



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented by its agents. All in attendance were a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent MG confirmed the landlord received the tenant's dispute resolution package. The parties confirmed that they were in receipt of all evidence before me.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in or about July 2009. Current monthly rent is \$1,965.00. The tenant occupies the rental unit with his partner and a roommate. The rental unit has one bathroom and two bedrooms. The tenancy is set to end 1 October 2015.

On or about 22 April 2015, the tenant reported water around the bathroom sink to the landlord by email. The tenant reported in that email that he had previously thought the water was from splashing, but now was of the view that the sink was leaking from the seal. That same day, the landlord arranged for a plumber to attend at the rental unit. The plumber attended at the rental unit that day. The plumber did not note any leak that day; however, the plumber did replace the faucet's cartridge.

On or about 23 April 2015, the tenant again reported a water leak. The agent MG testified that the plumber attended that day and observed no leak at that time and determined that it was not necessary to replace the entire faucet.

On or about 6 May 2015 in the early morning, the tenant slipped in some water. The tenant reported that there was water on the carpet outside of the bathroom. The agent MG testified that the plumber attended at the rental unit and did note that there was water on the carpet. The agent MG testified that water was observed on the countertop. The agent MG testified that the plumber did not understand how the water could have gotten to the carpet. The plumber could not locate a source for any leak. At this point, the plumber and landlord's agent determined it was appropriate to replace the faucet. The plumber ordered the replacement faucet.

On or about 2330 of 6 May 2015, the tenant and his partner returned home from a friend's home. The tenant testified that he entered into the kitchen. The tenant testified that he was carrying a bag that contained plastic ties and pliers. The tenant testified that he slipped on water on the kitchen floor. The tenant testified that the slip caused him to release the bag. The bag then landed on his laptop computer.

The tenant testified that when the pliers within the bag collided with the lid of his computer, the pliers caused a dent in the laptop casing. The tenant testified that the screen is still functional, but shows minor discolouration, but that the discolouration is "livable". The tenant expressed that his main concern is with the dent.

The tenant testified that he investigated the source of the water in the kitchen. The tenant testified that he could not locate a source within the kitchen. The tenant observed that there was water on the carpet of the flex space at the anterior of the kitchen. The flex space shares a wall with a hallway that leads to the bathroom. The

tenant observed that there was water on the carpet in the hallway. The tenant observed that this water led to the bathroom. The tenant shut off the water to the sink.

On or about 8 May 2015, the faucet was replaced. On or about the afternoon of 8 May 2015 a carpet contractor attended at the rental unit. The contractor noted that the carpet had been pulled back from the edging. The contractor noted dampness along the wall edge.

The agent MG testified that there was no damage to the interior wall of the rental unit. The agent MG testified that no water leaked into the suite below the rental unit. The landlord submits that if the leak did originate from the bathroom sink, the tenant was aware of the continued leak issue from earlier that morning and ought to have turned the water valve off at the basin. The landlord submits that the water in the kitchen may have been from a kitchen sink leak that was not reported to the landlord until 8 May 2015.

The tenant submits that the repairs made over the course of 22 and 23 April 2015 were negligent. The tenant submitted that if not for the negligent repairs, the water leak of 6 May 2015 would have not occurred and he would have not slipped and that the damage to his computer would have not occurred. The tenant submits that the plumber ought to have replaced the entire faucet in the initial repair.

The agent EM testified that the plumber has worked with the landlord for eighteen years. The agent EM testified that in that time she has not observed work she would characterize as negligent and has not had issue with the plumbers work.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the

loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenant alleges that the landlord breached its obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and that this breach caused damage to the tenant's laptop.

There is little factual disagreement in this matter. The parties agree that:

- the tenant reported leaking on 22 April 2015;
- the plumber replaced a cartridge on 22 April 2015;
- the tenant reported leaking on 23 April 2015;
- the plumber attended and did not observe any leaking on 23 April 2015;
- the tenant reported leaking on 6 May 2015;
- on 6 May 2015, the plumber attended the rental unit and determined it was necessary to replace the faucet; and
- the faucet was replaced on 8 May 2015.

I find that the landlord had an obligation to repair the leaking sink pursuant to subsection 32(1) of the Act. I find that the landlord met its obligation by sending a repairperson the same day each complaint was raised. I find that the tenant has failed to show that the plumber (as the landlord's agent) acted negligently in not replacing the faucet on 22 or 23 April 2015. At that point, the landlord was entitled to explore remediation short of replacing the entire faucet as there was not a substantial amount of water leakage or an observable source at that time.

I find that the delay in replacing the faucet from 6 May 2015 to 8 May 2015 was not so long as to prevent the landlord from meeting its obligation pursuant to subsection 32(1) of the Act. Further, I find that the plumber (as the landlord's agent) did not act negligently when he did not turn off the water to the faucet on 6 May 2015 when he observed water on the counter. I accept that he did not believe that the amount of water the tenant had on the carpet could have resulted from the small amount of water on the counter. If the tenant was concerned, he should have shut off the water at the source. Turning off the water to the faucet is not specialty plumbing knowledge and is within the scope of actions available to an ordinary tenant if there are concerns about water leaks.

It is unfortunate that the landlord was unable to prevent the water more extensive water leak, but the landlord's conduct does not amount to a breach of the Act. As the tenant

has failed to show the landlord breached the Act, he is not entitled to compensation for his loss.

As the tenant has not been successful in this application, he is not entitled to recover his filing fee from the landlord.

Conclusion

The tenant's claim is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: September 15, 2015

Residential Tenancy Branch

