Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, CNC, MNDC, RP, RR, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenants' application for orders setting aside the notice to end tenancy; a monetary order including compensation for emergency repairs; a repair order; and an order reducing rent for repairs, services, or facilities agreed upon but not provided.

Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

Upon questioning at the outset of the hearing it was acknowledged by the landlord that she had given notice to end tenancy by way of a letter delivered to the tenants; not in the prescribed form. I advised the parties that section 52 of the *Residential Tenancy Act* sets out that in order to be effective a notice to end tenancy given by a landlord must, among other things, be in the prescribed form. As the notice given by the landlord was not in the prescribed form, it was not valid. I ruled that he tenancy continued until ended in accordance with the legislation.

As the tenancy was continuing the application for return of the security deposit was no longer relevant.

Similarly the parties advised that the request repair had been completed. This made the application for a repair order irrelevant as well.

The hearing continued on the monetary claims of the landlord and the tenants only.

Issue(s) to be Decided

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

- Are the tenants entitled to compensation for emergency repairs and, if so, in what amount?
- Are the tenant's entitled to a rent reduction and, if so, in what amount?

Background and Evidence

The rental unit is an apartment style strata unit located on the second floor of a mixed use building. There are commercial units on the main level and residential units on the floors above. The landlord's business occupies the commercial unit below the rental unit.

The landlord has owned this unit since 1996. She testified that the unit was completely remodelled three years ago and that all of the appliances including a dishwasher and stacking washer/dryer unit were replaced at that time.

This one year fixed term tenancy commenced July 1, 2015. The monthly rent of $1425.00 is due on the first day of the month. The tenants paid a security deposit of $700.00. There is a written tenancy agreement but a Move-In Condition Inspection Report was not completed.

On July 27 the tenant contacted the landlord by e-mail to advise that: "We have a stopped-up kitchen sink upstairs in #201. It plugged a few times earlier in the month but drained and we thought nothing of it. Now it is completely plugged and has not drained since Saturday. I cannot think of anything we could have done to cause it. On the infrequent occasions that we use the garbage disposal for vegetable peels we run it with lots of water . . .Shall we call a plumber or can Dave take a look at it, please?" The tenant's undisputed evidence is that the landlord told them the sink was their responsibility so they unplugged it using a plunger.

On August 20 the washing machine overflowed causing water to go into a commercial unit below; not the unit occupied by the landlord but one of her neighbours. The tenant immediately notified the landlord of the mishap. The landlord responded that: "We had that happen once and it was because my husband didn't check the pockets and the coins block the hose. I agree it isn't normal wear and tear since I believe the machines are only 4 years old. I am still away until Monday so please go ahead and arrange the appliance repairs and he can determine the cause."

The tenants did arrange for the repair. The invoice from the repairman is dated August 26, 2015. The notes on the invoice are: "Repair as req, water level control pressure tube had come dislodged, re-attach, check & test operation, wash, fill & drain all OK." The invoice amount was $99.75, which was paid by the landlord.

On August 31 the landlord wrote the tenant: “I still have not received a bill from the association regarding the damage caused by the overflow of the washing machine. The repair person indicated that it was very unusual and could not comment on what triggered the issue but now we need to deal with the aftermath.” The landlord also asked the tenant to contact the insurance adjuster, which she did.

On September 15 the landlord wrote the tenant that: “The insurance company believes that the issue was preventable and the damage was caused by overloading the washer. I cannot prove otherwise and since this has never happened to any of the 3 condos I have the same stacking machine in I cannot really argue. I will let you know if I win the case but I am cringing at the damage claim as it is.”

In October a dispute on an unrelated issue occurred between the landlord and the tenant.

On December 21 the strata sent an invoice to the landlord for the water damage in the amount of $425.23. The invoice said:” Chargeback for Firm Management maintenance invoices [list of invoice numbers], copies included.” The landlord testified that she did not get a copy of the invoices referred to but since she trusts these people she paid the bill as requested.

The landlord forwarded the invoice to the tenant with the following e-mail: “It seems from the email below that the repair bill caused by the over flowing washer went astray and they have now sent me the reminder attached. Since there was no history of issues in 20 years with a washer in any of my 13 rental condos . . it is obvious you still thought you had a full sized washer and put too many times in it causing it to vibrate and detach the hose that regulates the water flow. I confirmed this with the repair person and felt that, to keep things amicable, I would absorb the cost. This new bill has changed my mind. I can take the payment from your damage deposit or you can drop a cheque off at my office for $525.00. Your choice.”

The tenants did not pay the amount requested.

As the conflict between the parties intensified they were both in communication with the repairman about the cause for the washing machine overflow. The landlord testified that the repairman told her that the cause of the overflow was that the washer had been overloaded. The tenant emailed the repairman, asking if this was what he had said. The repairman replied: “This was some months ago but, as I recall, I told the landlord

that this type of problem could certainly be caused by an off balance load or a heavy load."

On December 25 the kitchen sink plugged. In light of their previous interaction on the sink the tenants arranged for the repairman who had repaired the washing machine to come. The invoice from the repairman is dated December 28, 2016, and is in the amount of $126.00. The tenants paid this invoice. The note on the invoice was: "clear kitchen sink with 28 feet of cable. All drawing well."

