



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, FFL

### Introduction

On September 28, 2019, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord S.K. attended the hearing. Tenant T.L. attended the hearing seven minutes after it commenced and then Tenant M.E. attended the hearing minutes after that. All in attendance provided a solemn affirmation.

S.K. advised that he served a Notice of Hearing and evidence package to each Tenant by registered mail on October 2, 2019 and T.L. confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing and evidence package.

T.L. confirmed that they did not submit any evidence for consideration on this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on June 1, 2019 and that rent was established in the amount of \$2,650.00 per month, due on the first day of each month. A security deposit of \$1,325.00 and a pet damage deposit of \$1,325.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

S.K. advised that the Tenants live in the upstairs rental unit and that the downstairs tenant advised him, on or around August 9, 2019, that water was coming through his light fixture from above. He investigated the situation and he stated that the Tenants told him that water was leaking from below the toilet. S.K. immediately brought in a plumber, who examined the upstairs toilet and determined that there was a blockage in the bowl, resulting in an overflow of water. The plumber cleared the blockage, ensured that the toilet was working properly afterwards, and due to the amount of water that overflowed, suggested that the Landlords bring in a restoration company. A copy of the invoice describing the work completed was submitted as documentary evidence. In addition, an email from the plumber, submitted as documentary evidence, confirmed that the blockage in the toilet was due to “a very large amount of toilet paper.”

S.K. then had a restoration company come in to investigate the damage. This company confirmed that the source of the damage was from the Tenants’ toilet overflowing and that the “blockage was within the bowl not the[sic] below the trap.” A copy of this report was also submitted as documentary evidence.

He stated that the house was constructed in 2013, that there has never been this issue with previous tenants, that this is the second time it has happened with these Tenants, and that this issue has not occurred since the most recent incident. He advised that they were seeking compensation in the amount of **\$235.84** for the cost of the plumbing bill and **\$1,263.73** for the cost of the restoration company’s inspection.

T.L. advised that he first had a problem with the toilet a week after the tenancy originally started. He stated that there have been numerous, ongoing clogging problems with this toilet since the tenancy started but he fixed these issues himself. He estimated that the toilet had become plugged a total of 10 times during the tenancy and that this has occurred three additional times since the most recent incident. He stated that he had text messages informing the Landlord of these issues, but he did not submit them as documentary evidence.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* states that the Landlord must “provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. 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.”

With respect to the Landlords’ claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlords’ claims for the plumbing repair and the restoration inspection report, I find it important to note that the Landlords have provided evidence from two professional companies that confirm the source of the toilet issue was due to a substantial amount of toilet paper that was found in the toilet. On the contrary, I have before me Tenant T.L.’s testimony that there was an ongoing problem with the toilet, but he dealt with the issues by himself. While he stated that he informed the Landlords of these issues, he did not provide any evidence of having done so.

When weighing the totality of the evidence before me, I find the Landlords’ evidence from a plumber and a restoration company outweighs the Tenants’ simple claims of a faulty toilet. The Tenants have provided insufficient evidence to demonstrate that there is a problem with the toilet that causes it to operate ineffectively. I am satisfied, on a balance of probabilities, that it is more likely than not that this flooding issue was a result of the Tenants’ negligence in filling the toilet with an abundance of toilet paper, causing it to overflow. As such, I find that the Landlords should be granted a monetary award in the amount of **\$1,499.57** to satisfy these claims.

As the Landlords were successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlords**

Costs associated with the plumber	\$235.84
Costs associated with the restoration report	\$1,263.73
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,599.57</b>

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,599.57** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 4, 2020

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Residential Tenancy Branch