



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for the cost of restoration of the unit after a flood, for the cost of cleaning the water pipes, for the cost to replace a kitchen counter top, and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

Issues to be decided

Was the flood caused due to negligence on the part of the tenant? Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy started on August 01, 2013 and ended on March 31, 2017. The monthly rent was \$1,450.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$725.00.

The landlord testified that about six months into the tenancy, in February 2014, he hired a plumber to service the plumbing. The plumber found items that should not have been put down the drain and informed the tenant to keep these items including food scraps out of the sink. The tenant responded by purchasing and placing a strainer in the sink.

The landlord testified that he was not informed of any problems with plumbing until December 02, 2016 when he received an email from the neighbour below letting him know that there had been a flood in the rental unit on November 23, 2016.

The tenant agreed that he had not informed the landlord at the time the flood had occurred. The landlord visited the unit immediately upon finding out about the flood and met with the tenant and the neighbour. The landlord filed photographs of the water damage to the unit below.

The tenant stated that the handle of the kitchen faucet was faulty and had fallen off resulting in the water running continuously, which caused the sink to overflow. The landlord stated that the tenant had not informed him of the faulty faucet handle. The landlord also added that had the drains and pipes been clear of debris the water would have drained out and the sink would not have overflowed.

The landlord hired a plumber to check the pipes and the plumber found multiple items that should not have been in there and which had caused the pipes to get clogged. The landlord filed photographs of the items removed from the pipes by the plumber. The items included large amounts of hair, food and parts of a broken shower head.

The landlord also stated that the kitchen counter top was water damaged and filed photographs of the damage. The landlord testified that the kitchen counter top was replaced in 2011 and provided a quotation to replace the counter top. The landlord stated that the strata counsel had billed him for the cost of resetting the fire alarm that had been set off by the flood. The landlord did not provide an invoice or proof of payment. The landlord testified that the occupant of the unit below agreed to allow the landlord to cover half of her restoration costs. The landlord filed a copy of the restoration invoice.

The landlord is claiming the following:

1.	Cleaning the pipes	\$142.80
2.	Restoration of the unit below	\$1,384.00
3.	Reset fire alarm	\$252.00
4.	New counter top	\$418.88
5.	Install counter top	\$682.50
6.	Filing fee	\$100.00
	Total	\$2,980.18

Analysis

Based on the documentary evidence and sworn testimony of both parties, I find that a water leak did take place in the rental unit which impacted the unit below.

I further find that the tenant had a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the tenant should have taken reasonable steps to prevent damage by informing the landlord of the faulty faucet as soon as he became aware of the problem. The duty to minimize the loss generally begins when the person becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will result in damage that could have been prevented.

The Legislation requires the person show that reasonable efforts were made to reduce or prevent the damage. Based on the testimony of both parties, I find that the landlord's testimony credible when he testified that he was not informed of the faulty faucet.

In addition, the landlord provided sufficient evidence by way of invoices and photographs to demonstrate that the water pipes were clogged due to the presence of items that should not have been allowed to enter the drain. I find on a balance of probabilities that had the faucet been repaired or had the drains not been clogged, the overflow of water that caused the flood could reasonably have been avoided.

1. Cleaning the pipes - \$142.80

Based on the testimony of the landlord and the photographs filed into evidence, I find that the water pipes were clogged with items that should not have been allowed to go down the drain. Initially, the landlord had the pipes cleaned out approximately six months into the tenancy and therefore I find that the new debris in the pipes could only have been put there by the tenant. The landlord has provided an invoice and photographs to support his claim. Accordingly I award the landlord his claim for the cost of cleaning the pipes in the amount of \$142.80.

2. Restoration of the unit below - \$1,384.00

The landlord filed an invoice for the restoration of the unit below. The landlord has made a claim for half of this invoice. I find that the pipes were clogged which resulted in the overflow of water when it ran continuously from the broken faucet. The tenant testified that the faucet handle was faulty from the start of the tenancy. The landlord stated that the tenant did not notify him about the faucet handle and also did not notify him about the broken shower head.

The landlord testified that upon visiting the rental unit after the resident of the unit below informed him of the flood, on December 02, 2017, he found out about the faucet and showerhead and he replaced both of them immediately. The landlord added that the overflow would not have taken place if the pipes were not clogged.

Based on the testimony of both parties and the photographs filed into evidence, I find that the overflow resulted from a faucet that ran for a long period of time and from the water being unable to flow through the clogged pipes.

Since I have found that the tenant was responsible for causing the clog by putting hair, food and parts of the broken shower head down the water pipes, I find the tenant responsible for the cost of drying out and restoring the unit below. I award the landlord her claim of \$1,384.00.

3. Reset fire alarm - \$252.00

The landlord filed a copy of an email from the strata informing her that she would have to pay this amount to reset the fire alarm. The landlord did not file an invoice or proof of payment and therefore I dismiss the landlord's claim.

4. New counter top - \$418.88

5. Install counter top - \$682.50

The landlord testified that the faulty faucet handle was responsible for the water damage to the kitchen counter top. The landlord stated that he had replaced the counter top in 2011. Based on the photographs I find that the counter top was water damaged and on a balance of probabilities, it is more likely than not that the water from the faulty faucet caused this damage.

Since I have found that the tenant did not notify the landlord of the faulty faucet, I find that the tenant was negligent and did not take steps to mitigate the damage.

Section 34 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the countertop. As per this policy, the useful life of a counter top is 25 years. The landlord testified that the counter top was installed in 2011 and therefore at the end of tenancy it was approximately six years old and had 19 years of useful life left.

Accordingly, I find that the landlord is entitled to \$800.00 which is the approximate prorated value of the remainder of the useful life of the counter top.

6. Filing fee - \$100.00

The landlord has proven most of her case and is therefore entitled to recover the filing fee of \$100.00.

The landlord has established the following claim:

1.	Cleaning the pipes	\$142.80
2.	Restoration of the unit below	\$1,384.00
3.	Reset fire alarm	\$0.00
4.	New counter top	\$400.00
5.	Install counter top	\$400.00
6.	Filing fee	\$100.00
	Total	\$2,426.80

The landlord has established a claim for \$2,426.80. I order that the landlord retain the security deposit of \$725.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,701.80. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit of \$725.00. I grant the landlord a monetary order in the amount of **\$1,701.80**.

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: September 13, 2017

Residential Tenancy Branch