



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications. The landlord applied for compensation for damage to the rental unit, authorization to retain the security deposit, and recovery of the application filing fee. The tenant applied for return of the security deposit and recovery of the application filing fee.

Both the landlord and the tenant attended the hearing. Both parties were given a full opportunity to be heard, to present documentary evidence and to make submissions.

Service of the parties’ applications, notices of hearing, and evidence was not at issue.

Issues to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

If so, is the landlord entitled to retain some or all of the security deposit in satisfaction of that compensation?

Is the tenant instead entitled to return of some or all of the security deposit?

Is either party entitled to recover the application filing fee?

Background and Evidence

A written tenancy agreement was in evidence, recording a fixed term lease beginning on May 1, 2016 and ending on April 30, 2017, with a monthly rent of \$922.00 due on the first of each month. An addendum to the tenancy agreement includes 10 other terms, including that no pets are allowed and that the tenant will use only the amount of hydro normally used by one person.

It was agreed that another tenancy began in or about April of 2013, and that this initial fixed term tenancy was renegotiated every year. A security deposit of \$450.00 was paid in March of 2013 and remains with the landlord.

It was further agreed that this tenancy ended on April 30, 2017, with the expiry of the most recent fixed term. Move-in and move-out inspection reports were conducted and were included in evidence.

The parties were unable to agree on the allocation of the security deposit. The tenant provided the landlord with her forwarding address in writing on April 29 or 30, when the condition inspection report was completed. The landlord applied to retain the security deposit on May 5, 2017, within the timelines set out in the Act.

Replacement of bathroom sink

The landlord claims for the replacement of a bathroom sink (materials and labour). The move-in condition inspection report in the landlord's evidence indicates a "spot" on the sink. The tenant did not advise the landlord of any concerns about the sink until March of 2017 when she texted to tell him that the sink had broken: "Hello. I was cleaning the bathroom sink this morning and it broke. I guess the fracture had been building up over the years and finally gave way." The sink was approximately five years old.

The landlord argued that the tenant must have put significant force on the sink to cause it to break. He says that the sink in another unit also has a crack, but it has not broken. Both the landlord and the tenant submitted photographs of the broken sink basin.

The tenant does not believe she should be responsible for the cost of replacing the sink. She stated that when she moved in there was a crack in the basin, which the landlord's wife recorded as a "spot," and that it has spread over time. She never thought about telling the landlord about the spreading because she knew the landlord's wife was aware of the "spot," and because the spreading was so gradual.

The tenant submitted her own copy of the move-in inspection report. It includes additional notes that she wrote after the inspection, but still in 2013. At the bottom of the page where the "spot" in the sink is recorded, she had added: "There is a hairline fracture about palm size in bathroom sink." The tenant recognized in retrospect that she should have written this note while the landlord was still present in the rental unit for the move-in inspection.

Repair to sump pump

The landlord also claims for the cost of cleaning and repairing the sump pump. Although the rental unit is connected to the municipal sewage system, the toilet, sink and shower from the

bathroom are drained through a sump pump because of the grade of the rental unit. The sump pump serves only the one bathroom.

The landlord testified that when the tenant moved in, he told her there was a sump pump, and that only toilet paper could be flushed, and that the tenant responded that she was familiar with sumps. The landlord further said that it would be obvious to the tenant that there was a sump pump because it was located in a storage closet in the rental unit.

The landlord said that during the move-out inspection he flushed the toilet, and the drain seemed okay, if a bit slow, but it was difficult for him to know because he was not used to the toilet. The following day while attending to the sink repair the landlord noticed that the water in the bathroom was not draining well. As a result, the sump pump was drained and a mass was removed. A photograph of the mass was in evidence. The landlord suggested that the mass consisted of tampon strings, and said that he saw a partial tampon floating in the toilet during the repair. The landlord said that the repair required many hours of labour. A receipt in support of the landlord's claim for \$300.00 in labour for "cleaning sewage back up, removing pump, and cleaning blockage" was in evidence.

The tenant testified that she never had problems with the toilet in the rental unit, that there was never a conversation with the landlord at the beginning of the tenancy about restrictions around the sump pump, that she doesn't know what a sump pump is, and that she does not use tampons at all.

The tenant also included in her evidence correspondence between herself and the landlord about various showings and open houses of the rental unit over January, February, and March of 2017, while it was for sale.

Analysis

Residential Tenancy Branch Policy Guideline #1 clarifies the responsibilities of landlords and tenants around maintenance, cleaning, and repairs. A tenant is not responsible for reasonable wear and tear. "Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion." However, tenants are responsible for repair or maintenance required due to their deliberate damage or neglect. Accordingly, an important question is whether there has been deliberate damage or neglect by the tenant.

