



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TODD CO PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, MNDCT, FFT

Introduction

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

- an Order for regular repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant's amended application seeks a monetary Order for damage or compensation under the *Act* pursuant to section 67 of the *Act*.

The tenant testified that she served the landlord the notice of dispute resolution package by registered mail on February 6, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the dispute resolution package on February 8, 2018. I find that the landlord was served with this package on February 8, 2018 in accordance with section 89 of the *Act*.

The tenant testified that she served the landlord with the amendment package by regular mail sometime during the week of April 9, 2018. The landlord confirmed that he received the amendment package on April 16, 2018 and that he had enough time to review and respond the materials it contained. While the amendment package was not served in accordance with section 89 of the *Act*, I find that, pursuant to section 71 of the *Act*, the amendment package was sufficiently served on the landlord on April 16, 2018.

Both parties agree that the landlord personally served the tenant's sister, who lives with the tenant, with the landlord's evidence package on April 18, 2018. I find that the tenant

was served with the landlord's evidence package on April 18, 2018 in accordance with section 88 of the *Act*.

Issue(s) to be Decided

- Is the tenant entitled to a repair order pursuant to section 33 of the *Act*?
- Is the tenant entitled to a monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
- Is the tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 23, 2011 and is currently ongoing. Monthly rent in the amount of \$1,830.40 is payable on the first of the month. A security deposit of \$850.00 and a pet deposit of \$850.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenant testified that her kitchen sink has suffered from repeated clogs, the most recent starting at the beginning of February 2018, which has prevented water from draining from the sink. The tenant is seeking compensation for the loss of the use of the kitchen sink from February to May 2018 in the amount of \$1,812.80.

The tenant testified that in the past the landlord has covered the cost of having the clogs cleared but that now the landlord is insisting that the tenant's long hair is causing the clogs and so it is her responsibility to hire a plumber.

The tenant testified that since 2016 she has been proactive in preventing her and her sister's hair from entering the bathroom drains by placing metal mesh screens over the drains in the bathroom. The tenant testified that she has not put a similar screen in the kitchen sink as she does not wash her hair there. The tenant testified that it is her belief that her hair is not the cause of the repeated clogs, but some other pipe issue that the landlord is responsible to fix.

The tenant testified that she believes that the required repairs fall under section 33(4) of the *Act* which states that a tenant is not required to make repairs for reasonable wear and tear.

The landlord testified that in the past, as a courtesy, he has either hired a plumber to fix the kitchen sink clog or has cleared the clog himself. The landlord testified that on all occasions that a plumber attended he was on scene and saw that the clog, on each occasion, was comprised of hair. Prior to the clog which resulted in these proceedings, the landlord cleared the kitchen sink drain on November 23, 2017 and entered into evidence photographs of the hair clump he pulled from the drain. The landlord testified that he informed the tenant that her hair was the cause of the clog. The landlord further testified that the plumbing in the building in question was completely redone in 2000 and that there are eight other identical units, none of which have problems with repeated clogged drains.

Analysis

Section 32 of the *Act* states that the landlord is responsible for ensuring that rental units meet health, safety and housing standards established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit or site. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit.

Section 1 of Residential Tenancy Guideline 1 defines reasonable wear as the natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Based on the testamentary evidence of the landlord and the photographic evidence of the material pulled out of the kitchen sink drain on November 23, 2017, I find that the kitchen sink has suffered from hair clogs in the past and that the current clog is very likely also caused by hair. A hair clog does not fall under the definition of reasonable wear and tear as it is not caused by a natural deterioration resulting from aging or other

natural forces, it results from hair, from the tenant and or tenant guests, going down the drain and getting caught.

The tenant testified that in the bathroom she took pre-emptive steps to prevent hair from going down the drain but has not taken the same steps in the kitchen as she does not wash her hair in the kitchen sink. I find that after the November 23, 2017 hair clog in the kitchen sink, the tenant was aware that her hair caused and or contributed to the clogged kitchen sink and did not take steps to prevent further hair from going down the drain. I find that the current clog in the kitchen sink is likely due to hair which has gone down the kitchen sink as a result of the negligence of the tenant.

The tenant bears the burden of proof as she is the applicant; I find that the tenant has not made her case or proved that the current clog is the result of reasonable wear and tear or something other than hair.

Conclusion

I dismiss the tenant's application for a repair order pursuant to section 33 of the *Act* with leave to reapply.

I dismiss the tenant's application for a monetary Order for damage or compensation pursuant to section 67 of the *Act* without leave to reapply.

I dismiss the tenant's application to recover the filing fee pursuant to section 72 of the *Act*.

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: May 03, 2018

Residential Tenancy Branch