



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FFL

### Introduction

On September 7, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for damage or repairs; to keep the security deposit and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords agent (“the Landlord”) and the Tenants attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Can the Landlord keep the security deposit towards the claims?
- is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on September 1, 2018, as a fixed term tenancy to continue until August 31, 2019. Rent in the amount of \$2,100.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,050.00. The rental unit is a duplex with four bedrooms and two bathrooms. The tenancy ended on August 31, 2019.

The Landlord testified that

The Landlord is seeking compensation for the following items:

Plumbing service	\$156.45
Flood damage insurance deductible	\$4,843.55.
Broken window lock	\$98.56
Water bill	\$95.00

#### Plumbing Service Call

The Landlord is seeking to recover the cost of having a plumber attend the rental unit to deal with a clogged toilet. The Landlord testified that on November 5, 2018 the Tenants called the Landlord to report that the toilet on the upper level was flooding. The Landlord testified that she called a plumber because the toilet was clogged, and the Tenants did not have a plunger.

The Landlord testified that the plumber attended the unit and found the toilet to be clogged. The Landlord stated that the plumber found nothing faulty with the toilet. The Landlord stated that the plumber reported that the toilet was repeatedly flushed causing the water to overflow and cause water damage.

The Landlord provided a copy of an invoice dated November 5, 2018 in the amount of \$156.45. The plumbers note provides that the plumber arrived on site to find the toilet plugged and the toilet running flooding the residence. Lower in the note the plumber states he arrived to find extensive water damage and found that Tenants had water supply turned off.

The Landlord provided a letter from the plumber dated December 3, 2018 where the plumber gives a professional opinion that the Tenants repeatedly flushed the toilet when it was plugged.

The Landlord provided a letter from the plumber dated March 29, 2019 that indicates the plumber arrived and found the toilet flapper faulty and explains that if a toilet is plugged and the flapper is faulty, it will cause a toilet to overflow.

The Landlord is seeking to recover the cost of the plumbing service call. The Landlord provided a copy of an invoice in the amount of \$156.45.

In response, Mr. B.C. testified that a Tenant Mr. K.J. noticed water flooding out of the toilet and the Tenants did not have a plunger. H testified that Mr. K.J. did not keep flushing the toilet. He testified that Mr. K.J was not aware that the toilet flapper was broken and allowing water to keep flowing. He submitted that the water continued to run so the problem was with a faulty toilet component.

Mr. N.F. testified that a repair person informed him that the flapper was not sealing so it ran continuously.

Mr. K.J. testified that he used the bathroom and flushed the toilet and watched the water go down and walked out of the bathroom. He testified that he was then playing video games wearing headphones. When he noticed the water, he immediately contacted the Landlord and reported the flooding toilet. He testified that he did not repeatedly flush the toilet, and when he left the bathroom the toilet did not appear that it was going to overflow.

The Landlord replied that the plumber found no faulty components and referred to the plumbers invoice dated November 5, 2019.

The Tenant, Ms. K.D. testified that the Landlord had the toilet replaced in March 2019 and referred to the Landlords evidence showing this.

#### Insurance Deductible \$4,843.55

The Landlord testified that the Landlord paid \$4,843.55 for an insurance deductible for the cost to repair the rental unit due to the water damage caused by the overflowing toilet. The Landlord feels that the Tenants are responsible to pay for the cost of the deductible for remediation of the rental unit. The Landlord testified that the repairs took place over a number of months while the Tenants lived in the unit. The Landlord provided an invoice dated November 15, 2018 in the amount of \$5000.00 for work

performed at the rental unit. The Landlord provided a payment receipt date July 12, 2019 in the amount of \$4,834.55.

In response, the Mr. B.C. submitted that they do not know what damage was present. He testified that they have no idea on the extent of any damage. He testified that the Landlord immediately remediated the area.

Ms. S.F. submitted that the Tenants were not permitted an opportunity use their own insurance coverage to cover the cost of repair.

The Landlord replied that tenants cannot get flood insurance coverage only content insurance.

The Tenants testified that their home insurance for the homes they own includes blanket coverage for liability and would cover flood costs in the rental unit.

#### Broken Window Latch

The Landlord is seeking to recover the cost of \$98.56 for the repair of a window latch. The Landlord submitted that damage to the window latch was not identified at the time of the move out inspection. The Landlord testified that the damage was noticed afterwards, and they had it repaired at a cost of \$98.56. The Landlord provided a copy of the repair invoice. The Landlord testified that the window latch was fine at the start of the tenancy.

