



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, FF, O

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; orders for compliance, and authorization to reduce rent payable for repairs or services or facilities not provided. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant had named two respondent landlords in filing this Application. The respondent requested that his personal name be excluded as named party. The tenant did not object to this request. I also noted that two applicant tenants were named on this Application yet the tenancy agreement names only one tenant. The Application has been amended to identify the landlord and tenant as it appears on the tenancy agreement. At the hearing, the tenant's wife represented the tenant and the landlord was represented by an agent. For ease of reference in writing this decision, submissions by either the tenant or the tenant's wife have been reflected as submissions of the tenant. Similarly, submissions by the landlord's agent have been reflected as submissions of the landlord.

The tenant pointed out that the landlord's evidence was received by the tenant only two days before the hearing. The landlord submitted that the landlord's evidence was mailed to the tenant on April 25, 2015 using the rental unit address even though the tenant has since vacated the rental unit because that is the only service address provided to the landlord. The tenant acknowledged that they have not provided the landlord with any other service address and that they acquired a mail forwarding service in order to receive mail sent to the rental unit. I noted that the landlord had mailed his

evidence to the Branch on the same day he mailed evidence to the tenant and the Branch received the landlord's evidence on April 28, 2015. I found it likely that the delay experienced by the tenant is attributable to the tenant's decision to use the rental unit address as a service address and a mail forwarding service. I was satisfied the landlord served his evidence within the time limit for doing so and I accepted it into evidence. The tenant commented that because the landlord's evidence was received so late, the tenant could not provide evidence in response. I informed the parties that I would permit the tenant to read from relevant text messages during the hearing and I would consider other options if determined necessary. After hearing from both parties, I found it unnecessary to request the tenant to send copies of text messages.

Having heard that the tenant have since vacated the rental unit and the landlord has regained possession of the unit. As such, I found the tenant's request for orders for compliance and authorization to reduce rent payable to be moot and the balance of this proceeding dealt with the tenant's monetary claim against the landlord.

The tenant had requested compensation of \$4,999.00 but the Monetary Order worksheet that accompanied the Application identified only two specific amounts: \$320.00 and \$229.00 for damaged property. The tenant had identified other matters on the worksheet but did not include a specific request for compensation for each of the items in order to arrive at a total of \$4,999.00. The tenant explained that is how Branch staff instructed them to complete their Application and Monetary Order worksheet. Withdrawing the claim in its entirety, without prejudice, was discussed; however, the landlord stated that he wished to proceed as he had taken time to prepare for this dispute and had witnesses available to testify. I informed the parties that I would consider the claim for damaged property by way of this proceeding as those claims were clearly outlined and I dismissed the tenant's other claims with leave to reapply considering the tenants may have received incomplete information from Branch staff. The landlord expressed concern that the rental unit is now vacant and losses must be mitigated. Since the tenant's claims relate to events that have already taken place and the landlord is not precluded from re-renting the unit I was satisfied that dismissal with leave was not unduly prejudicial to the landlord.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for damaged personal property?

Background and Evidence

The one-year fixed term tenancy commenced August 1, 2014. The monthly rent is \$3,500 payable on the 1st day of every month. The rental unit is a condominium in a newly constructed building that had not been occupied before this tenancy.

The tenants vacated the rental unit at the end of March 2015 and mailed the keys to the landlord in April 2015. Although the parties had provided submissions concerning notice to end the tenancy, return of keys to the landlord, and failure to perform a move-out inspection, I did not consider those issues further as this Application is limited to a monetary claim for damage to the tenant's personal property that occurred during the tenancy.

Below, I have summarized the tenant's claims against the landlord and the landlord's responses.

Damaged towels - \$320.00

It was undisputed that water began dripping from the ceiling in the laundry room on or about January 13, 2015; that the dripping was reported to the landlord; the landlord attended the unit in response to the complaint; and, the landlord reported the issue to the person responsible for maintenance at the building. The dripping continued for several weeks as the cause of the dripping water was investigated and a solution determined. At the end of February 2015 work was done on the dryer vent and a removable panel was installed on the ceiling so as to permit future inspections. The landlord was of the position that the work performed at the end of February 2015 resolved the problem; however, the tenant stated that the water continued to drip after the end of February 2015.

