



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC, MND, FF

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 15, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The female Tenant acknowledged receipt of these documents.

On April 26, 2017 the Landlord submitted 25 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant, via registered mail, on April 26, 2017. The female Tenant stated that this evidence was received on April 30, 2017 and it was accepted as evidence for these proceedings.

I find that the Landlord's evidence was not received by the Tenant at least 14 days prior to the hearing, as is required by Residential Tenancy Branch Rules of Procedure. The Agent for the Landlord stated that there was a delay in serving the Landlord's evidence as they were waiting for documents from the owner of the rental unit and from the Strata Corporation. As the evidence was not served on time, the Tenants were given the opportunity to request an adjournment for more time to respond to the Landlord's evidence. The Tenants indicated that they were prepared to respond to the Landlord's evidence without the need for an adjournment.

On April 26, 2017 the Tenants submitted 13 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was sent to the Landlord, via registered mail, on April 26, 2017. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

I have read all of the documentary evidence submitted by the parties; however that information is only referenced in this decision if it was relevant to my findings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions and they were advised of their legal obligation to speak the truth during these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for plumbing costs and damage to the rental unit?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2013.

The Agent for the Landlord stated that on July 20, 2016 the kitchen sink in the rental unit overflowed and that the water from the overflowing sink leaked into the suite below the rental unit. The Landlord is seeking compensation for plumbing costs associated to the leak and for the costs of repairing the damage to the lower suite.

In support of this claim the Agent for the Landlord stated that:

- the leak in the lower unit was reported to the Strata Council by the occupants of the lower unit on July 20, 2016;
- on July 20, 2016 the Strata Corporation sent a plumber to the rental unit, who cleared the blockage in the kitchen sink;
- the leak was reported to the Landlord by the Strata Council on July 20, 2016;
- on July 20, 2016 the Landlord also sent a plumber to the rental unit, by which time the problem had been rectified;
- a plumbing problem was not reported by the Tenants on July 11, 2016 or July 20, 2016; and
- she has no record of a plumbing company attending the rental unit on July 11, 2016.

In the Agent for the Landlord's written submission she reiterated some of the aforementioned testimony, however in the written submission she makes no reference to the Landlord sending a plumber to the rental unit on July 11, 2016. Rather, she declares that after "the emergency plumber had repaired the blocked sink" and "after reviewing our records" the Landlord determined that "earlier that same week" the Landlord's plumbing company had attended the unit to "unclog a blocked bathtub drain and kitchen sink".

In response to this claim the female Tenant stated that:

- on July 11, 2016 she was draining the bathtub in the rental unit when she heard water running in the kitchen;

- she ran to the kitchen and realized the kitchen sink was overflowing;
- she ran back to the bathtub and inserted the drain plug into the bathtub drain, which stopped the water from draining into the sink;
- on July 11, 2016 the plumbing problem was reported to an agent for the Landlord, hereinafter referred to as “Andrea”;
- on July 11, 2016 a plumbing company attended the rental unit; and
- on July 11, 2016 the plumber removed hair from the drains in the bathtub and bathroom sink.

In response to this claim the male Tenant stated that another plumber attended the rental unit for an inspection approximately 4 days after the incident on July 11, 2016, at which time the plumber determined that the bathtub and all sinks were draining properly.

The Landlord submitted an invoice from a plumbing company, dated July 20, 2016. The Agent for the Landlord stated that this plumbing company was sent to the rental unit by the Strata Corporation. This invoice indicates that the plumber was sent as a result of a backed up kitchen sink; that the drain was working properly when tested; and that the “owner” had stated a plumber had been there “earlier” and may have pushed the “blockage down the line”.

The Landlord submitted an invoice from a plumbing company, dated July 28, 2016. The Agent for the Landlord stated that this plumbing company was sent to the rental unit by the Landlord. This invoice indicates that the plumber “unclogged bathroom sink, tub, and kitchen sink. Removed hair from both drains, causing the blockage”.

The Landlord contends that the tenancy agreement and the *Residential Tenancy Act (Act)* requires tenant to keep drains clear of debris. The Tenants argue that they keep their drains clear of debris and that the blockage was the result of an on-going internal plumbing problem.

The Agent for the Landlord and the Tenants agree that on April 07, 2015 the Tenants reported that the sink was backing up; that the Tenants were able to clear the blockage on their own, which was reported to the Landlord; and that a plumber was not sent to the rental unit due to the fact the blockage had been cleared.

The Agent for the Landlord and the Tenants agree that on May 18, 2015 the Tenants reported that the sink was backing up; that a plumber was sent to the rental unit; and that the plumber cleared a blockage.

The Agent for the Landlord and the Tenants agree that on April 10, 2016 or April 11, 2016 the Tenants reported that the sink was backing up; that the Tenants were able to clear the blockage on their own, which was reported to the Landlord; and that a plumber was not sent to the rental unit due to the fact the blockage had been cleared.

The Tenants contend that the history of the blockages in the rental unit is indicative of an on-going problem with the plumbing. She stated that the plumbing report from May 15, 2016, which was not submitted in evidence, indicates the sink was blocked with food and "debris".

