, but content of the files is a text in a pdf format.

TS testified that she was served with the landlord's video file.

As such, I ordered that the landlord may re-upload the video files to the RTB system by 4:00 pm on January 7, 2020.

The landlord uploaded one video by this deadline, and I have reviewed it and I admit it into evidence.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) retain a portion of the security deposit in partial satisfaction of any monetary order made;
- 2) a monetary order of \$704; and
- 3) recover his filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting February 1, 2018. The tenancy ended on September 30, 2019. At the end of the tenancy, monthly rent was \$1,641. The tenants paid the landlord a security deposit of \$800 and a pet damage deposit of \$500. The landlord still retains this deposit.

The rental unit is a basement suite of a single-detached home.

The landlord made this application on September 4, 2019, prior to the end of the tenancy.

The landlord's claim for \$704 represents the following:

Expense	Amount
Plumber labour and supplies	\$599
August 2019 Rent shortfall	\$105
<b>Total</b>	<b>\$704</b>

These expenses arose as the result of two separate floods in the rental unit. The first flood occurred on May 15, 2018 (the "**First Flood**"). The second flood occurred on July 5, 2019 (the "**Second Flood**"). I should note that the TS testified that a minor flood also occurred on December 23, 2018. The landlord testified that he was unaware of this flood. As this flood does not give rise to any damages claimed by the landlord in this application, there is no need for me to discuss it further.

#### 1. The First Flood

TS testified that the laundry room of the rental unit flooded in the evening of May 15, 2018. She testified that she notified the landlord of this immediately, and that the landlord arranged for a plumber to attend the rental unit. The plumber attended later that evening. TS testified that he arrived "drinking beer". She did not provide any corroboration of this (photographs, video, or a corroborating statement from a witness).

TS testified that the plumber identified the cause of the flood to be a failed sump pump. She testified that the plumber removed the sump pump, then told her that the motor needed to be replaced. She testified that the plumber told her there was a diaper in the sump pump which caused it to malfunction and cause the flooding. She denied that she flushed a diaper or anything else that was not flushable down the toilet.

She testified that the plumber took the sump pump away and returned with it the following evening (May 16, 2019) to reinstall it. She testified that the sump pump failed again on May 17, 2019, and the plumber returned a third time. She testified that another diaper was caught in the sump pump, and that he removed "chunks of gravel" from the pump.

She took a photo of the object the plumber claimed to be a diaper and submitted it into evidence. She testified that it was not a diaper, but rather appeared to be a mop head.

She testified that after this third visit the sum pump worked until December 2019.

The landlord testified the plumber attended the rental unit and replaced the motor of the sump pump. He testified (and TS agreed) that he paid the plumber. He testified that the plumber is at arm's length from him. He submitted an invoice from the plumber dated May 15, 2018. The invoice showed a charge of \$350 to replace the sump motor and \$185 for "labour, travel and miscellaneous materials". With tax, the amount of the invoice was \$599.20.

The invoice also contains the plumber's notes, which read as follows:

Attended the suite due to faulty Sewage ejection pump. We replaced the sump pump and found what appeared to be a diaper and other materials that were not capable of going through a sump pump. We removed the debris and flushed out the pipe. The tenant was clearly told nothing should go down the toilet but toilet paper and human waste.

The next day we were called again because there was another flood in the basement suite. We investigated and once again found what appeared to be diaper liners. I asked what was being used for feminine hygiene products other than toilet paper.

The tenant showed me a cleaning cloth product that on its label said flushable and we explained that is possibly the case for toilets but not for sump pump systems. We again explained nothing can go into the toilet other than human waste and toilet paper. We removed the debris and flushed the pipe and insured it was running with no problem.

The landlord testified that he had a phone call with the TS shortly after the First Flood wherein TS admitted that she flushed wipes down the toilet. TS denied admitting to doing this. The landlord did not provide any corroborating evidence in support of this claim.

TS testified that at the time of the First Flood she had a newborn child in the house suffering from respiratory problems. Accordingly, she used a "Diaper Genie" (which I am advised is a sealed, diaper-disposal container) to dispose of all used diapers, as to dispose of them otherwise would be dangerous to her child. She argued that this supports her claim that she did not flush a diaper down the toilet.

Additionally, TS testified that the landlord's wife operated a daycare out of the upper suite of the rental unit at the time of the First Flood. She submitted a Facebook advertisement for the daycare dated the same date as the First Flood. She argued that

the alleged diaper and other materials found in the sump pump originated from this daycare and not from her unit.

The landlord did not deny that his wife operated a daycare in the upper suite. However, he testified that the upper suite was on a separate plumbing system from the rental unit or that the sump pump only received water from the rental unit. He did not provide any documentary evidence supporting this assertion.