The tenants seek compensation of \$320.00 for damage to eight Turkish cotton bath towels. The tenant submitted that the towels became stained with rust and a greasy substance when they were used to absorb water that dripped from the ceiling of the laundry room for several weeks. The tenant submitted that the water was dripping every day or every other day and that containing the water was vital to prevent somebody from slipping on a wet floor and because the flooring just outside the laundry room was hardwood. The tenant submitted that on February 5, 2015, via text message, the landlord was informed that the towels were getting stained and in verbal communications with the landlord the landlord was informed that the towels were expensive. The tenant stated that in response to her text message, the landlord told the

tenant to use something else to contain the water. The tenant explained that the drips came from various places in the ceilings and that using towels was the most effective at as opposed to a bucket. The tenant stated that they had 10 towels in the set they acquired as an anniversary present, with the exception of little children's towels. The tenant explained that cheaper towels had not been purchased as they expected the issue to be resolved much sooner than it was.

The landlord stated that the issue was resolved in a timely manner considering the cause of the problem was not known at first and required investigation and then a remedy determined by engineers. The landlord also submitted that the water did not necessarily fall every day and that it may have ceased for a week at a time since the problem was related to temperature and wind.

The landlord stated that he expected the tenant to contain the water but that he did not expect the tenant to use expensive towels that were an anniversary present. The landlord pointed out that he did not see any damage to the towels in the photographs or video although he acknowledged that the water drips may have contained rust as water dripping from the dryer vent travelled over plumbing pipes in the ceiling cavity before coming through the ceiling. Further, the landlord was of the position that this dispute could have been resolved if the tenants had submitted receipts to demonstrate their losses.

The tenant acknowledged that receipts for the towels were not provided. The tenant submitted that the towels were an anniversary gift received the year before.

The tenant provided digital evidence including still pictures of the exposed ceiling cavity and water that had dripped onto the washing machine and floor in the laundry room. The tenant provided a video of water falling from the ceiling at a fairly constant rate and a large towel lying on the floor to catch the water.

Damaged outdoor table and chairs -- \$229.00

The tenants are seeking compensation of \$229.00 for damage to their outdoor table and chair set. The tenants explained that the patio was covered and they purchased a new table and chair set when they moved into the rental unit but that there were three vents that dripped water onto their furniture since the start of the tenancy. The problem was reported to the landlord and the issue was looked at by the building's maintenance person but a solution was not found. The tenant understood that one vent was a dryer vent, one was for the air conditioning/heating system, and the purpose of the other vent was unknown by the tenant. The tenant submitted that they tried placing the furniture

in different places on the patio but the dripping water could not be avoided. The regular occurrence of water falling on the furniture caused the wicker chairs to become mouldy and rot and the table became rusty. The tenants threw the table and chair set away when they moved out of the rental unit. The tenants explained that the pieces of the set are not available individually and that a similar set costs \$229.00.

The landlord acknowledged that water was dripping from the vents onto the covered area of the patio, that he had been notified of the issue, and that this issue was turned over to the maintenance person for the building. The landlord did recall that the tenant had a table and chair set on the patio when he went to inspect the issue. The landlord stated that this was an issue for other units in the building as well. Although the tenant had not provided a receipt for the table and chair, the landlord stated that he found the tenant's request for \$229.00 to be reasonable and he was agreeable to compensation for this amount.

Analysis

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law and is suitable for occupation, having regard for its age, character and location.

Where a rental unit is in need of repairs, it is expected that the tenant notify the landlord of the issue so as to mitigate the tenant's losses and that the landlord will respond and ensure necessary repairs are made in a timely manner. Where a tenant suffers loss of use of the rental unit due to a repair issue, the tenant may pursue the landlord for compensation for breach of contract even if the breach was no fault of the landlord. The tenants had indicated a loss of use in their Application; however, that part of their claim was dismissed with leave as explained earlier in this decision.

