



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCERT REALTY SERVICE
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 17, 2018 wherein the Landlord requested \$29,890.26 in compensation from the Tenant and to recover the filing fee.

The hearing was conducted by teleconference on November 16, 2018 and January 7, 2019.

Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by P.L., the Community Manager, and M.G., the Building Technician. The Tenant appeared on his own behalf as well as with A.E., the Tenant's Insurance Adjuster.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant, and the Insurance Adjuster, confirmed that they were not taking issue with the quantum of damages claimed by the Landlord and that they only disputed the issue of liability.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began October 1, 2016. The rental unit is located in a 21 floor apartment building with 200 suites. P.L. testified that the building was built in approximately 2000.

The Landlord's claim relates to water damage caused by an overflowing toilet in the rental unit. In the details of dispute section on the Application the Landlord wrote as follows:

"The tenant, [name withheld], found his toilet overflowed around 8:00am on Sunday, November 12, 2017; however, he failed to report it to our emergency line to deal with the situation. Consequently, the water had gone down 5 suites below by 10:52am when the tenant on the 4th floor called in to our emergency line. In total, there were 6 suites effected by the water escape. The costs of restoration and repair work is \$29,890.26 which he is responsible due to his negligence on his part by not reporting it."

[reproduced as written]

P.L. confirmed that he was not at the rental building when the flooding occurred. He stated that when he came back to work on November 13, 2017 he was informed about the flood by the Building Technician, M.G. M.G. informed P.L. that it was the tenants on the 4th floor who reported the water leak. M.G. discovered a similar leak in the 5th floor and then traced the water to the 6th floor and the subject rental unit.

P.L. stated that when M.G. got to the Tenant's suite he told the Tenant that there was a flood. Initially the Tenant would not let M.G. into the suite. M.G. informed him that it was an emergency and he needed to enter. At that time he entered and M.G. found that the carpet in the bedroom was wet and there was water overflowing in the toilet. P.L.'s information is repeated in the Incident Report prepared at the time which reads as follows:

After going to 407 and inspecting the damage, I went to the next unit above. In 507, I discovered the exact same conditions as 407 but in addition, the bedroom's ceiling had a large wet spot, which prompted me to go up another floor to 607. When I knocked on 607's door, the resident denied that there was a problem and initially did not want me to enter his suite; after explaining several times why I needed to investigate the leak he finally relented. In the course of inspecting the unit, the resident mentioned that his toilet overflowed at 8 am, 3 hours earlier. The living room and bedroom floors had a substantial amount of standing water. I immediately started the water extraction process. Also, by the time I left his suite to go and get the drying equipment, the common hallway's carpet was also extremely wet. I used the wet vacuums to extract as much water in all the affected areas as possible and installed fans.

P.L. stated that initially the restoration company estimated the costs to remediate at \$30,000. P.L. confirmed that the amount actually spent by the Landlord was \$29,890.26 as detailed in the Monetary Orders Worksheet:

Increased electrical charges	\$385.86
Floor replacement	\$2,646.00
Drywall repairs and painting	\$5,213.25
Emergency repairs	\$18,106.65
Follow up repairs	\$3,538.50
TOTAL CLAIMED	\$29,890.26

P.L. confirmed that prior to this incident the Landlord was not aware of any issues with the toilet in the rental unit. He also confirmed that there have been no issues since such that the only possible cause is that the Tenant overflowed the toilet.

P.L. submitted that it was not possible that the water came from anywhere else. He also noted that it was the Tenant who informed the Technician that the water was overflowing from the toilet.

P.L. further stated that the problem worsened by the fact the Tenant did not immediately report the problem; rather it was three hours after the Tenant discovered the leak that the Landlord discovered the source (and after a tenant two floors below reported the water). Had the Tenant contacted the Landlord earlier the situation could have been resolved sooner and the damage minimized.

Although given an opportunity, the Tenant declined to question P.L.

The Tenant's Insurance Adjuster, A.E., asked P.L. to confirm his understanding that when the Tenant woke up he noticed water overflowing from the toilet to which P.L. confirmed that was his understanding.

The Technician, M.G., also testified. He confirmed that he is the maintenance technician at the rental building and stated that he was at the rental building on the date

of the flood. M.G. testified that on November 12, 2017 he received a message on the answering service at approximately 10:15 a.m. from a tenant on the 4th floor. He drove from his house (approximately 15 minutes away) and saw the water damage in the wall and ceiling. He assumed that it was leaking from a unit above and as such he went up one floor up, at which time he discovered water in the ceiling and walls in that unit as well suggesting it was coming from higher up. He then went up one more floor, to the subject rental unit (607), and knocked on the door.

When he arrived at the subject rental unit, initially the Tenant did not want to let him inside. After he told the Tenant it was an emergency (because water was leaking two floors down) the Tenant allowed him to enter. M.G. stated that the carpet in the Tenant's living room and bedroom were soaking wet as well there was water on the floor in the kitchen and bathroom.

M.G. confirmed that by the time he arrived at the rental unit the water was no longer running; he stated that he then flushed the toilet three times and there was no problem.

M.G. testified that he then went downstairs to get the wet shop vac to suck up the water. He also brought some fans to dry the unit because it was very wet.

M.G. stated that he did not believe that the water came from any other source, such as the bathtub or the sink as the Tenant told him it was coming from the toilet when the toilet overflowed.

M.G. testified that he did not go upstairs to see if there was water from the unit above, as he noted that there was no water on the ceiling or walls such that it was clear the water was coming from The Tenant's rental unit.