The tenant testified the when the repairman unplugged the sink he showed them a two foot long grease plug and told them that the pipe was at an interesting angle and that the plug had developed over time.

The landlord testified that none of the previous tenants had reported a problem with drainage and that there was no problem with drainage in her commercial unit. She testified that she spoke to the repairman after the sink was plugged. He suggested to her that the problem was that the tenants did not know how to use a garburator properly, in particular, they did not use enough water and this caused the blockage. She also said that the repairman did not say anything to her about a grease plug. She stated that when the garburator plugs up the water goes into the sink beside it.

The tenant responded that they have never reported a problem with the garburator; they only use it occasionally; and, when they do, it works fine. She also said the garburator drains into the main sink and there is no problem with it.

On January 5, 2016, the tenant reported that the dishwasher was not working. The landlord responded: "First the garburator, then you overflow the washing machine, and now a 3 year old dishwasher fails to work. Once my staff tell me you have dropped off the cheque for the damage to the commercial space I will have the dishwasher fixed."

The dishwasher was repaired on February 5 at a cost of $95.00. Although the landlord did not file a copy of the invoice from the same repairman in evidence she said it contained a notation: "repair failed connection terminal box".

The landlord argued that the damage to the dishwasher occurred when the garburator overflowed, thereby causing a short circuit in the dishwasher. The tenant testified that in her conversation with the repairman he told he the circuit in the dishwasher failed; nothing had overflowed; and the situation could not have been prevented.

The landlord is claiming reimbursement of the invoice from the management company in the amount of $425.25 and the repair bill for the washing machine in the amount of $99.75 for a total of $525.00. The tenant is claiming reimbursement of the bill for unplugging the kitchen sink in the amount of $126.00 and compensation in the amount of $50.00 per month for loss of use of the dishwasher.

Analysis

Washing Machine

On any claim the person making the claim must establish their claim on a balance of probabilities.

At first the landlord reported to the tenant that the repairman "could not comment on what triggered the issue". The subsequent e-mail from the repairman was "that they type of problem could certainly be caused by an off balance load or a heavy load" (emphasis added). Clearly the gentleman was not prepared to commit himself.

There is no evidence that an off-balance or too- large load are the only possible reasons for a regulator hose becoming unattached. Further, there is no information as to whether this is a situation that could have developed over time- and there therefore may have been contributed to by the previous tenants – or whether this is a situation that would develop the first time an off-balance or too-large load was placed in the washing machine and therefore the sole responsibility of the current tenants.

Basically the evidence boils down to the tenant saying she did not overload the washing machine and the landlord saying she must have. This is not enough evidence to tip the balance of probabilities in the landlord's favour.

Even if the evidence had established that the tenants were solely responsible for the overflow the landlord has a second problem in that the invoice submitted in evidence in support of the claim for payment of $425.23 is that absolutely no particulars were provided as to what the charges related to. Without any information about the charges it is impossible to determine whether they are charges properly attributable to the tenants.

Plugged Sink

Section 33 sets out a detailed procedure to be followed when an emergency repair, as defined by that section, is required. The definition of "emergency repair" included "damaged or blocked water or sewer pipes or plumbing fixtures". Subsection (3) sets out that a tenant may have emergency repairs made only when the following conditions are met:

- the repairs are required;
- the tenant has made a t least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and,
- following those attempts the tenant has given the landlord reasonable time to make the repairs.

Subsection (6) provides that the landlord does not have to reimburse the tenant for the cost of emergency repairs if the tenant made the repairs before on or more of the conditions were met.

The tenant's evidence is that they did not attempt to contact the landlord before arranging for this repair. Even if they did not expect a favourable response from the landlord they must still contact the landlord before arranging for the repair. Accordingly, the tenants' claim for reimbursement of the money paid for the sink repair is dismissed.

Dishwasher

As to the cause of the problem with the dishwasher, the only evidence is the parties' conflicting reports of their conversations with the repairman and the landlord's assertion that since she has never personal experienced an appliance failure like this, it must be the tenants' fault. Once again, the evidence does not establish, on a balance of probabilities that the dishwasher failure was caused by the tenant's actions.

Just as a tenant has no legal right to withhold rent as a means of forcing a landlord to make repairs or to take a particular action, a landlord has no right to withhold repairs as a means of forcing a tenant to pay a bill.

The evidence is clear that the landlord did just that. The repairman who ultimately did this repair has responded quickly to all previous requests for repairs so it is clear that the principal delay was the landlord's reluctance to call him.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

The claim of $50.00/month for the lack of the dishwasher is reasonable. The tenants were without a dishwasher for one month so I award the tenants' $50.00 for this item.

Filing Fee

As the tenants were substantially successful on their application I find that they are entitled to reimbursement from the landlord of the $100.00 fee they paid to file it.

Conclusion

a. The notice to end tenancy is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

b. The tenants are awarded $150.00 comprised of $50.00 compensation for the lack of a dishwasher for one month and the $100.00 fee paid by the tenants for their application. Pursuant to s. 72 this amount may be deducted from the next rent payment due to the landlord.

c. All other claims by the landlord and the tenant are dismissed.

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: April 07, 2016

Residential Tenancy Branch