# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with a landlord's application, as amended, for a Monetary Order for compensation for damage to the rental unit and damage or loss under the Act, regulations, or tenancy agreement, as amended. 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.

The hearing was held over two dates. An interim decision was issued after the first hearing date and should be read in conjunction with this decision.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation from the tenants for damage to the rental unit and damage or loss under the Act, regulations or tenancy agreement in the amount claimed?

Background and Evidence

The tenancy was set to commence on August 1, 2015 although the tenants were provided early occupancy on July 31, 2015. The tenants paid a security deposit of $750.00 and were required to pay rent of $1,500.00 on the first day of every month. The tenancy ended on July 31, 2016 by mutual agreement and the security deposit was subsequently refunded.

The rental unit is a condominium located in a strata property. Under the tenancy agreement, the landlord provided the tenants with an in-suite washer and dryer along with furniture and linens, including pillows, among other things.

By way of this application the landlord seeks to recover damages and losses related to water damage that occurred on August 1, 2015. It was undisputed that water escaped from the washing machine in the rental unit and travelled to the condominium located directly below the rental unit.

The landlord did not carry homeowner's insurance at the time of the water leak. In email communication to the tenants the landlord had indicated she had cancelled her homeowner's insurance because the rates had increased. However, during the hearing the landlord stated she had allowed the insurance policy to lapse. Whatever the reason, the landlord did not have insurance coverage at the relevant time. I did not hear any evidence to suggest the tenants carried tenant's insurance.

Shortly after the egress of water, the services of a restoration company were obtained by the strata property management company to extract and dry wet areas in the rental unit and the condominium below; and, the condominium below was repaired to its "pre-loss condition" for a cost of $5,115.63. The strata corporation pursued the landlord for recovery of these costs and eventually engaged a lawyer to further pursue the matter in March of 2016. The landlord resolved the dispute with the strata corporation to avoid going to court by eventually repaying the strata corporation for the costs described above, plus the strata corporation's legal fees of $2,308.64.

The landlord seeks to recover the above-described expenditures from the tenants as well as the estimated cost of $1,078.00 to remove and replace the bottom two feet of drywall and baseboards in the laundry area of the rental unit. The landlord acknowledged that the drywall in the rental unit has not yet been removed or replaced and explained that estimates for this work were obtained as it is customary in another province to remove the bottom two feet of drywall where there has been a flood. The tenant questioned the need to remove and replace the bottom portion of the drywall as the contractors who viewed the unit commented on how well the walls had been dried during the emergency response. The tenants also pointed out that that the work has not yet been done, despite the water escape taking place more than a year ago, and the unit has been re-rented.

The landlord also seeks to recover postage costs of $136.68 and loss of wages in the amount of $500.00 from the tenants. I dismissed the postage costs summarily as the costs to prepare for and participate in dispute resolution proceedings are not recoverable under the Act, with the exception of the filing fee. I dismissed the landlord's claim for loss of wages summarily as this claim was not supported by sufficient particulars as to the basis for this claim, such as the specific dates of loss of wages or the reason for the time missed, or documentary evidence to support the amount of the claim.

The reason water escaped from the washing machine was the primary dispute in this case. Although I heard and considered a great deal of testimony as well as written submissions and evidence from both parties, with a view to brevity, I have only summarized the most relevant submissions below.

In brief, the landlord attributed the water leak as being the result of negligence on part of the tenants when they washed pillows in the washing machine and the tenant's failure to first determine whether it was appropriate to do so and to monitor the machine while it was running.

The tenants acknowledge that pillows were put in the washing machine but were of the position they were not negligent and point to evidence that the leak was the result of a possible mechanical failure and they did not observe any water on the floor due to a dip in the flooring under the washing machine.

In support of the landlord's position the landlord provided an email from the previous tenant who indicated they had used the washing machine on the last day of their tenancy without issue. The landlord also submitted that during the remainder of the subject tenancy and during the current tenancy there have been no other leaks from the washing machine.

The landlord also had email communication with an appliance dealer who opined that a pillow should not be washed in the subject washing machine based upon the model and serial number provided by the landlord. The landlord also communicated with a customer service representative with Whirlpool who stated "based on the model and serial number provided, we would not recommended pillows to be washed in your product."

The landlord also provided a list of items that may be washed in the washing machine as provided by the manufacturer and the landlord pointed out that pillows are not listed.

In light of the above, the landlord is of the position that the cause of the leak must be from the tenant's inappropriate use of the washing machine and negligence.

The tenant stated that she washed multiple loads on August 1, 2015, some that included a pillow and others that did not, that she did monitor the status of the washes. The tenant testified that she did not observe any water on the floor and stated there is a small step-down under the washing machine where the water likely accumulated before travelling down to the lower unit since she did not see any water on the floor. The tenant provided photographs that show tile flooring in the laundry room that does not appear to extent all the way under the washing machine. The tenant explained that she was unaware of any leak until the occupant of the lower unit came and notified her.

