



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit/pet damage deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 04, 2019 the Dispute Resolution Package was sent to each Tenant, via registered mail. The Tenant acknowledged receipt of these documents. The Tenant stated that she is representing the second Respondent, who is her mother, at these proceedings.

On the basis of the undisputed evidence, I find that the Dispute Resolution Package was served to both Tenants and that the second Respondent is being represented at these proceedings by her daughter. I therefore find it reasonable to proceed with the hearing in the absence of the second Respondent.

In November of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on November 04, 2019. The Tenant acknowledged receiving some, but not all, of the Landlord's evidence.

In December of 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was served to the Landlord, via registered mail, on December 23, 2019. The Landlord acknowledged receiving some, but not all, of the Tenants' evidence.

As neither party acknowledged receiving the full evidence package submitted by the other party, the parties were advised that I was not accepting the full evidence packages as evidence for these proceedings.

The parties were advised that any documentary evidence they wish me to consider at these proceedings must be introduced at the hearing, at which point I would confirm the other party has received that evidence. This is consistent with rule 7.4 of the Residential Tenancy Branch Rules of Procedure, which requires parties to present their documentary evidence.

All relevant documentary evidence that was discussed during these proceedings is referenced in this decision. At the time the documentary evidence was discussed at the hearing, the other party

acknowledged being served with the evidence. The documentary evidence discussed at the hearing was, therefore, accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party in attendance at the hearing, with the exception of legal counsel, affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Preliminary Matter #1

The Tenant with the initials YL stated that her name is not correctly recorded on the Application for Dispute Resolution. With the consent of both parties, the Application for Dispute Resolution was amended to reflect the Tenant's correct name.

#### Preliminary Matter #2

The Landlord and the Tenant agree that the Landlord was ordered to return the pet damage deposit and the security deposit at a previous dispute resolution proceeding. As the issue of the deposits was previously determined, I am unable to consider that matter at these proceedings. The Landlord's claim to retain those deposits is therefore dismissed, without leave to reapply.

#### Preliminary Matter #3

In the Application for Dispute Resolution the Landlord declared that she was claiming compensation of \$1,297.79. In the Amendment to the Application for Dispute Resolution the Landlord increased the amount of her claim to \$1,637.69.

In support of this claim the Landlord submitted a Monetary Worksheet in which she claimed:

- \$2,447.90 – water damage
- \$240.00 – cleaning
- \$1,250.00 – plumbing
- \$1,159.89 – tools
- \$120.00 – photocopying
- Less \$3,544.10 for July rent, pet damage deposit, and security deposit.

The Landlord and the Tenant agree that the Landlord was ordered to return rent for July at a previous dispute resolution proceeding.

On the basis of the Monetary Order Worksheet, I find that the Tenants knew, or should have known, that the Landlord was seeking compensation for the items listed on the Worksheet. All of those claims will be considered at these proceedings.

#### Preliminary Matter #4

Near the end of the hearing the Landlord disrupted the hearing by yelling and using profanity. She was immediately placed in “mute mode” and was cautioned about her behaviour. She remained in “mute mode” for approximately three minutes while the Advocate for the Tenant made submissions. She was subsequently removed from “mute mode” and the hearing continued.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on December 01, 2016;
- the tenancy ended on June 30, 2018; and
- the Tenant agreed to pay monthly rent of \$2,300.00.

The Landlord is seeking compensation, in the amount of \$2,447.90, for repairing water damage.

In support of this claim the Landlord stated that:

- there was a flood in the rental unit in April of 2018;
- water from the flood leaked into the unit below;
- she paid \$2,447.90 to the Strata Corporation in compensation for the damage caused by the flood;
- the flood occurred when a toilet overflowed;
- the plumber who inspected the toilet informed her that the toilet overflowed because it was blocked;
- she does not know what the toilet was blocked with, but the plumber told her it was toilet paper and “stuff”; and
- there were no floods in the rental unit after April of 2018.

The Tenants do not dispute that the Landlord paid money to the Strata Corporation, but they submit that the Tenants are not liable for the damage caused by the flood.