Where there is damage to a tenant's personal property from an unforeseen defect or a malfunction of the building, component of the building, or appliance provided under the tenancy agreement, the tenant may only pursue a claim against the landlord for damages or loss only if the landlord has been negligent. This is provided for in Residential Tenancy Policy Guideline 16 which provides policy statements with respect to claims in damages. The guideline provides, in part:

Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[my emphasis added]

Negligence is a failure to act in a manner that a reasonably prudent person would given the circumstances. Negligence includes carelessness.

In this case, it was undisputed that the tenant notified the landlord of water leaking from the laundry room ceiling and I find that ensuring the matter was repaired was a statutory duty the landlord had under the Act. I am satisfied that the landlord attended the property in a timely manner in response to the tenant's notification and that the landlord appropriately acted by notifying the building's maintenance person of the issue since mechanical systems of a condominium building were involved.

I also accept the landlord's submission that where several mechanical systems co-exist within a wall or ceiling cavity, as in this case, it is not always obvious as to the cause of the problem and investigation is required, followed by an appropriately planned remedy, which may take some time to accomplish. I find I was not provided sufficient evidence to suggest that the remedy could have been accomplished sooner. It is also important to note that I have made no finding as to whether the leak was resolved at the end of February 2015 as I find that several weeks of water leaking is sufficient to cause damage to the tenant's personal property.

While I am satisfied that the landlord did not cause the water leaking or cause delay in its repair I note that during the several weeks that the water was dripping the tenant was expected to catch and contain the water so as to prevent other damage to the unit or building, which the tenant did. However, from the evidence before me, I find it obvious that the landlord contributed very little, if anything, to the ongoing need to catch and contain the water that fell from the ceiling. Rather, this appeared to have been left to the tenant to handle for several weeks. The evidence is also undisputed that the tenant

complained of stained towels to the landlord on February 5, 2015 yet the landlord still took no action to provide the tenant with an alternative means of catching the water or provide the tenant with other towels for the tenant to use. I find in these circumstances that it is reasonable to expect that the landlord would have at least offered to supply towels or another means of catching and containing the water to the tenant and, in my view, appeared rather indifferent to the tenant's increasing frustration. I find the landlord's failing in this situation was the lack of any meaningful contribution or solution to containing the water that fell over several weeks for which the tenant had to continually monitor and catch so as to prevent harm to persons or things. Therefore, I find the landlord negligent in this regard.

Upon viewing the photographs and video of the open ceiling cavity, the water dripping off of plumbing pipes, and water drips on the edge of washing machine and floor of the laundry room, I accept that using towels was an effective way of catching and containing the water. Further, I find it likely that the towels suffered from rust stains given the water was travelling over plumbing pipes that appeared to have some rust or staining on them. Therefore, I accept that the towels were damaged and having found the landlord negligent by not providing the tenant with another means of catching the water, I find the tenant entitled to compensation for the towels.

Although the tenant did not provide receipts for the towels I accept that receipts for towels purchased a year before as a gift may not have been retained. From the photographs, I also accept that several large towels were necessary to catch the volume of water that was dripping at times. Therefore, I accept the tenant's submissions, on the balance of probabilities, that 8 of their 10 large towels were damaged and I award the tenant \$320.00 for this loss, as claimed.

I further award the tenant compensation of \$229.00 for damage to their patio table and chairs as the landlord was largely agreeable to the tenant's claim for this item.

Given the tenant was successful in establishing entitlement to recover the amounts claimed, I further award the tenant recovery of the \$50.00 filing fee paid for this Application.

In light of all of the above, I provide the tenant a Monetary Order in the sum of \$599.00 [calculated as \$320.00 + \$229.00 + \$50.00] to serve and enforce as necessary.

Conclusion

The tenant's request for compensation for damaged property was successful and the tenant has been provided a Monetary Order for the sum of \$599.00 to serve and enforce upon the landlord.

Any other monetary claims of the tenant were dismissed with 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: May 08, 2015

Residential Tenancy Branch

