# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNRT MNDCDT OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for $1,113.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for the cost of emergency repairs.

The tenant, a property manager for the landlord, AH (manager), and the landlord, PH (landlord) attended the teleconference hearing and gave affirmed testimony. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties. Expectations regarding conduct were also explained to the parties. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had been served with documentary evidence and had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

Firstly, the parties agreed that the actual landlord was PH and that AH was agent for PH. As a result, and pursuant to section 64(3)(c) of the Act, I amend the tenant's application to reflect the correct landlord name as PH was at the hearing and confirmed they were landlord.

Secondly, the tenant confirmed that they were seeking the cost of emergency repairs in the amount of $556.50 and not $1,113.00. As a result, I have amended the application to the lower amount of $556.50 as otherwise the claim would have been for double the

cost of emergency repairs. This amendment was made pursuant to section 64(3)(c) of the Act.

In addition, the parties confirmed their respective email addresses. The parties were advised that the decision would be emailed to the parties.

Issue to be Decided

- Has the tenant provided sufficient evidence to support reimbursement of emergency repairs for plumbing costs under the Act?

Background and Evidence

Firstly, there is no dispute that the tenant called the agent on November 11, 2020 to report an overflowing toilet in the rental unit. The parties agreed that the rental unit has only one toilet. The agent testified that they arrived at the rental unit between 3:30 p.m. and 4:00 p.m. on November 11, 2020. The agent notes in their evidence that they brought along a plunger but did not use the plunger as the tenant confirmed they had already used a plunger and the water had since receded. The agent testified that the water in the toilet when they arrived was lower than normal and provided no evidence that the agent attempted to flush the toilet to see if it was cleared by the tenant's use of their plunger.

The agent stated that they left the rental unit and it was 9:13 p.m. on November 11, 2020 before the tenants were advised that a plumber would be attending the following morning at 9:00 a.m. on November 12, 2020 to address the clogged toilet. The landlord submitted a series of text messages between the tenant and the agent on November 11, 2020 which say in part:

> (from tenant to agent at 9:00 p.m.) So since 3:00 this afternoon we advised you of this issue and you dragged your till about 8:00 7:30 telling me that you can't find somebody well I got news for you already found three of them so just documenting everything I'm doing right now thank you
>
> (from agent to tenant at 9:09 p.m.) As I saw earlier, the toilet was not overflowing, so unfortunately the landlord does not consider this an urgent repair. I had a plumber scheduled to come in for 9AM first thing tomorrow morning. As I understand, you have called a plumber to come in already, so I will be cancelling the work order for the plumber tomorrow morning.

> (from tenant to agent at 9:15 p.m.) So you're saying that you didn't see any water on the floor and it wasn't overflowed and you didn't want to go in the bathroom when you said oh no I can't fix it and walked out so that was not overflowed do you even know what you're saying
>
> (from agent to tenant at 9:20 p.m.) When I came in, I saw that the water in the toilet was lower than usual, but it was not actively overflowing. Before I arrived, you told me it was overflowing and you tried using a plunger which is why when I arrived with a plunger and found out you had already tried that, I contact my plumber to schedule a repair time.

The tenant stated that during this time, due to COVID restrictions, they were very stressed out and had no ability to go and use a neighbour's toilet due to COVID. The agent stated that over the phone, the tenant asked the agent if they were "expected to use a bucket?" and the agent stated that they did not suggest that to the tenants.

The landlord writes in their "statement of events" document the following in part:

> [Name of rental building] agrees that the landlord is responsible for this repair. For a toilet that cannot be flushed, we feel that a service call for 9AM the next day is an appropriate response for the level of urgency of this problem. We are willing to compensate $185 for the repair to a reasonable maximum of $267, but not the $556.60 claimed by the tenant.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

*Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 33 of the Act applies and states:

**Emergency repairs**

**33**(1) In this section, **"emergency repairs" means repairs that are**

(a)**urgent,**

(b)**necessary for the** health or safety of anyone or for the preservation or **use of residential property**, and

(c)**made for the purpose of repairing**

(i)major leaks in pipes or the roof,

(ii)**damaged or blocked water or sewer pipes or plumbing fixtures,**

(iii)the primary heating system,

(iv)damaged or defective locks that give access to a rental unit,

(v)the electrical systems, or

(vi)in prescribed circumstances, a rental unit or residential property.

(3)**A tenant may have emergency repairs made only when all of the following conditions are met:**

(a)**emergency repairs are needed;**

(b)**the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**

> (c)**following those attempts, the tenant has given the landlord reasonable time to make the repairs.**
>
> [emphasis added]

In the matter before me, I find the landlord's response to the tenant's complaint of an overflowing toilet to be unreasonable. In reaching this decision I find that by attending the rental unit and failing to at least try to flush the toilet was unreasonable. The agent stated that the tenant tried to use a plunger; however, I find the agent failed to exercise reasonable due diligence by flushing the toilet to see if there was still a problem and if not, attempt to use the plunger the agent stated they had with them. As a result, I find it was more likely than not that the plumbing to the toilet was blocked as the landlord failed to confirm it when they attended, which I find to be unreasonable.

I also find the delay between approximately 3:30 p.m. on November 11, 2020 until advising the tenants at approximately 9:15 p.m. that they would have then have to wait again until the next morning at 9:00 a.m. for a plumber to be an unreasonable time delay and that the landlord must pay the full amount of the emergency repair plumbing bill as a result.

In reaching this finding, I find that the landlord has agreed that they are responsible for the plumbing costs in their own documentary evidence, and that the landlord only wanted to pay up to $267.00 to avoid the call out fee on November 11, 2020. There was only 1 toilet in the rental unit and I find it was the responsibility of the landlord to try another plumber if they could not get their plumber to come until the next day at 9:00 a.m. as the tenants were unable to use a neighbour's toilet due to COVID.

Given the above, I find the landlord breached section 33 of the Act and I grant the tenants a one-time rent reduction in the full amount of the claim, **$556.50.** I make this order pursuant to section 62(3) of the Act. I do not find a monetary order is necessary.

**I CAUTION** the landlord to not breach section 33 of the Act in the future and to ensure they have more than one plumber to contact to avoid a similar situation in the future where there is only one toilet in a rental unit.

Conclusion

The tenant's application is fully successful.

The tenant is granted a one-time rent reduction in the amount of $556.50 in full satisfaction of the tenant's claim.

The landlord has been cautioned as noted above.

This decision will be emailed to both parties as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 12, 2021

Residential Tenancy Branch