In response to this claim the Tenant stated that:

- on April 24, 2018 her sister was awakened by the occupant of the lower suite, who informed the sister that water was leaking into the lower suite;
- she was awakened by her sister;
- she observed water pouring out of the toilet bowl in the master bathroom;
- the water flowing out of the toilet was clear and odorless;
- she shut off the water intake valve, and the leaking stopped;
- she flushed the toilet, and the water disappeared;
- the toilet flushed without the use of a plunger;
- she does not know what caused the toilet to overflow;
- a plumber did not attend the rental unit;

- the restoration company was unable to determine that cause of the flood as the blockage had been cleared prior to their arrival;
- she has never flushed anything inappropriate down any of the toilets in the rental unit;
- she rarely used the master bathroom, in part, because it was in an inconvenient location;
- she rarely used the master bathroom, in part, because the water flow in that toilet was not strong;
- she rarely used the master bathroom, in part, because there were bugs in the room; and
- in October of 2018 she received an email from the occupant of the lower suite, who informed her that water was leaking into the lower suite.

The Witness for the Tenant stated that:

- she lived in the rental unit during this tenancy;
- the Tenant in attendance at this hearing is her sister;
- she did not regularly use the master bathroom, in part, because it was in an inconvenient location;
- she did not regularly use the master bathroom, in part, because the water pressure in that toilet was weak;
- she did not regularly use the master bathroom, in part, there were bugs in that bathroom;
- on April 24, 2018 she was awakened by the occupant of the lower suite, who informed her that water was leaking into the lower suite;
- she had not used that toilet on April 24, 2019; and
- the other Respondent was not living in the rental unit at the time of the flood; and
- she has never flushed anything inappropriate down any toilet in the rental unit.

The Witness for the Landlord stated that:

- she is the Landlord's mother; and
- the washroom was very dirty after the flood.

The Landlord submitted a receipt from a large home repair box store, in the amount of \$143.36, which is dated April 02, 2019. The receipt shows one item was purchased for \$128.00. The Landlord stated that this receipt was for a faucet and a toilet seat. When it was pointed out that the receipt was for the purchase of only one item, the Landlord insisted that the receipt was for a faucet and a toilet seat.

The Tenants submitted documents from an internet search. This search indicates that the sku number on the aforementioned receipt from the large home repair box store is the sku number for a toilet. The Tenants submit that this indicates there was a problem with the toilet.

The Landlord submitted a photograph of a cracked floor tile in front of the toilet that overflowed. The Tenant stated that this tile was cracked prior to the flood in April of 2018. The Landlord stated that the tile was not cracked prior to the flood.

On page 2 of the report from the restoration company that repaired the flood damage, which was submitted by the Landlord, the author of the report notes that the tiles in the bathroom were previously cracked.

The Landlord did not submit evidence from the plumber that allegedly inspected the toilet.

The Tenant submitted a copy of email exchanges, dated October 23, 2019, in which the author of the email declares that water is leaking into unit 301. The Tenant responded to that email and informs the other party she no longer lives in the rental unit.

The Landlord is seeking compensation, in the amount of \$1,159.89. On her Monetary Order Worksheet, the Landlord declared this claim was for tools required to make repairs to the rental unit. At the hearing the Landlord stated that this claim was for replacing the flooring in the rental unit, which was damaged when the toilet overflowed. The Tenant stated that the flooring did not need to be replaced as a result of the flood.

The Landlord is seeking compensation, in the amount of \$120.00, for photocopying evidence.

The Landlord is seeking compensation, in the amount of \$240.00, for cleaning.

The Landlord stated that the rental unit required cleaning at the end of the tenancy. The Witness for the Landlord stated that the rental unit was very dirty at the end of the tenancy.

The Tenant stated that the rental unit was clean at the end of the tenancy. She stated that she sold some of her furniture to the person who moved into the rental unit at the end of the tenancy.

The Landlord submitted photographs of the rental unit in support of her claim that the unit required cleaning, which she says were taken on June 30, 2018. The Tenant does not agree that these photographs accurately represent the condition of the unit at the end of the tenancy.

