



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MND, MNSD, FF

Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for repairs and to keep the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages.

Background

The landlord testified that the tenancy began on September 15, 2004 and ended on April 30, 2011. Current rent was \$845.00 and a security deposit of \$385.00 was paid.

The landlord testified that during the tenancy there was an incident in which the tenant had clogged the drain from the toilet and this resulted in plumbing costs of \$830.19. The landlord testified that, in addition to the plumber's bill, four other units were affected by the flooding and the landlord is claiming compensation for the \$2,500.00 deductible portion of the insurance coverage that was required to be paid by the landlord.

The landlord was also claiming:

\$75.00 for partial cost to fix the damaged bedroom door.

\$100.00 partial cost to replace the countertop.

\$164.59 for a broken window and patio door handle.

The total claim is for \$3,669.78

With respect to the clogged toilet, the landlord testified that the tenant had apparently flushed some kind of non-soluble padding, such as a diaper, down the toilet and this lodged in the pipe below the toilet. According to the landlord, on January 10, 2011 in the morning, the clog caused the waste water to back-up and the pressure that this

placed on the floor seal of the tenant's toilet then allowed the sewage escape and flow underneath the floor and down into the other 4 units through the ceilings and walls. The landlord testified that the problem was not discovered until the evening of January 10, 2011 because the leak was apparently coming from underneath the toilet. The landlord testified that there was no pre-existing problem with the brass pipes directly beneath the toilet. According to the landlord, these original brass pipes leading to the tenant's toilet had been cleared and checked in 2007 and it was found that they were not subject to any build-up or flaws. At that time, a portion of the old down-pipe was replaced with a new plastic drain pipe and was attached to the brass junction below the toilet.

The landlord supplied a photograph of the brass junction with the plastic downpipe disconnected and pointed out that the white material shown protruding from the brass junction was confirmed to be padding.

The landlord's witness, who was the plumber that attended to do the repair, stated that there was material in the pipes that should not have been flushed down the toilet and that this could only have come from the tenant's unit, being that the tenant lived on the top floor.

The landlord's position is that the tenant should pay for the plumbing repair costs and the deductible amount charged by the insurance company for the damage to the other suites affected by the flooding.

The landlord testified that the tenant had also severely damaged the door and evidently made an unsuccessful attempt to repair it. The landlord submitted a photo of the damage and invoice for the repair and stated that they are only asking for a portion of the costs incurred, given the age of the door.

The landlord testified that the tenant had burned the countertop and had submitted photographic evidence of the damage, as well as an invoice for a portion of the replacement cost. The landlord testified that the counter-top was likely installed just prior to the tenancy and would have been 8 years old. The landlord stated that only part of the replacement cost is being claimed.

The landlord is also claiming compensation for a window that was cracked during the tenancy and replacement of a patio door handle that had been broken off sometime during the tenancy.

The tenant disputed ever flushing anything like pads or diapers down the toilet and pointed out that they had been living in the unit for 7 years without incident. The tenant stated that, during their tenancy, other areas of the building and their own suite were plagued with occasional leaks and drainage problems and this necessitated replacing portions of the pipes in other units. The tenant's position was that, given the 1960's

vintage of the complex, it was likely that all of the older plumbing should have been modernized and that any failure of drainage or water pipes was likely due to normal wear and tear..

The tenant also questioned how a leak from their toilet could compromise 4 different units, particularly as that they were not aware of any leakage for the entire day in question. The tenant testified that no sewage had backed up into their bathroom and their toilet bowl had never overflowed at all. For the tenant, this would seem to confirm that the leaks came from aging pipes beneath the floor of the suite.

With respect to the damaged door the tenant agreed to pay the landlord for a portion in the amount of \$75.00.

The tenant acknowledged that they had burned the countertop, but disputed that the counter was new when they took tenancy. The tenant testified that the surface was discoloured and badly worn through normal wear and tear and would likely need to be updated..

In regard to the window crack, The tenant testified that the crack had occurred from the wind and pointed out that the photo showed that the location and nature of the crack makes it unlikely that it was caused by being hit. The tenant stated that all of the windows were old and worn. The tenant pointed out that, during the tenancy, one window even suddenly fell out of its frame without warning and had to be re-inserted..

With respect to the patio door handle, the tenant stated that it fell off during normal use during the tenancy.

Analysis:

An Applicant's right to claim damages from another party is dealt with in section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that, in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to the repair and maintenance of plumbing, I find that this obligation falls to the landlord under the Act and would not be a responsibility of the tenant.

Moreover, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A 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, having regard to the age, character and location of the rental unit to make 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. While 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, a tenant is not required to make repairs for reasonable wear and tear.

I find that a portion of the brass pipes beneath the tenant's toilet were likely 50 years old and that a patch-up repair occurred four years ago which involved replacing original down pipe with pipes that were made of a different composite material and what appeared to be a plastic connector. I find that there is no way to know for certain whether or not this repair compromised the integrity of the drainage or made it more prone to clogs.

Even if I found that the tenant caused the blockage itself, the fact that the water only backed up to a point beneath the toilet before finding egress could possibly be attributed to a problem with the toilet flange seal. In that case, I would have to find that the leak would not be a matter for which the tenant would be responsible. I find that, had all of the other pipes under the unit been intact and functional, any blockage would have likely made the water back up into the toilet bowl and logically this water would then overflow over the rim of the toilet bowl. In that case, the problem would probably have been discovered immediately, thereby preventing further damage to other units.

I find that in order to support the landlord's claim for repairs to the plumbing, the landlord would need to prove that the clog in the drain was caused by the tenant's intentional or negligent misuse of the facility. However, I find that this may well have

been a situation where the tenant or a guest of the tenant had inadvertently flushed insoluble material down the toilet. I find that it was an isolated occurrence and could have been an accident, particularly being that the tenancy spanned 7 years without any similar mishap.

For the reason above, I am unable to find that a violation of the Act or agreement was willfully committed by the tenant with respect to the toilet clog or the resulting damages that stemmed from the flooding. I find that the landlord has not successfully met element 2 of the test for damages and therefore the claims for \$830.19 for plumbing repairs and \$2,500.00 claimed for reimbursement of the insurance deductible must be dismissed.

With respect to the \$75.00 claimed for the door repair, I find that the landlord is entitled to be compensated this amount.

With respect to the countertop damage, I find that the tenant did damage the counter beyond normal wear and tear and that this was in violation of the Act. I accept the tenant's testimony that the counter was not brand new when they moved in and that it was already showing signs of staining and discoloration prior to the tenancy.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item or finish in the home would be.

With respect to the counter damage, I find that the average useful life of countertops is set at 25 years. I find that the original countertop was replaced sometime during the last 50 years since the building was constructed, and that the current counter is likely less than 25 years old. Therefore, I grant the landlord's claim of \$100.00 towards the replacement of the counter.

With respect to the crack in the window, I find that the landlord has not sufficiently proven that the tenant was responsible and in breach of the Act. In regard to the broken door handle, I find that this damage was likely due to normal wear and tear. Therefore, I find that these two claims fail to meet element 2 of the test for damages and must be dismissed.

Based on the evidence and the testimony, I find that the landlord is entitled to a total monetary compensation of \$225.00 comprised of \$75.00 for the door damage, \$100.00 for a portion of the counter replacement and the \$50.00 cost of this application..

Conclusion

I order that the landlord retain \$225.00 from the tenant's security deposit and interest of \$398.64 leaving \$173.64 still owed to the tenant.

I hereby issue a monetary order to the tenant for \$173.64. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave.

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: August 25, 2011.

Residential Tenancy Branch