



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREAT RADIANCE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) provided undisputed affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenant confirmed receipt of the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail January 26-28, 2017. The tenant did not provide any documentary evidence. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2001 on a fixed term ending on August 31, 2002 and then thereafter on a month-to-month basis. The monthly rent began at \$755.00 payable on the 1st day of each month. A security deposit of \$377.50 was paid on August 20, 2001.

The landlord seeks a monetary claim of \$1,913.80 which consists of:

\$199.50	Repair holes/painting
\$290.10	Replace electrical breakers/ water damage
\$105.00	Remove antennae
\$1,304.69	Replace/Repair countertop/cabinet

The landlord provided affirmed testimony that at the conclusion of a previous dispute resolution hearing the tenant's tenancy was ended as a result of a 1 Month Notice to End Tenancy issued for Cause. The landlord has provided a copy of the decision and order that shows that in that hearing the Arbitrator decided that the tenant's application (CNC) was dismissed and upheld the 1 Month Notice. An order of possession was granted to the landlord. In that decision the landlord referred to a finding that the tenant failed to maintain reasonable health, safety and housing standards regarding a major water pipe leak. It states in part,

In making my findings in this case, I refer to the following sections of the Act. Section 32(2) of the Act requires a tenant to maintain reasonable health, safety and housing standards. Section 33 of the Act requires a landlord to provide to a tenant contact details for emergency repairs. Section 33 of the Act also defines an emergency repair as those involving major leaks in pipes.

Based on the foregoing, I find that when the Tenant discovered the leak in the kitchen faucet on February 8, 2016, the Tenant's duty pursuant to the Act and in accordance with section 13 of the tenancy agreement was to immediately notify the Landlord or the building manager. However, I find the Tenant went against this requirement by attempting to fix the repair himself.

Furthermore, the Tenant also failed to abide by this requirement the next day on February 9, 2016 when he discovered that the leak had gotten worse. At this point in time, it would have been a reasonable expectation that the Tenant would have taken the necessary steps in informing the Landlord or the building manager of the problem even though the spurting water stopped when the faucet was turned off and the Tenant left the rental unit for work.

I do not accept that the Tenant's ability to take reasonable steps in informing the Landlord was inhibited because he had to rush off to work. Furthermore, if the Tenant had to rush off to work then he could have informed the Landlord on his way to work or when he got to work. Instead the Tenant left this vital step of informing the Landlord until the end of his work day by which point the leak had emanated itself in the downstairs suite.

On this basis, I find the Tenant put the Landlord's property at significant risk and at the very least could have mitigated damage and loss by informing the Landlord in a timely and reasonable manner which he did not. Furthermore, I am satisfied by the Landlord's photographic evidence and plumber's report that the leak was a slow one which occurred over a number of weeks which explains the mould growth.

The Tenant explained that he had not seen this mould growth because he only used this cupboard for garbage and storage of products. While I find that this could be a plausible explanation as to why the Tenant did not see the mould growth, I find it difficult to believe that when the Tenant did smell mould and attempted to fix the leaking faucet, it would have been highly likely that this would have come to his attention during this time. At that point, the Tenant should have had known that this was a serious problem that warranted immediate notification to the Landlord.

Based on the foregoing, I find that the Tenant failed to notify the Landlord of the leaking faucet when it came to his attention and this put the Landlord's property at significant risk, caused significant damage to the downstairs suite as verified by the invoices relating to the remediation costs involved, and put the downstairs resident's safety at risk as water was leaking into the electrical panel of that suite. Therefore, I find the Landlord has proved the Notice and it is upheld. The Tenant's Application to cancel the Notice is dismissed. [Reproduced as written]

In support of the landlord's claim, the landlord has provided copies of the 4 invoices for the work performed due to the water leak and tenant's actions for an installed satellite antennae without permission of the landlord. The tenant has also provided undisputed affirmed testimony that he did install the antennae and could not remove it. The tenant does not dispute this portion of the landlord's claim and concedes to the \$105.00 claim.

The tenant disputes the remaining portions of the landlord's claim stating that the water damage was as a result where a "faucet looks to have been leaking for a few weeks" and was not his fault. The landlord argues that because of the tenant's inaction to notify the landlord, the tenant took away the landlord's opportunity to deal with the leak and any potential damage that could have been prevented.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. The landlord has provided undisputed affirmed evidence that the tenancy ended as a result of the tenant's neglect in informing the landlord of the water leak as shown in the Arbitrator's decision on the previous Residential Tenancy Branch File. A finding was made that the tenant failed to reasonably notify the landlord of the water leak. In that hearing both parties relied upon the landlord's submissions that a plumber's report who wrote, "Faucet looks to have been leaking for a few weeks". The tenant argues that this shows that the water leak was leaking over time and that he did not notice it. The landlord argues that as per the report, the water leak occurred over time and that the tenant failed to notice it and report it to the landlord. The landlord argued that because of this, the landlord was not able to mitigate any possible damage caused by the water leak. In this case, I find that the landlord has established a claim for damages caused by the water leak. The tenant had failed to notice and notify the landlord within a reasonable amount of time of the water leak. I find as such, that the landlord has provided sufficient evidence to show that the tenant was negligent and is responsible for the damages claimed by the landlord of \$1,903.80.

The tenant has also conceded the landlord's \$105.00 claim to remove the satellite antennae installed without permission of the landlord.

The landlord has established a monetary claim of \$1,913.80.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$377.50 security deposit and the accrued interest of \$17.68 in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$1,713.62.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: July 17, 2017

Residential Tenancy Branch