M.G. stated that the Tenant told him that he saw the water at approximately 8:00 a.m. M.G. confirmed that he arrived at approximately 11:00-11:10 a.m., approximately three hours later and that at no time did he receive a call from the Tenant about the water. M.G. submitted that if the Tenant had called right away, he could have contained the water and prevented damage to the 5th and 4th floor.

In cross examination the Tenant asked M.G. how it was possible this affected two other floors; M.G. replied that had he been able to extract the water right away there would not have been so much water damage.

The Insurance Adjuster also asked M.G. whether M.G. found the area wet, or standing water; M.G. replied that it was standing water and further stated that the carpet was completely soaking wet.

A.E. also asked M.G. whether the kitchen or bathroom had standing water, or were just wet. M.G. stated that the bathroom was wet, not standing water, although he could see that the drywall was wet. He confirmed that his definition of standing water was more than half an inch of water on a non-porous surface.

A.E. also asked the Technician whether he realistically could have stopped the water from going downstairs if they were called earlier. In reply M.G. stated that he could have minimized the damage if he knew earlier and because three hours passed the water went all the way down.

M.G. stated that to his knowledge the Tenant did not call anyone else about the overflowing toilet.

A.E. asked if M.G. called a plumber to check on the source of the issue. M.G. stated that they did not call a plumber because at the time he arrived the toilet flushed three times and worked fine. He further stated that there were no issues before or after the incident, noting that a year had passed since and there have been no further issues.

In cross examination M.G. stated that the cause of the overflow was that the "Tenant put something in the toilet which plugged the toilet or it could be something else".

In response to the Landlord's claims the Tenant, F.Z. testified as follows. He confirmed that it is his position that the damage is not his responsibility.

In terms of the flooding on November 12, 2017 the Tenant stated as follows. He testified that he woke up in the morning and saw water was everywhere in his bedroom and part of his living room. He then went to the bathroom and saw that the water was overflowing from the toilet. He stated that he tried to clean it up. He tried to flush the water a couple of times and at first it didn't work. He then tried to clean it up with paper towel. He then tried to stop it again by flushing the toilet multiple times and finally it worked. He opened the window, turned on the heat and turned on the fan.

The Tenant stated that "after a while" he heard a knock on his door from someone saying they wanted to come in. The Tenant confirmed that he asked why they wanted to enter and didn't open the door initially. When the technician asked him if there was

overflow the Tenant said yes. The technician said it was “really serious” and asked why the Tenant did not call them earlier.

The technician said that they needed to bring in machines to come to the apartment to remove the liquid. The Tenant informed the Landlord that he had to leave for a meeting but told them they could come in any time they needed to. He stated that when he returned the machines were there and it took more than one month to have this cleaned up.

The Tenant stated that this was the first time there was any problems with the toilet. He also claimed that to his knowledge there wasn't anything blocking the toilet. The Tenant testified that he had not used the toilet, but when he woke up there was water coming from the toilet. He stated that he could not remember if there was water coming from the tank or the bowl.

The Landlord's representatives declined to ask the Tenant any questions.

In reply, P.L., stated that this was not the original toilet from 2000, as it was replaced in 2015.

Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the evidence and testimony before me and on a balance of probabilities, I find as follows.

I find it more likely than not, that the Tenant, through use or misuse, clogged his toilet thereby causing it to overflow. I find this to be the cause of the subsequent water damage to his rental unit and the units below. While he claims to have woken up to an overflowing toilet, I find this to be very unlikely.

I accept the Landlord's evidence that the toilet was replaced in 2015. I further accept their evidence that at no time prior to the date of the flooding on November 12, 2017 did the Tenant report any issues with his toilet. I also accept the Landlord's evidence that there have also been no issues since November 12, 2017. This leads me to conclude that the flooding on November 12, 2017 was a result of the Tenant's use and not some defect with the toilet itself or the plumbing more generally.

I accept the Landlord's evidence that the volume of water in the rental unit alone was significant. Despite the gravity of the problem, the Tenant failed to call for help from the Landlord or a plumber. Additionally, when the Landlord's staff arrived, the Tenant initially denied them entry to the rental unit. This suggests the Tenant was worried about his responsibility for the resulting damage and that he was attempting to conceal the problem from the Landlord.

The Tenant testified that he attempted to mop up the water, and continually flushed the toilet until the drain cleared. It does not appear that he attempted to plunge the toilet, or stop the water flow by turning off the water line to the toilet, or manually engaging the toilet flapper. While it is clear he was unsure what to do, the proper course of action would have been to seek assistance.

The Landlord's representatives aptly noted that had the Tenant turned off the water lines on the toilet itself and stopped the flow, the damage would have been considerably less. Additionally, had the Tenant contacted the Landlord's representatives, the damage to the lower floors may have been avoided.

I find that the Tenant was negligent in failing to report the toilet overflow to the Landlord, and in doing so, breached his obligations to repair and maintain the rental unit under section 37 of the *Act*.

As noted earlier, the Tenant did not take issue with the amounts claimed by the Landlord. In any event, the amounts claimed are supported by the Landlord's evidence and which prove that the Landlord suffered the losses claimed.

I therefore find the Landlord has met the burden of proving their claim. Having been successful, they are entitled to recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord's Application for monetary compensation in the amount of \$29,890.26 is granted. The Landlord is also entitled to recover the filing fee for a total of **\$29,990.26**.

In furtherance of this claim I grant the Landlord a Monetary Order which must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: February 1, 2019

Residential Tenancy Branch