The Landlord submitted a photograph that allegedly depicts the area behind the refrigerator, which clearly needed cleaning. The Tenant submits the photograph does not depict the area behind the refrigerator in the rental unit.

In support of the Tenant's submission the photograph does not depict the area behind the refrigerator in the rental unit, the Tenant stated that the area behind the refrigerator in the photograph has tile on the wall, which was not present in the rental unit. The Landlord stated that the floor tile in the photographs is the same.

In support of the Tenant's submission the photograph does not depict the area behind the refrigerator in the rental unit, the Tenant stated that the countertop in the photograph is different, in color and shape, then the countertop shown in other photographs of the kitchen. The Landlord stated that the countertops are the same.

The Landlord submitted several photographs of the interior of cabinets, which show these areas required cleaning.

The Tenant submits the photographs do not depict the interior of the cabinets in the rental unit. In support of this submission the Tenant referred to the photograph in which drain pipes can be seen and she notes that the flooring in front of that cabinet is wood, rather than the tile floor in the kitchen in the

rental unit. The Landlord agreed that this area of the kitchen has tile flooring and she submits the photograph depicts tile flooring.

The Landlord submitted a photograph of dirty liquid. She stated that this is the liquid that came from inside a wet vacuum that was used to clean the rental unit.

The Landlord is seeking compensation, in the amount of \$1,250.00, for plumbing repairs, as stated on a plumbing receipt submitted in evidence.

The Landlord stated that a portion of the plumbing claim relates to the installation of a dryer. The Landlord stated that the dryer was not working at the end of the tenancy, although she does not know why. The Tenant stated that the dryer was working properly at the end of the tenancy.

The Landlord stated that a portion of the plumbing claim relates to the installation of a kitchen faucet. The Landlord stated that the kitchen faucet was not working properly at the end of the tenancy. The Tenant stated that the faucet was working properly at the end of the tenancy.

The Landlord submitted a photograph of the faucet that was allegedly damaged.

The Landlord stated that a portion of the plumbing claim relates to the installation of five light bulbs that were burned out during the tenancy. The Tenant stated that all lightbulbs were working at the end of the tenancy.

The Landlord stated that the final portion of the plumbing claim relates to the installation of a toilet seat that was broken at the end of the tenancy. The Tenant stated that the toilet seat was not broken at the end of the tenancy.

The Landlord submitted a photograph of the toilet seat that was allegedly damaged. When the Tenant was asked to comment on this photograph, she responded that it did not appear broken to her. When it was noted that the toilet lid was missing, she stated that she did not previously notice that in the photograph, and that the toilet lid was intact when the tenancy ended.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32 of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant 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, with the exception of damage that is the result of reasonable wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the toilet that flood in April of 2018 was the result of the actions or neglect of the Tenants or the guest of the Tenants. In reaching this conclusion I was influenced by the absence of evidence, such as a report from a plumber or similarly qualified individual, that suggests the toilet flooded because a foreign object was introduced into the toilet.

In adjudicating the claim for compensation related to the flood, I was further influenced by the undisputed evidence of the Tenant and the Witness for the Tenant, both of whom testified that they did not put any foreign objects into the toilet.

Even if I accepted the Landlord's testimony that the plumber told her the toilet was blocked with toilet paper and "stuff", I would not conclude that the toilet was used inappropriately, given that toilets are designed to dispose of toilet paper. I find the term "stuff" is insufficient to determine that something inappropriate was placed into the toilet.

In adjudicating the flood claim, I was further influenced by the undisputed testimony of the Tenant and the Witness for the Tenant, both of whom report that the water pressure in this toilet was low. I find that this provides a possible explanation for why items typically placed in a toilet may have caused a blockage.

In adjudicating the flood claim, I was further influenced by the undisputed testimony of the Tenant and the Witness for the Tenant, both of whom report that they were sleeping when the toilet overflowed. As toilets that overflow due to a blockage typically overflow when they are flushed, I find that this testimony suggests the toilet malfunctioned for a reason other than a blockage.

