



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, MNDCL, FFL

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlords seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and both tenants attended the hearing, and the landlords were assisted by Legal Counsel. One of the landlords and both tenants gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and only the evidence I find relevant to this application is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

### Background and Evidence

**The landlord** (CAW) testified that this fixed-term tenancy began on November 25, 2019 and reverted to a month-to-month tenancy after November 30, 2020, which ultimately

ended on June 30, 2021. Rent in the amount of \$2,350.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,175.00 as well as a pet damage deposit in the amount of \$1,175.00. The full pet damage deposit was returned to the tenants, and \$326.47 of the security deposit was also returned. The rental unit is the upper level of a house, and the lower level was also rented. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a copy has been provided for this hearing. A move-out condition inspection report was also completed by a property manager but the tenants were not present, having signed it for "cleaning purposes." The landlord testified that it appears that the tenants were there on the 29<sup>th</sup> of June, 2021 to sign the move-out condition inspection report, or give permission for deductions from the security deposit. The move-out portion of the report has also been provided for this hearing, and the landlord testified that copies were provided to the tenants.

Starting on January 13, 2021 a small initial sewage back-up occurred in the suite, and the tenants notified the landlord of an odour. The tenant in the basement suite had a stroke and went to hospital. In mid-February, 2021 a major back-up of sewer occurred and the landlords made an insurance claim. However, it occurred a 3<sup>rd</sup> and 4<sup>th</sup> time and the landlords couldn't make another insurance claim and had to pay for repairs.

Personnel from Roto Rooter arrived on February 13, 2021 and located a blockage. The personnel stated that massive amounts of toilet paper clogged the toilet. On the third occasion, March 9, 2021 the lower suite flooded; toilet paper had totally blocked it. On the fourth occasion, there was nothing new, but pretty much more of the same.

After the second incident, carpet and linoleum in the basement had to be removed, and the landlords upgraded to vinyl plank flooring for future use, but was damaged again due to the next flooding.

The landlords emailed the tenants after the 1<sup>st</sup> and 2<sup>nd</sup> times that the system was blocked, trying to explain what paper to use and such, and left it up to the tenants to listen to what the personnel from Roto Rooter was saying. They said that they did not find any issues with the line to the septic field, but expected roots and such for a septic system of that age; it looked as it should, but asked if the landlord would like to do something about proactive maintenance. That work had nothing to do with the problem at hand. Personnel did not recommend replacing the system.

The landlords also received information by way of email from the restoration company, a copy of which has been provided for this hearing. It states that sewer backups typically occur due to blockage or that the septic had reached its capacity or life expectancy, and the repeated sewer backups were believed to be due to user error and flushing wrong amounts or items in the toilet. It also states that the person noted an excessive amount of what looked to be paper towel, and that septic systems are very sensitive to what is flushed through them. It also states that he has never been called to a home as many times to deal with the same issue.

The landlords emailed a link to the tenants about septic system products to educate them about care of septic systems, meant to help, but the tenants found it offensive.

The landlords had previous tenants but never a reported blockage in 20 years. The landlords moved into the rental unit immediately after the tenants moved out, and the system was inspected since and no issues occurred. Two tenants resided in the basement suite, so 4 people in total lived there, including the landlords, and had guests, but there were no problems.

The Roto Rooter personnel provided a bill for \$190.58 dated January 13, 2021; \$130.20 on February 12, 2021; \$250.95 on March 9, 2021; and the 4<sup>th</sup> occasion was April 22, 2021 at a cost of \$539.70. Then the landlords had to also get the tank pumped again, which had been done 6 months prior on April 11, 2019, at which time it was recommended that the landlords get the tank re-pumped in 3 or 4 years, but it had to get pumped again on April 23, 2021 at a cost of \$780.15. Roto Rooter inspected the system 5 times, at a cost of \$57.75 each time.

The rental unit was unavailable due to renovations required for 18 ½ months. Renovations were completed in late March or Early April, 2021, but the landlords did additional work for soundproofing, so the landlords claim 6 months loss of rental revenue for the basement suite. The tenants in that suite paid \$1,600.00 per month, and the landlords claim \$9,600.00. The suite is now rented for \$2,300.00 per month.

The landlords claim \$12,589.47 for the damages and \$9,600.00 for loss of rental revenue for the basement suite. Numerous invoices, quotes, receipts, photographs and emails have been provided for this hearing.

**The first tenant** (RB) testified that the tenant is a Hedge Fund Manager and was the main operator of a large 77 room hotel on a septic system, so is very familiar with septic systems.

The tenants lived on the 1<sup>st</sup> floor of a split level home. The basement suite was directly below, and it was difficult for the tenants to flush because the venting was connected to both toilets. The tenant observed Roto Rooter on the 1<sup>st</sup> day, and it was clogged with toilet paper but the system is old, not maintained, and an elbow should have been shaved down 90 degrees to allow it to flow freely. The tenants used commercial safe toilet paper, safe for every system, and not excessively. The issues happened after the tenant in the basement suite left, and he didn't flush. The tenants could hear gurgling and did not get working toilets, and to blame the tenants for damage to a unit they didn't live in is wrong. The tenant told the Roto Rooter people, but couldn't reach the landlords. Roots were growing on the upper level, not to the baffle, but that speaks to lack of maintenance. It was a new system 20 years ago. No paper towels were flushed, but only 2 people in their 60's flushing toilet paper which got caught up in the system, which the tenants are not responsible for. The landlords must maintain the system.