Replacement of bathroom sink

Based on the move-in condition inspection report completed by the parties, I accept that there was some sort flaw in the sink basin when the tenant moved in, whether described as a "spot" or a "crack." All of the photographs of the sink in evidence suggest that the crack has spread

slowly over time in a star-like formation, in the same way that damage to a windshield can spread over time. There is some staining in the cracks closest to the centre, and that staining diminishes as the cracks move farther away from the centre.

Based on the above, I find that the sink was compromised when the tenant moved in and that the crack spread slowly and unavoidable over time, until the structural integrity of the sink was also compromised. The landlord said that the tenant must have put an excessive amount of weight on the sink. However, that is only speculation, and the sink may well have broken in response to a normal amount of pressure at this point. There is insufficient evidence to establish that the tenant deliberately or negligently broke the sink.

The landlord suggested that the tenants should have informed him that the spot was spreading. However, he did not say what sort of repairs could have been done if she had done so. Nor is it clear that there is anything that could have been done. I therefore do not accept that the tenant's failure to advise the landlord of the spreading means that she is responsible for the cost of replacing it.

Repair to sump pump

Residential Tenancy Branch Policy Guideline #1 states that the landlord is responsible for cleaning blockages in septic and water systems, unless the blockage is caused by the tenant's negligence. The same approach applies by analogy in this situation. Accordingly, the question here is whether the tenant flushed materials other than toilet paper down the toilet and, if so, whether that was negligent.

It is difficult to tell what materials are included in the mass clogging the pump based on the landlord's photograph. It is clear that the mass does not consist solely of tampon cotton and string. There is a substantial amount of what appears to be hair, for instance. The substance that the landlord appears to characterize as tampon cotton seems to be only partially covering the mass. The mass looks as though it has accumulated over time, and if it includes tampons, it does not include more than one or two.

The tenant's documentary evidence also established that there were others in the rental unit, including the landlord's realtor and many prospective purchasers, over the last few months of the tenancy. The tenant testified that she does not use tampons and that there has never been an issue with the plumbing before.

There is insufficient evidence that it was the tenant who flushed tampons down the toilet. It seems more likely, considering that the unit was open to prospective purchasers and their agents over the last few months of the tenancy, that those others flushed them. This is consistent with the fact that there were no other issues with the sump pump over the four years of this tenancy.

There is also insufficient evidence that the tampons were the actual or only cause of the blockage, as there appears to be hair included in the mass. The landlord did not testify that he cautioned the tenant against allowing hair to drain through the system, and it seems likely that this would happen during showering.

Moreover, even if the tenant did flush tampons down the toilet, or allow hair to drain through the shower, I would not necessarily find the tenant negligent. The landlord stated in response to my question that he briefly discussed the sump pump's limits with the tenant when the tenancy began. He also said that the tenant should have known about the sump pump because it was located in a broom closet. The tenant denied discussing what could be flushed at the beginning of the tenancy, and said that she did not know about the sump pump.

Even accepting the landlord's evidence that the issue was touched upon once at the beginning of the tenancy, I do not find that the landlord provided the tenant with adequate instructions about the sump pump. And not everyone will know that the presence of a pump in the infrastructure of their rental unit means that certain items cannot be flushed down the toilet.

If the landlord wanted to hold the tenant accountable for what she flushed down the toilet, he could have given her written notice or instructions at the beginning of the tenancy. Many tenancy agreements do include provisions around the use of septic systems. The addendum to this tenancy agreement contains ten different provisions but does not deal with the sump pump at all. The landlord's allegation that the tenant was negligent cannot be sustained as he has not established that the standard to which she was expected to conform was clearly communicated to her.

Section 32 of the Act requires a landlord to repair and maintain rental property. Policy Guideline #1, which states that landlords are required for blockages unless caused by the tenant's negligence, assumes that there will be blockages that are not caused by the tenant's negligence. In those cases, clearing a blockage is simply part of the landlord's obligation to repair and maintain, and will therefore be a cost borne by the landlord.

I also note that the move-out condition inspection report does not document the blockage. The timing of the blockage thus also counts against the landlord in this context.

The landlord's claims against the security deposit are not accepted. The landlord is thus required to refund the tenant the security deposit. As the tenant was successful in this application, she is also entitled to recover the \$100.00 filing fee.

Conclusion

The landlord's application is denied.

The tenant's application is allowed.

I issue a monetary order in favour of the tenant for **\$550.00**.

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

Dated: October 04, 2017

Residential Tenancy Branch