



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for damage to the rental unit, an compensation for loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the tenancy agreement and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant B.K. confirmed the spelling of his name and I have amended the Landlord's application for dispute resolution by correcting the spelling pursuant to section 64(3)(c) of the *Residential Tenancy Act*.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for damage from the Tenants?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated the tenancy began October 1, 2014. Monthly rent was payable in the amount of \$1,200.00.

In the within hearing the Landlord sought compensation in the amount of \$475.80 for money he claimed to have paid to have the flooring repaired in the rental unit. The Landlord testified that the repairs were necessary due to water damage caused by the Tenants. In particular he alleged that the Tenant, B.K., was soaking his pots in the sink and left the water running which overflowed and went from the kitchen into the bathroom where the bathroom tile lifted. The Landlord further stated that at the time of the incident, the B.K. called the Landlord and spoke to the Landlord's son and admitted to him that the water damage occurred because he left the faucet running and fell asleep.

The Landlord also stated that the Tenants' claim that the water originated from under the sink due to leaky pipes was "completely false". He noted that it is not possible that the damage was caused by leaking pipes given the volume of water which went to the bathroom. He stated that when his son attended the rental unit, he had to bring numerous towels to help B.K. clean up the water in the bathroom all of which were washed in more than one laundry load.

Attached to the Landlord's evidence was a copy of a receipt for \$493.90 for building supplies related to the repair of the bathroom floor. He confirmed that he had to remove the toilet and the toilet seal when he replaced the tile.

The Landlord confirmed that he returned the security deposit to the Tenants when they moved out. He further stated that he tried to resolve matters with the Tenants when they returned the key as he told the Tenants they had to pay for the damage to the floor.

L.H. testified on behalf of the Tenants. L.H. stated that B.K. noticed the water on the floor in the bathroom and that B.K. informed the Landlord immediately. She said the Landlord's son attended at which time they discovered that there was water damage under the sink. L.H. confirmed she was not at the rental unit at the time.

L.H. stated that they did not overflow the sink. She further stated that the Landlord's son speculated that the pipe was leaking within the wall and that it has likely been leaking for months such that it made its way to the bathroom flooring.

L.H. further stated that the Landlord's son pulled the tile up in the bathroom and under the sink in the kitchen. Introduced in evidence was a copy of the post the Tenant L.H. made on social media, (approximately two days after the water was discovered) which shows the damage under the kitchen sink and the tile being pulled up in the bathroom.

The Tenant further stated that the bathroom tile was spongy, and wet, but there was not two inches of water as alleged by the Landlord.

At my request, B.K. also testified on behalf of the Tenants. He testified that he did not "recall overflowing any sink." He stated that he noticed the water damage on the bathroom floor but claimed that the kitchen floor was not wet. He confirmed that he called the Landlord spoke with the Landlord's son and told him "there is water on the bathroom floor and I am not sure where it is coming from." He stated that the Landlord's son came downstairs and they both looked at the damage. B.K. claimed that the Landlord's son determined that the water was likely coming from a leak under the kitchen sink. B.K. further stated that he did not look under the sink, but he recalls the Landlord's son stating that there was water. He also stated that the Landlord's son tightened the pipes and there were no more water issues.

B.K. further stated that the tiles were replaced a day or two after the incident. He also testified that when they moved out the Landlord did not state that he expected compensation for the cost to repair the flooring.

In reply, the Landlord stated that the Tenants were lying. He further stated that his son determined that the water was from the sink overflow when B.K. was sleeping, not from any alleged leak. The Landlord also stated that he came approximately half an hour to an hour after his son arrived at the rental unit and that he also looked to determine the source of the water and confirmed there was no leak in the pipes under the sink. He confirmed that the dishes and the pot were still in the sink when he arrived which was consistent with the information B.K. had given to his son about overflowing a pot. The Landlord reiterated that the Tenant, B.K., also borrowed 7-8 towels to clean up the significant amount of water on the bathroom floor.

The Landlord also stated that the Tenant, L.H., was in the U.K. at the time this incident, not at the rental unit when the flooding occurred and was gone for a week. L.H. stated that she was not in the U.K. at the time.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 32(3) of the Residential Tenancy Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

I prefer the Landlord's testimony that the Tenant, B.K., overflowed the kitchen sink when he accidentally fell asleep and the resulting water caused damage to the bathroom floor. I further accept the Landlord's testimony that the Tenant, B.K. borrowed 7-8 towels from the Landlord's unit to clean up the water from the overflowing sink and that he personally attended the rental unit shortly after his son to confirm the source of the water.

L.H. provided the Tenants' submissions. While she may or may not have been in the U.K. at the time of the incident, she confirmed that she was not at the rental unit at the material time. Therefore, the evidence she provided was, for the most part, second hand as she had received it from B.K.

It was only at my request, that the Tenant, B.K. testified. When I asked him to provide his response to the Landlord's claim he stated "I don't recall overflowing the sink". I found this response to be indirect and evasive. He then stated that the water came from a leaking pipe in the kitchen.

I find that the damage caused to the bathroom floor (as depicted in the photo submitted by the Tenants and which was posted to L.H.'s social media account), is more consistent with a significant amount of water, such as an overflowing sink, rather than a slow leak.

Further, it is notable that on L.H.'s post (made two days after the incident) she writes "sink has leaked which in turn has spread to the bathroom!!! Luckily our landlord lives upstairs..." I find her comment that the "sink leaked" to be more consistent with an overflowing sink, rather than leaky pipes.

Further, I find it highly unlikely that the water would travel from a leaking pipe under the kitchen sink, across the wood floor (which appears to be laminate) to the bathroom without the Tenants noticing the moisture. I find it more likely, that the damage occurred after a significant amount of water pooled in the bathroom due to the overflowing sink.

Accordingly, I find the Tenants are, pursuant to sections 32, 67, and 72 of the *Act*, responsible for compensating the Landlord the \$475.80 claimed for damage to the bathroom floor in addition to recovery of the \$100.00 filing fee for a total of **\$575.80**.

The Landlord is granted a Monetary Order for this sum and must serve a copy of the Order on the Tenants. Should the Tenants fail to pay this amount, the Landlord may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord is entitled to a monetary Order in the amount of **\$575.80** including the \$475.80 claimed for losses incurred by the Landlord due to the Tenants overflowing the kitchen sink and damaging the bathroom floor as well as recovery of the \$100.00 filing fee.

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 23, 2016

Residential Tenancy Branch