In adjudicating the flood claim, I was further influenced by the undisputed testimony of the Tenant the water flowing out of the toilet was clear and odorless; that the leaking stopped when she shut off the water intake valve; and that water disappeared when she flushed the toilet, without using a plunger. This testimony also suggests that the toilet malfunctioned for a reason other than a blockage. Rather, it suggests that the water may have been overfilling the toilet bowl from the tank.

I do not have the expertise to ascertain the cause of the flood, however I am satisfied that the flood may have occurred due to a mechanical failure in the toilet.

In determining there may have been a problem with the toilet, I was influenced by the email submitted in evidence by the Tenant, dated October 23, 2019. In the email the author of the email, who appears to live below the rental unit, declares that water is leaking into unit 301. Although the Landlord testified that there were no leaks after April of 2018, I find that this email refutes that testimony. I also find it supports the Tenants' submission that there was a problem with the toilet in the rental unit, although I recognize that there is no evidence that the toilet was the source of this second leak.

In determining there may have been a problem with the toilet, I was further influenced by the receipt from the large home repair box store, dated April 02, 2019. As the sku number on this receipt is the same as the toilet sku number on internet search documents submitted by the Tenants, I find that this receipt was likely for a toilet. Although the Landlord testified that this receipt was for the purchase of a faucet and a toilet seat, I find that this testimony is not credible, given there was only one item on the receipt.

I find that the purchase of a toilet in April of 2019 supports there was a problem with the toilet in the rental unit.

As the Landlord has submitted insufficient evidence to establish that the flood was the result of neglect or misuse, I find that the Tenants are not obligated to repair the damage caused by the flood. I therefore dismiss Landlord's claim of \$2,447.90 for flood damage.

Even if I accepted that the flooring in the rental unit needed to be replaced as a result of the floor in April of 2018, I would dismiss the Landlord's claim of \$1,159.89 for replacing the flooring. As has been previously stated, the Landlord has submitted insufficient evidence to establish the Tenants are obligated to repair any of the damage caused by the flood.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim of \$120.00 for photocopying evidence.

I find that the Landlord has submitted insufficient evidence to establish that the rental unit required cleaning at the end of the tenancy. In reaching this conclusion I was influenced by the Tenant's testimony that the unit was cleaned at the end of the tenancy.

I find, on the balance of probabilities, that the photograph of the dirty area behind the refrigerator submitted by the Landlord does not depict an area in the rental unit. In reaching this conclusion, I was heavily influenced by the fact the countertop in photograph depicting the dirt behind the refrigerator has a molded edge. Conversely, the countertop in other photographs depicting the kitchen has a straight edge.

Although the Landlord submits the floor tile in the photograph depicting the dirt behind the refrigerator is the same as the floor tile in other areas depicting the kitchen, I am unable to reach that same conclusion. Although the floor tile is similar in size and shape, the photograph depicting the dirt behind the refrigerator is of insufficient quality to determine that the color of the tiles is the same. I therefore have placed no weight on this submission.

In concluding that the photograph of the dirty area behind the refrigerator does not depict an area in the rental unit, I was further influenced by the fact there is tile on the wall behind the refrigerator in the "dirty" photograph and other photographs of the kitchen show the wall behind the refrigerator is painted brown.

In concluding that the photograph of the dirty area behind the refrigerator does not depict an area in the rental unit, I was further influenced by the fact that undisputed photographs of the rental unit show that there is a solid wall on the right side of the refrigerator and that the baseboard of that wall runs straight past the side of the refrigerator. In the photograph of the dirty area behind the refrigerator there appears to be corner on the right side of a refrigerator.

I find, on the balance of probabilities, that the photograph of the interior cabinet in which plumbing can be seen does not depict an area in the rental unit. In reaching this conclusion I was heavily influenced by the



undisputed evidence that the flooring in this area of the rental unit is tiled and by my opinion that the flooring that can be seen in this photograph is not tile.