The tenants submitted that the pillows that were washed were provided to them by the landlord and the pillows have labels indicating they are machine washable. The landlord was of the position the label refers to the wash-ability of the materials in the pillow and does not refer to the washing machine's ability to accommodate the pillow.

The tenants also provided a copy of a magazine article, an advertisement for laundry detergent, and a cleaning website print-out that indicate pillows may be cleaned by putting them in a washing machine. The tenant stated that she washes pillows approximately once per year and had no issue with washing pillows in the past.

The tenants submitted that they were not provided a manual or instruction sheet for the washing machine and used it under the assumption it was operating properly as that is how it was

advertised by the landlord. The landlord suggested that the tenants could have contacted the landlord if they had any questions about use of the appliance.

The tenants had the washing machine inspected by a Whirlpool technician on September 12, 2015. The tenants provided a copy of the report from the technician. In the report, the technician describes the areas of the machine that he inspected and the results of the inspection. The technician indicates that he found no leaks during the inspection despite running multiple cycle tests. The technician noted that the water level filled properly at all four levels, that he "checked over and all the components are functioning properly and tested okay with no leaks." The technician also indicates that he "inspected pillows that were washed and they are machine washable so no problem there". The technician also writes: "Possible pressures switch (W103611356) failure and the washer overflowed." The technician recommends that the "customer" is to continue to monitor for leaks and callback if anything is detected.

Both parties pointed to the above report in support of their respective position. The landlord pointing out the technician found nothing wrong with the machine and that there were not subsequent leaks reported. The tenants pointing out the technician inspected the pillows, noting no problem with washing them, and that the pressure switch may have been to blame. The tenant went on to state that the pressure switch cannot be tested and the technician suggested the tenants only wash small loads, which they did during the remainder of their tenancy, and they left a note to this effect on the washing machine for the next tenants.

Aside from the above arguments, the parties also made arguments as to apportioning liability where a condominium is tenanted and a party does not carry adequate insurance. A court case and a previous dispute resolution decision were provided for my consideration and referred to by the parties.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. The balance of probabilities means the circumstances put forth are more likely than an alternative. Accordingly, the preponderance of evidence must support one version of events over another. That being said, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the landlord has the burden of proof.

Under section 32 of the Act, a tenant is responsible to repair damage caused by way of their actions or neglect. The tenants in this case were provided a washing machine under their tenancy agreement and I find that the tenants had the right to use it for its intended purpose. According, merely using the machine and having a leak occur during its use does not automatically impose an obligation upon the tenants to repair damages that result from a leak. Rather, I find the landlord must establish that the tenants were negligent in their use of the washing machine to establish an entitlement to compensation from the tenants.

In this case, it is undisputed that the washing machine leaked on August 1, 2015 and on that date the tenant washed pillows, among other things, in multiple loads. Whether it was the load containing the pillows that resulted in the leak is uncertain. Nevertheless, both parties provided opposing evidence as to whether it is appropriate to wash pillows in the washing machine. Although the landlord provided evidence that the customer service representative indicated washing pillows in the subject machine are not recommended, the tenants had a Whirlpool technician inspect the washing machine and the pillows and found no issue with washing the pillows. Accordingly, I find the evidence is not sufficiently persuasive for me to conclude that washing pillows in the washing machine resulted in the leak.

The landlord also largely relied upon circumstantial evidence in pointing to the tenants being negligent which was that there had not been a leak prior to or after August 1, 2015. However, the tenants also provided evidence from a Whirlpool technician pointing to the possibility that the pressure switch may have failed. Appliances, like any piece of equipment are prone to mechanical failure at some point in time due to age and deterioration and tenants are not responsible for mechanical failures of the landlord's appliances in such circumstances. Further, the tenants provided a reasonable explanation for not having another leak, which is that they ran only small loads after the technician inspected the unit.

Also of consideration, as pointed out by the tenants and shown in their photographs, it appears to me that the tile floor in front of the laundry machines does not extend all the way underneath the machines which could have be a contributing factor to water escaping the rental unit without flowing onto the tile floor where it would have been noticed by the tenants. I find that any consequence from having added tile flooring in the laundry room and creating a lower area under the machine must be attributed to the landlord and not the tenants.

Considering all of the above, I accept that it is possible that water leaked from the washing machine due to improper loading of the machine by the tenants; however, I find the tenants have provided sufficient evidence to demonstrate mechanical failure was reasonably likely as well, and the uneven floor was a contributing factor to water egress from the rental unit. Therefore, I find the landlord has not met her burden to prove the tenants are responsible for the damage and loss that result from the washing machine leak and I dismiss the landlord's claims against the tenants.

Conclusion

The landlord's application is 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: November 25, 2016

Residential Tenancy Branch