One opinion that the landlord quoted about excessive toilet paper was from a carpenter, not a septic specialist. The problem was at the baffle; there was not enough pressure to make the 90 degree elbow. The toilet downstairs was capped; that's what it says in the landlords' evidence. There has to be venting systems.

The landlord had suggested what type of toilet paper would be best, and the tenants used the gentlest type available. They don't make half-ply toilet paper.

**The second tenant** (DD) testified that the tenants are in their 60's and all kinds of junk was found in the septic. The tenants only used septic system friendly toilet paper. It was stressful, a basic human requirement.

The landlords turned everything into a negative, laughing and saying that they were trying to educate the tenants on how to use a toilet and toilet paper is downgrading. The tenants were told that it was a smoke-free environment, but the tenant in the basement suite smoked dope, which may have something to do with the renovations completed, which permeated upstairs and was mentioned to the landlords. Renovations would have been required.

The landlord testified that Roto Rooter was convinced the tenants were flushing paper towels, but later they said none was found, and the tenants did not do that. Often

people flush smokes down the toilet to prevent fire, but the tenant has no idea what gunk the landlord is talking about.

An email from the tenants to the landlords dated April 22, 2021, provided for this hearing, states that the basement toilet was overflowing, and the tenant went to check and found a plunger and wet brown paper towel pieces on the seat.

The tenants have also provided a written overview, stating that the overflow and back-ups of sewage commenced after the tenant in the basement suite moved out shortly before this tenancy ended. The overview contains 86 points, including that “the repair people reveal that this septic system was in great need of an overhaul and regular maintenance” which didn’t happen until after the warnings of repeated overflows. It also states that, “If a single family home is divided by the landlord into a two family dwelling then the Septic system has to logically be upgraded and regularly maintained to handle the extra people. This was clearly not done. The perimeters were changed. But everything was left to accommodate a single family.” It also states that when the drains were cleaned, hair and scum was found, but one of the tenants has very little hair and the other tenant has very short hair., and that Roto Rooter found blockages that had clearly been there since before the tenants moved in, and the right angle baffle at the tank is where the blockages occurred. It also suggests that the basement suite tenant had visitors, and perhaps they emptied their ashtrays into toilets, or barbeque sauces or grease.

The document also points out that Roto Rooter commented, in part: “Located d-box and found 4 field lines camera showed all have roots and sludge,” and that the large volume of what appeared to be paper towel, but was an enormous volume of toilet paper and waste. The document speculates that when the lower tenant’s fridge was cleaned, a lot of waste was flushed down the toilet.

The document also states that the landlords moved in after the septic system was upgraded, cleaned and fixed.

#### SUBMISSIONS OF THE LANDLORDS’ LEGAL COUNSEL:

Based on the invoices, experts who attended multiple times and communicated what was needed or not and recommendations, which the landlords did, show that the damage was caused by overuse of toilet paper. There were no problems before or since this tenancy. The landlords claim only 6 months’ loss of rental revenue but were out of pocket for 18 months, not to mention repair work that was done. The landlords are out over \$22,000.00 because of this situation. The tenants did not cooperate with the landlords about usage of the septic system and toilet paper.

#### SUBMISSIONS OF THE LANDLORD:

There is no 90 degree baffle, nothing to shave down, and no reduction in the size of the pipe, as shown in the landlords' photographs.

#### SUBMISSIONS OF THE TENANTS:

The landlords have selected things from Roto Rooter, but the tenant talked to them and they said the system was bad and that's shown in the evidence. The landlords are trying to get the tenants to pay for lack of rent and restore another unit due to a faulty system at the end of its life. It's better now because they had changes made to the system. The tenants didn't damage the unit, lived in an unsanitary condition and smelled sewage for months.

#### Analysis

Where a party claims compensation for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlords have provided numerous receipts and Invoices to satisfy element 3. There is no question that the damage or loss exists.

A tenant is required to repair any damage caused by a tenant. I find it concerning that the tenancy began on November 25, 2019 and ended on June 30, 2021. The landlord testified that the first was a small sewage backup reported by the tenant in the basement suite starting on January 13, 2021, then that tenant went to hospital and never returned. If the tenants had caused the back-ups and blockages due to overuse of toilet paper or flushing paper towels down the toilet, surely the back-ups would have commenced prior to that, assuming that the tenants' habits remained the same.

I cannot ignore the testimony of the tenant that the toilet in the lower unit was directly below the toilet in the rental unit, and that venting was connected to both. I also consider that the incidents happened after the tenant in the lower level left. This tenancy began on November 25, 2019 and the evidence indicates that the first plumbing

issue commenced in January, 2021, which is about 14 months after the beginning of the tenancy, and there were no issues prior to that.

I also consider the testimony of the tenant that the family members of the tenant in the lower level moved that tenant out, and perhaps flushed paper towels and other matter down the toilet. I find that to be very possible.

I have reviewed all of the evidence, which consists of multiple emails that have been altered, highlighted and scribbled all over, and I do not see how the landlords can attribute all of the damages to these tenants and not the tenant in the lower level. Therefore, I am not satisfied that the landlords have established element 2 in the test for damages.

The landlords' application is therefore dismissed.

Since the landlords have not been successful with the application, the landlords are not entitled to recover the filing fee from the tenants.

### Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

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: June 14, 2023

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Residential Tenancy Branch