The Agent for the Landlord contends that the history of blockages suggests that the Tenants are not using the garburator properly and that the Tenants are not properly clearing the drains. She stated that the plumbing report from May 15, 2016, which was not submitted in evidence, indicates the sink was blocked with food and "debris".

The Agent for the Landlord stated that when this tenancy began the Tenants were given instructions on how to use the garburator, which the Tenants deny. The Tenants acknowledge that they were given instructions on how to clear the garburator once their sink backed up.

### Analysis

Regardless of whether the sink overflowed on July 11, 2016 or July 20, 2016, there is no dispute that the kitchen sink in the rental unit overflowed, causing damage to the suite below the rental unit.

On the basis of the testimony of the female Tenant and the absence of evidence to the contrary, I find that one of the plumbers responding to the incident removed hair from the bathroom sink and bathtub. I find that this testimony is consistent with the information in the plumbing invoice dated July 28, 2016.

On the basis of the plumbing invoice dated July 28, 2016 and in the absence of any evidence to the contrary, I find that the plumber who removed the hair concluded that the hair was causing the blockage. I specifically note that the plumber did not identify any other potential cause for the blockage.

The relevant issue in this dispute is whether or not the Tenants were responsible for the plumbing blockage that resulted in the sink overflowing and for ensuring that all drains remained free of blockages.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances the Landlord bears the burden of proving the Tenants did not comply with section 32 of the *Act*.

Section 32(1) of the *Act* stipulates that a landlord must provide and 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 a tenant.

Section 32 of the *Act* stipulates, in part, that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; that a tenant 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; and that a tenant is not required to make repairs for reasonable wear and tear.

I find that section 32 of the *Act* requires tenants to ensure that sink, bathtub, and shower drains are not blocked by items, such as diapers, sanitary wipes, and large food items, which are not intended to be disposed of in those drains. As there is no evidence that the Tenants disposed of items that are not intended to be placed in a drain, I cannot conclude that the Tenants breached section 32 of the *Act*.

The evidence before me is that the drains in this rental unit were blocked by an accumulation of hair. As hair is an item that is typically introduced into a drain, as a result of showering and personal grooming, I cannot conclude that the Tenants breached section 32 of the *Act* as a result of hair accumulating in the drains.

I find that any suggestion that a tenant is responsible for clearing a blockage within a plumbing system imposes an obligation onto the tenant that is not contemplated by the *Act*. In my view, clearing internal plumbing blockages is an obligation of the Landlord, pursuant to section 32(1) of the *Act*.

Although Residential Tenancy Branch Policy Guidelines do not specifically mention internal plumbing blockages, this decision is consistent with Residential Tenancy Branch Policy Guideline #1, which stipulates that landlords are responsible for clearing any blockages in pipes leading to a septic tank except where the blockage is caused by the tenant's negligence.

In the absence of evidence that the Tenants misused the drainage system in the rental unit or that they did not clear hair that is accumulating near the top of the drain, I find that the accumulation of hair inside plumbing should be considered normal wear and tear. As the Tenants are not obligated to repair normal wear and tear, I find that they are not obligated to pay the plumbing costs associated to clearing this blockage. I therefore dismiss the Landlord's claim to recover plumbing costs.

As I have concluded that the Tenants were not obligated to clear the blockage in the plumbing, I find that they are not liable for the damage that occurred as a result of the blockage. I therefore dismiss the Landlord's claim for repairing the damage that occurred as a result of the sink overflowing.

On the basis of the undisputed evidence, I find that the sink in the rental unit backed up in April of 2015, May of 2015, and April of 2016, all of which were reported to the

Landlord. I find that the Landlord has submitted insufficient evidence to establish that these plumbing problems show that the Tenants have been misusing the drains. In reaching this conclusion I was heavily influenced by the absence of evidence from a plumber that suggests the drains have been used improperly.

I find it equally possible that the history of plumbing problems is indicative of an internal plumbing properly that is preventing the sink from draining properly, which is contributing to an accumulation of food and hair.

In adjudicating this matter I have placed no weight on the Agent for the Landlord's testimony that the plumbing report from May 15, 2016 indicates the sink was blocked with food and "debris". I find it reasonable to expect that a sink, which is equipped with a garburator, would be blocked with food if there is a blockage in the pipe somewhere past the garburator.

I find that the Landlord was aware of an on-going plumbing problem prior to the incident in July of 2016. Although the Landlord appeared to be willing to respond to those reports, I note that no evidence was submitted to show that the Landlord made an effort to determine whether the blockages were being caused by a systemic plumbing problem. I further note that there is no evidence that the Landlord provided the Tenants with any directions that might help prevent further blockages, with the exception of running the garburator once per week.

I find that the Landlord has failed to establish the merit of this Application for Dispute Resolution and I dismiss the claim to recover the fee for filing this Application.

### Conclusion

The Landlord's application for a monetary Order 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 *Act*.

Dated: May 11, 2017

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Residential Tenancy Branch