As I have concluded that the Landlord has submitted misleading photographs of this particular interior cabinet, I find that all of her photographs of the interior areas of cabinets and drawers are unreliable and cannot, therefore, be relied upon to establish that the rental unit required cleaning at the end of the tenancy.

Many of the other photographs submitted in evidence by the Landlord are of insufficient quality for me to conclude that the rental unit required cleaning at the end of the tenancy. I am unable to determine whether darkened areas in many of the photographs are dirt or simply the result of poor lighting.

I find that the photograph of the dirty water that allegedly came from a wet vacuum used to clean the rental unit is of little evidentiary value. Even if I accepted the Landlord's evidence that this water came from the wet vacuum used to clean the rental unit, I find that there is insufficient evidence that the entire contents of the vacuum came from the rental unit. I find it possible that the vacuum was not cleaned prior to cleaning the rental unit.

For all of these reasons, I find that the photographs submitted in evidence by the Landlord do not corroborate her testimony that the rental unit required cleaning at the end of the tenancy, and they do not refute the Tenant's testimony that cleaning was not required. I therefore dismiss the Landlord's claim for cleaning the rental unit.

In adjudicating this matter, I have placed little weight on the testimony of the Witness for the Landlord, who stated that the rental unit was very dirty at the end of the tenancy. This is a very subjective opinion which, in my view, must be corroborated with substantive evidence, such as photographs, when the other side believes the rental unit was cleaned.

I find that the Landlord submitted insufficient evidence to show that the dryer was not working at the end of the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates her claim that the dryer was not working or that refutes the Tenant's claim that it was working.

Even if I accepted the Landlord's testimony that the dryer was not working at the end of the tenancy, I would find that the Landlord is not entitled to compensation for replacing the dryer. In reaching this conclusion I was heavily influenced by the absence of evidence to establish that the dryer stopped working because of abuse or neglect on behalf of the Tenant, rather than normal wear and tear which the Tenant is not obligated to repair. For these reasons I dismiss the claim for replacing the dryer.

I find that the Landlord submitted insufficient evidence to show that the kitchen faucet was not working properly at the end of the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates her claim that the faucet was not working properly or that refutes the Tenant's claim that it was working properly.

Even if I accepted the Landlord's testimony that the faucet was not working at the end of the tenancy, I would find that the Landlord is not entitled to compensation for replacing the faucet. In reaching this conclusion I was heavily influenced by the absence of evidence to establish that the faucet stopped

working because of abuse or neglect on behalf of the Tenant, rather than normal wear and tear which the Tenant is not obligated to repair. For these reasons I dismiss the claim for replacing the faucet.

In adjudicating the claim for replacing the faucet I have placed no weight on the photograph of the faucet the Landlord submitted in evidence. I am unable to determine that the faucet is broken on the basis of that photograph.

I find that the Landlord submitted insufficient evidence to show that lightbulbs were burned out at the end of the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates her claim that the bulbs were burned out or that refutes the Tenant's claim that they were all working at the end of the tenancy. I therefore dismiss the Landlord's claim for replacing lightbulbs.

I find that the Landlord submitted insufficient evidence to establish the toilet seat was damaged during the tenancy.

In reaching this conclusion I was heavily influenced by the testimony of the Tenant. I find that the testimony of the Tenant throughout the hearing was forthright and consistent. After stating that the toilet seat was not broken at the end of the tenancy the Tenant appeared genuinely surprised when it was pointed out that the lid of toilet seat in the Landlord's photograph was missing. I find this genuine surprise lends credibility to her testimony that the toilet seat was not broken.

Conversely, I have found the Landlord's testimony to be, at times, inconsistent with the documentary evidence. I therefore find it difficult to accept her testimony that the toilet seat was broken at the end of the tenancy. As I have previously concluded that Landlord misrepresented at least some of the photographs submitted in, I find it possible she has also misrepresented this photograph and I am not satisfied that I can rely on it to establish that the toilet seat was broken. I therefore dismiss the Landlord's claim for replacing the toilet seat.

I find that the Landlord has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 09, 2020

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Residential Tenancy Branch