In response, the Tenant Mr. B.C. testified that he was present at the extensive move out inspection and there was no indication that the latch was broken at that time. He submitted that if it was broken, it would be attributable to normal wear and tear caused by opening and closing the window over 20 years.

The Tenants also submitted that the Landlord rented the unit out to new tenants and its possible that a new tenant damaged the latch.

#### Water Bill

The Landlord testified that the cost of water is not included in the rent. The Landlord has the water bill in the Landlord's name and provides the bill to the Tenants for payment. The Landlord testified that the Tenants did not pay the water bill for the

months of July and August. The Landlord paid the bill and is looking to recover the amount of \$95.00.

In reply, the Tenants submitted that they take no issue with this claim.

### Security Deposit

The Landlord is requesting to keep the security deposit of \$1,050.00 towards any successful claims.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

*if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Residential Tenancy Branch Policy Guideline # 16 provides the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

#### Plumbing Service

I have considered the evidence from the Landlord and the Tenants. I find the November 5, 2018 invoice from the plumber to be internally inconsistent and I assign it very little weight. The plumber states that he arrived to find the toilet running and flooding the unit. The plumber later writes that the water supply was turned off when he arrived. I find that if the water supply was turned off, he could not have observed that the toilet was running and flooding the residence.

I find that approximately five months after the toilet overflowed, the toilet was repaired by the plumber. The plumber provides that he found the toilet flapper faulty. I accept the plumbers statement that if a toilet is clogged, and a toilet flapper is faulty, it will cause a toilet to overflow.

I find that it is more likely than not that the overflow of water from the toilet on November 5, 2018 was affected by a faulty toilet flapper.

I am mindful that the Tenants did not have a plunger available to clear the blockage and I accept that the plumber cleared the blockage by plunging the toilet. I find a faulty flapper would not contribute to a blockage but would cause water to flow if the toilet was plugged.

I find that the Tenants are responsible to pay for the cost of the service call to unplug the toilet.

I award the Landlord the amount of \$156.45 for the cost of the plumber.

#### Insurance Deductible

I have found it is more likely than not that the overflow of water from the toilet on November 5, 2018 was affected by a faulty toilet flapper.

I have also reviewed the Landlord's documentary evidence. I find that there is no photographic evidence showing water damage to the rental unit. I find that there is no quote document or invoice that identifies what building elements were damaged.

The Tenants submitted that they do not know what damage was present and they have no idea on the extent of any damage.

I find there is no evidence before me that specifically identifies what building elements were replaced or repaired. I find that there is no evidence which itemizes the specific costs to remediate or repair building elements in the rental unit.

While the Landlord has provided proof of payment for an insurance deductible, this alone is not sufficient evidence to prove that the damage or loss being claimed by the Landlord is accurate. It is not sufficient proof of the actual amount of compensation that the Landlord may be entitled to. I find there is insufficient evidence from the Landlord to prove that the deductible paid for work performed is entirely attributable to the remediation work performed due to water damage.

The Landlord has provided insufficient evidence to prove; that damage or loss exists; that the damage or loss occurred due to the actions or neglect of the Tenants; and the actual amount required to compensate for the claimed loss. The Landlord's claim for \$4,834.55 is dismissed.

#### Window Latch

I find that the damage to the window latch was not identified at the time of the move out inspection. I also find that there was insufficient evidence from the Landlord to prove that the damage was caused by the deliberate actions or neglect of the Tenants. I find that any damage present is likely attributable to normal wear and tear.

The Landlords claim for \$98.56 is dismissed.

#### Water Bill

I find that the Tenants are responsible to pay for the cost of water during the tenancy. The Tenants agreed with the Landlord's claim to recover an unpaid water bill of \$95.00.

I award the Landlord the amount of \$95.00 for an unpaid water bill from July and August 2019.

### Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$351.45 comprised of \$156.45 for a plumber bill; \$95.00 for a water bill; and the \$100.00 fee paid by the Landlord for this hearing.

I authorize the Landlord to keep the amount of \$351.45 from the security deposit of \$1,050.00.

I order the Landlord to return the balance of the security deposit in the amount of \$698.55 to the Tenants. I grant the Tenants a monetary order in the amount of \$698.55, the balance of the security deposit. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord has established a monetary claim in the amount of \$351.45. I order that the Landlord can keep \$351.45 from the security deposit of \$1,050.00 in full satisfaction of the Landlord's awards.

I grant the Tenants a monetary order in the amount of \$698.55, the balance of the security 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 22, 2020

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Residential Tenancy Branch