



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

Both parties attended the hearing and gave sworn testimony. . The landlord gave sworn testimony that they served the Application for Dispute Resolution by registered mail and the tenants all acknowledged receipt. I find that the tenants are served with the Application according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties (including all 5 of the tenants) attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is the tenancy commenced September 1, 2007, that monthly rent was \$3400 and a security deposit of \$1700 was paid. Some of the tenants have since vacated and the landlord has returned all the security deposits except one (T.H.'s) as he does not have her forwarding address. The tenants agreed that her portion of the deposit was \$330.

The landlord provided evidence that there was a flood in the home that was caused by a sink overflowing upstairs after a tap was left running. He provided an invoice from the Restoration Company and a ledger statement showing the cost was \$14,490.45 to remediate. His insurance covered the cost except for \$2,500 deductible. He claims the deductible from the tenants as they caused the damage.

Various tenants gave evidence but they agreed a tap was left running in an upstairs sink and a flood resulted. One tenant contended that no Condition Inspection Report was

done at move-in so the landlord cannot claim they damaged the property. Another stated the sink that overflowed was faulty in not draining properly and she told the landlord about this at move-in but he said to use the adjacent sink instead. They contend they should not be responsible for it was a clogged drain that caused the problem; they said normally a tap left running would just drain away if the drain was clear. There was some disagreement as to who had left the tap running but the landlord said that T.H. had said at the time that she was rushing and maybe her sleeve caught the lever type tap and turned it on without her realizing it.

The landlord said that he had qualified, professional tradespeople inspect the house before these tenants moved in. He had a plumber, electrician and roofer and all was certified as okay. He noticed at the time of the overflow that the sink that overflowed had large quantities of hair caught in the drain plug and also further down. He said he lives across the street and if there was a defect noticed, he would expect the tenants to complain. He had no complaints about the sink. He denies T.H.'s statement that they noticed a defective drain at move-in and he told her to use the other one. He does not believe he would ever do this.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that the tenants caused the water damage by leaving a tap running which caused an overflow of a sink. Although one of the tenants argued that they should not be responsible for the cost of repair as no condition inspection was done at move-in, I find those sections refer to the landlord's ability to claim against the security deposit and that is not the contention here as most of

the deposit was returned. The issue here is to prove the cause of the flood and the facts clearly show the tenants caused it by leaving a tap running.

Regarding the tenant's argument that the faulty drain of the sink caused the problem, I find the landlord's evidence credible that he had a professional company inspect the plumbing just prior to this tenancy and it was okay. I find he was forthright and readily offered the name of the company which supports his credibility. I find it likely that the tenants may have caused some blockage of the drain by hair as the landlord found some in the stopper of that sink after the flood. I note that their lease requires the tenants to report any problems promptly and also notes they are responsible to have sinks clogged by them cleared out. I find they violated these lease terms. Residential Policy Guideline 1 states that tenants are responsible for costs of repair when damages are caused, either deliberately or through neglect, by the tenants or their guests. I find in this case the tenants caused the damage through negligence by leaving a tap running and they are responsible for the costs of repair. I find the tenants caused the damage and are responsible to compensate the landlord.

As the landlord's insurer has covered the major portion of the cost, I find the landlord entitled to recover \$2500 which is his deductible towards the cost of repairing the damage caused by the tenant. The \$330 security deposit remains in trust for T.H. until she provides a forwarding address to the landlord as required by section 38 of the Act or, in the alternative, she may consent to the landlord retaining this amount towards her portion of the monetary claim against the tenants.

Conclusion:

I find the landlord is entitled to a monetary order for \$2500 and to recover the filing fee of \$100 for a total order of \$2600 to the landlord..

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: December 06, 2018

Residential Tenancy Branch