



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      MNDL-S FFL

### Introduction

The landlords seek compensation (including an order to retain a security and pet damage deposit) against the tenants pursuant to sections 67 and 38 of the *Residential Tenancy Act* (the “Act”). The landlords also seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

A dispute resolution hearing was held on October 4, 2022 and attending were one of the landlords and an agent for the respondent tenants.

### Issues

1. Are the landlords entitled to compensation?
2. Are the landlords entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below. It is noted that a copy of a plumber’s invoice was the only documentary evidence served upon the tenants. The tenants submitted into evidence a 26-page document that was also served upon the landlords.

The tenancy began January 15, 2022 and ended on March 31, 2022. Rent was \$1,680.00. The respondent tenants paid a \$840.00 security deposit and a \$800.00 pet damage deposit, all of which was returned except for \$453.54. There is a written Residential Tenancy Agreement in evidence; while there was an addendum to the tenancy agreement no copy of this addendum was submitted.

The landlords seek \$453.54 in compensation to pay for plumbing services. The amount sought is for the following reasons, as stated in the landlords' application: "The rental suite downstairs of [rental unit address redacted] had a clogged toilet from tenants use... plumber service incall invoice was 453.48 paid by landlord upon show up and services repair." (The amount was corrected in the landlords' application.)

The landlord testified that the toilet was working fine at the start of the tenancy. The tenants then contacted the landlord on February 4 to let him know that the toilet had stopped flushing. He looked around for a plumber immediately, but no one was available to come until February 8. A plumber attended to the rental unit on February 8, 2022 and made the necessary repairs. These repairs are outlined on the invoice.

On the invoice the following was written by the plumber: "activate 4-5 times Tested great NO LEAKS" and "would Recomend [sic] change in Brand of toilet paper But when I plunged a huge wad of Toilet paper came Back."

In summary, the landlord argued that the problem was tenant-inflicted though the tenants declined responsibility for causing the toilet to become blocked.

The tenants' agent explained that she helped the tenants moved in. They noticed a large leak in the bathroom ceiling, possibly related to larger plumbing issues within the home. The agent argued that the tenants were "very mindful" of the amount of toilet paper used and they avoided any type of sanitary napkins.

She noted that there was nothing in the tenancy agreement which prohibited toilet paper from being used in the toilet. Due to the clogging of the toilet, one of the tenants—the agent's daughter who was pregnant at the time—had to go to a nearby gas station to use the toilet a few times a day. The agent reiterated that the tenants were very mindful of the necessity to use a reasonable, small amount of toilet paper.

In a brief rebuttal the landlord testified that there was no clause in the tenancy agreement whereby the use of toilet paper was prohibited. At the end of the day the tenants clogged the toilet and the landlords incurred costs in calling a plumber.

### Analysis

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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

*1. Was there a breach of the Act?*

Section 32(3) of the Act states 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.”

Based on the evidence before me it is my finding that the tenants caused temporary damage to the toilet by attempting to flush an excessive amount of toilet paper. The plumber’s invoice clearly states that they witnessed “a huge wad of toilet paper come back.” Conversely, there is no evidence provided by the tenants for me to find that the toilet was clogged due to any action or inaction on the part of the landlords. Therefore, I conclude that the tenants breached section 32(3) of the Act.

*2. Did landlords suffer a loss because of breach?*

But for the tenants’ negligence in putting too much toilet paper into the toilet the landlords would not have had to incur costs to have the problem resolved. There is a clear link between the tenants’ negligence and the landlords’ monetary loss.

*3. Has the amount of the loss been proven?*

The landlords have provided an invoice which directly proves that the amount of the monetary loss is \$453.54.

4. *Did landlords do whatever was reasonable to minimize loss?*

The landlord testified that he called several (or at least a few) plumbers to come and fix the issue. Finally, he was able to procure the services of Roto-Rooter who attended on February 8. The landlord acted swiftly and retained a reputable plumbing service. I am satisfied based on this undisputed evidence that the landlords did what was reasonable to minimize any loss.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlords have proven on a balance of probabilities that they are entitled to compensation in the amount of \$453.54.

*Summary of Award, Retention of Security Deposit, and Award for Filing Fee Cost*

Section 38(4)(b) of the Act permits authorizing a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlords are authorized to formally retain the \$453.54 of the security deposit, which was previously held in trust, in satisfaction of the above-noted award.

Pursuant to section 72(1) of the Act, as the landlords were successful in this application, they are entitled to recover the cost of the application filing fee. Therefore, I hereby order the tenants to pay to the landlords \$100.00 for the cost of the filing fee. A copy of a monetary order in this amount is issued with this decision to the landlords.

Conclusion

**The landlords' application is hereby granted.**

This decision is made on authority delegated under section 9.1(1) of the Act.

Dated: October 5, 2022

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Residential Tenancy Branch