Additionally, the landlord testified that his wife had childcare training, and knew not to flush diapers or wipes down the toilet. The landlord's wife did not give any evidence at this hearing (either written or oral).

## 2. The Second Flood

The landlord testified that the tenant withheld \$105.75 from her August rent. TS confirmed this and testified that it was because she incurred \$90 in costs associated with cleaning up after the flood and \$15.75 in landfill costs assisted with disposing property damaged in the Second Flood.

TS testified that she has made an application to recover other damages suffered as a result of the Second Flood, but that this application has not yet come to a hearing. As such, I will not discuss the alleged causes of the Second Flood in this decision, as (for reasons set out below) it is not necessary.

## **Analysis**

Section 32(3) of the Act states:

### **Landlord and tenant obligations to repair and maintain**

32(3) 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.

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord bears the onus of proving that the tenants' actions or neglect caused the landlord to suffer damage.

### 1. The First Flood

The evidence provided by the parties regarding whether the tenants flushed diapers or wipes down the toilet is contradictory. TS denied this occurred. The landlord testified that she admitted to him that she did.

I am persuaded, however, by the notes made by the plumber on the invoice dated May 15, 2019. In these notes he writes that "the tenant showed me a cleaning cloth product that on its label said flushable". The reasonable inference from this statement is that the tenant told the plumber she flushed these "cleaning cloths" because she thought that it was permissible to do so. I find this written note of the plumber to be a reliable. I find that the notes were made contemporaneously with the time the plumber spoke with TS, and that they were made in the course of his business. I find that he is at arm's length from both parties. I cannot find any plausible reason for him to lie in the circumstances.

As such, I find that the tenants have flushed "cleaning cloths" down the toilet.

However, this does not mean that the tenants caused the First Flood. The plumber's notes refer to a diaper being flushed which damaged the sump pump. There is nothing in the plumber's notes relating to who flushed the diaper.

Based on the evidence presented by the tenant, I find that the landlord's wife operated a daycare in the upper suite at the time the First Flood occurred. I am not persuaded by the landlord's testimony that his wife did not flush diapers down the toilet. It is unlikely that the landlord knows the minutia of his wife's business practices to such a degree. For me to be persuaded that this were the case, I would need to hear from the landlord's wife herself.

Additionally, I am not persuaded by the landlord's testimony that the sump pump only receives water from the rental unit and not from the upper suite. No documentary or expert evidence was provided in support of this assertion. Without any corroboration, I decline to accept the landlord's assertion that this is the case.

I am therefore not persuaded that the diaper found in the sump pump originated from the rental unit. I find that it is just as likely that it originated from the upper suite.

I am not sure whether the diaper caused the sump pump to be damaged or if the “cleaning cloths” did. As the plumber was not called to give testimony, I do not have the benefit of his expert opinion.

As such, I find that the landlord has failed to discharge his evidentiary burden to prove that the tenant’s actions caused the First Flood.

As such, I find that he is not entitled to recover the costs associated with hiring the plumber to replace the sump pump’s motor.

## 2. The Second Flood

I find that the tenant withheld \$105 from their August 2019 rent payment in compensation for damage allegedly caused by the Second Flood.

Section 26 of the Act states:

### **Rules about payment and non-payment of rent**

**26(1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Act does not permit the tenants to withhold rent from the landlord due to damage caused to their property as the result of a flood. As such, the tenants are not permitted to withhold any portion of their monthly rent. The appropriate course of action to recover for damages caused by the Second Flood is for the tenants to make an application at the RTB (which they have already done).

As such, it is not necessary for me to determine the cause of the Second Flood, as even if I determined it was caused by the landlord, this would not be justification for the tenants to withhold rent.

As such, I order that the tenants pay the landlord \$105 in satisfaction of the balance of August 2019 rent owed. The landlord may deduct this amount from the security deposit. As the tenancy has now ended, I order that the landlord return the balance of the

security deposit (\$695) and the entire pet damage deposit (\$500) to the tenants in accordance with the Act. I will issue a monetary order for \$1,195 reflecting this obligation to return the deposits.

As the tenants have been substantially successful, I decline to order that they reimburse the landlord his filing fee.

### **Conclusion**

Pursuant to sections 67 and 72(2), I order that the landlord may retain \$105 of the security deposit in satisfaction of the rental arrears for August 2019.

Pursuant to section 62(3) of the Act, I order that the landlord pay the tenants \$1,195, representing the return of the balance of the security deposit and the entire pet damage deposit.

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: January 7, 2020

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Residential Tenancy Branch