



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit in full or partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

What order should be made with respect to the security deposit?

Background and Evidence

This month-to-month tenancy commenced July 1, 2011. The monthly rent of \$1000.00 was due on the first day of the month. The tenant paid a security deposit of \$500.00. A move-in inspection was conducted and a move-in condition inspection report completed on June 22, 2011.

The tenancy ended August 31, 2013. A move-out inspection was conducted and a move-out condition inspection report completed on August 31. No damage was noted on the condition inspection report.

The day before the move-out the tenant had reported that the bathroom sink was slow to drain. The landlord arranged for a plumber but he did not attend until after the move-out inspection had been completed.

The plumber pointed out a very fine crack in the sink. According to the landlord, the crack was not very noticeable. The plumber suggested that the crack may have been caused by something dropping on the sink.

The landlord bought a new sink for \$232.28. The problem was that the sink was seventeen years old and sinks of the same size and shape as the cracked sink are no longer available so it was impossible to find a sink that would fit the existing hole in the bathroom vanity exactly. The landlord hired a carpenter to adapt the existing vanity for

the new sink. This included building a ceramic tile border around the upper edge of the vanity to close in the gaps. The carpenter charged her \$150.00 for remove the cracked sink, dispose of it, make the adaptation to the vanity and build the ceramic border. The landlord then had to pay a plumber \$195.05 to install the new sink.

The tenant testified that he had not realized that the line in the sink was a crack; he had always assumed it was a hair. He also testified that he did not recall anything heavy dropping on the sink. The tenant suggested a different cause for the crack. Based on his conversation with a different plumber he suggested that the crack may have been caused by a previous plumber over-tightening the drain while repairing the sink. The sink had been repaired during the tenancy. The tenant's source told him that if the crack goes from the drain outward, usually the cause was over-tightening the drain.

The landlord responded that the sink had been repaired some time in the past and if that repair was the cause of the problem wouldn't the crack have shown up sooner?

The landlord also pointed out the tenant and his roommate had lots of company and lots of parties during their tenancy so one of the guests could have dropped something on the sink.

The landlord also claimed \$99.68 for carpet cleaning. The tenant testified that they did not clean the carpets because the tenancy agreement did not require them to do so.

The tenant testified that he never gave his forwarding address to the landlord in writing; only orally over the telephone.

The tenant filed evidence to show that the landlord had provided him with a copy of the move-out condition inspection report twenty-three days after the inspection had been conducted.

Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord from damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of

fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

In this case, both parties have presented alternate explanations for the cause of the crack in the sink based on second hand (hearsay) evidence. Both explanations are plausible. It is entirely possible that the tenant, his roommate, or one of their guests over two years dropped something on the sink. On the other hand, the photograph filed by the landlord shows that not only does the crack extend to the drain; it also appears to curl around it. This is consistent with the crack being caused by a previous plumber over-tightening the drain.

There are two equally plausible explanations for the crack: in one scenario the tenant would be responsible; in the other the tenant would not. The onus is on the landlord to provide sufficient evidence to tip the balance of probabilities in her favour. She has not done so and the claim for damage to the sink is dismissed.

Even if I had found that the tenant was responsible for the damage to the sink I would not have allowed the full amount of the landlord's claim. As set out in *Guideline 40* the expected useful life of a bathroom sink is twenty years and of cabinetry twenty-five years. There was nothing wrong with the cabinet; any work done to the cabinet was a consequence of replacing the sink. Accordingly, I would have applied a depreciation rate of 85% to the damages proven by the landlord and found that the landlord was entitled to payment of \$86.60 (\$577.33 X 15%).

With respect to the claim for carpet cleaning, *Residential Tenancy Branch Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* sets out the standards for cleaning and repairs to be applied to landlords and tenants. The *Guideline* states that generally, at the end of tenancy of a year or more, the tenant will be responsible for steam cleaning or shampooing the carpets. This obligation exists whether it is specified in the tenancy agreement or not. I award the landlord \$99.68 for carpet cleaning.

With respect to the tenant's argument based upon when the copy of the move-out condition inspection report was delivered to him, section 35 of the *Residential Tenancy Act* provides that a landlord and tenant must complete a move-out condition inspection report and section 18 of the *Residential Tenancy Regulation* states that a copy of the report must be given to the tenant within 15 days of the later of:

- the date the condition inspection is completed; and,
- the date the landlord receives the tenant's forwarding address in writing.

Similarly, section 38(1) of the *Act* provides that within the same time period the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

The tenant never provided his forwarding address in writing to the landlord so the fifteen day period never started. The landlord provided a copy of the agreement and filed her claim against the security deposit within the required time period. She complied completely with the legislation.

Conclusion

I find that the landlord has established a total monetary claim of \$149.68 comprised of the cost of carpet cleaning in the amount of \$99.68 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain this amount from the security deposit in full satisfaction of the claim. I order that the landlord pay the balance of the security deposit, \$350.32, to the tenant and I grant the tenant a monetary order in that amount. If necessary, the order may be filed in 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: January 14, 2014

Residential Tenancy Branch

