Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

This case involves a landlord's dispute against his former tenants for compensation related to, as described in his application for dispute resolution filed under the *Residential Tenancy Act* (the "Act") on November 14, 2018, the following:

> Through Negligence or Malice, [tenants] severely damaged the plumbing system at my home -Continued running the plumbing when flood happened in May, further putting water into the basement, increasing the cost of damage, and putting basement tenants health at risk, and destroying their property -they are the only tenants with a small child, baby/child wipes found in system, and continue to be found, has damaged sump pump to point of replacement - damaged the door to basement
>
> [and]
>
> The lease authorized only the use of the 2 car garage. The 3rd/single car garage was meant only as storage to the landlord. -The tenants use the garage, without my knowledge or to the knowledge of the property management agent -The tenants admitted to using the garage, when confronted about the charges, changed their story, proceeded to modify the garage to cover their tracks and usage. -Tenant had the only garage door opener -Tenants had 3 cars, stored only 1 in the large garage

The landlord seeks $4,188.28 for the first aspect of his claim and $3,000.00 for the second aspect of his claim, plus $100.00 in compensation for the filing fee.

A dispute resolution hearing convened on March 19, 2019 and the landlord and the tenants attended. I gave the parties a full opportunity to be heard, to present evidence, to make submissions, and to call witnesses. The landlord raised an issue with respect to the tenants' submission of evidence, which I shall address below.

I have only reviewed and considered oral and documentary evidence that met the requirements of the Act's *Rules of Procedure,* to which I was referred, and that is relevant to the issues of the dispute.

Preliminary Issue: Tenants' Submission of Evidence

The landlord filed his application on November 14, 2018. He served the Notice of Dispute Resolution Proceeding package shortly thereafter on the tenants. He also submitted most of his evidence and documentary submission around that time. The landlord argued that the tenants submitted their evidence late and in contravention of the *Rules of Procedure.*

The tenants submitted their documentary evidence by mail on March 8, 2019, and which was received by the landlord on March 12, which is seven days before the arbitration of March 19. Rule 3.15 states that a respondent's evidence must be served on the applicant "as soon as possible." However, it also states that the "respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

In this case, the tenants' explanation for why they did not submit evidence earlier in the process—"we were quite busy" and because they had "vacations"—is rather feeble, but the tenants' submission is not in contravention of the *Rules of Procedure.* As such, I will accept, and may consider, any documentary evidence that they submitted and to which either they or the landlord referred.

Issues to be Decided

1. Is the landlord entitled to compensation under section 67 of the Act?
2. If yes, is the landlord entitled to retain the tenants' security deposit in full or partial satisfaction of any compensation awarded?
3. Is the landlord entitled to compensation for the filing fee, under section 72 of the Act?

Background and Evidence

The rental unit is a two-level detached house, with a rental unit in the lower, or basement level, and a rental unit on the upper, or main level. This dispute is about the rental unit in the main level and the tenants who resided therein from February 1, 2018 until October 31, 2018.

Monthly rent was $2,400.00 and the tenants were responsible for paying 60% of the utilities (which included water, sewer, hydro, and gas). Included in the rent was parking, described as “2 car garage.” The tenants paid a security deposit in the amount of $1,200.00. A copy of the written tenancy agreement was submitted into evidence.

There are four items for which the landlord seeks compensation: (1) loss and damage from flooding caused by the tenants; (2) loss from the tenants’ unauthorized use of garage; (3) a modified basement entry door; and, (4) the filing fee.

The flooding, which first occurred in the early morning hours of May 21, 2018, was the result of a sump pump that got clogged and water backed up and flooded the basement suite. A plumber was called in the middle of the night and he found that there were S.O.S. cleaning pads clogging the pump. It cost the landlord $6,197.93 to clean up the flood. The flood caused damage to the tile and wood floors, which cost the landlord an additional $244.78 to repair and replace.

Once the flooding started to occur, the downstairs tenants asked the upstairs tenants (that is, the tenants in this dispute) to stop using the water, otherwise it would worsen the situation. The landlord testified that the tenants ignored the request and continued using the water until 6 PM the next day. The plumber checked the pump again on May 24 and found more S.O.S. pads.

The landlord testified that the upstairs and downstairs rental units are all linked to the same water and plumbing system, which is then drained and pumped into the municipal sewer system by way of a sump pump. However, the landlord argued that only the tenants could have caused the flooding. He explained that it would only have been possible to flush an S.O.S. pad from the upstairs rental unit because only the upstairs sink in the kitchen, which has a garburator, is 8 cm (or 3”) in diameter. The sinks in the downstairs rental unit are only 1/2” in diameter, which would have prevented someone from putting an S.O.S. pad down the drain.

On July 29, 2018, the sump pump again clogged between 1 and 3 AM. A plumber was called, and he found that baby wipes had clogged the pump. On July 30, the sump pump tank was emptied, and more baby wipes were found.

The landlord argued that the tenants were the only tenants in the house (as opposed to the downstairs tenants) who had a small child, and thus they would be the responsible party for putting baby wipes down the drain.

The landlord stated that the sump pump was purchased in 2015 and that these pumps are expected to last at least eight to ten years. He noted that there were no issues with the pump before the tenants moved in. (I note, however, that the landlord was essentially unaware of the property and any issues relating thereto before mid-2018, when he fired the property management company for shoddy service.) The sump pump is burnt out and needs to be replaced.

Regarding the second aspect of his claim, the landlord testified that the tenancy agreement permits the tenants the use of part of the garage. The garage is a 3-car garage, but the tenants were permitted to only use the space for 2 cars. The third space was for the landlord's use. The landlord explained that if a tenant wants the third space that the landlord charges $150.00 per month, if used.

The landlord testified that there was some back and forth emails between him and the tenants regarding the use of the third space, and he argued that the tenant admitted to using the space but later denied doing so. He also said that the downstairs tenants confirmed that the tenants were using the third garage. The downstairs tenants were also entitled to use a spot on the driveway for their car, but that the tenants usually used up the driveway for their vehicles.

The third aspect of the landlord's claim is regarding an unpaid water bill. The now-fired property management company failed to properly enforce the payment of utility bills, and the landlord eventually received a water bill in early 2019, of which 60% of the bill comes to $635.16. A copy of the bill was submitted into evidence. (The tenants disputed that the tenancy agreement requires them to pay for water. A close inspection of the tenancy agreement clearly states that water is part of the utilities that must be paid.)

The fourth aspect of the landlord's claim is regarding a modified basement door. When the landlord moved into the rental unit, he observed a large piece of plywood that had been attached over the doorway leading to the basement. He suspected that given the

less-than-healthy relationship between the upstairs and downstairs tenants, that the plywood was attached to maximize the chances of the downstairs tenants from gaining access to the upstairs. The landlord claims $250.00 for labour and materials to repair the door and remove the plywood.

The tenants did not dispute the landlord's testimony regarding the details of the tenancy agreement. However, they testified that "we categorically deny all accusations." They "took good care of the house" as if it were their own. They took care of the lawns and foliage around the property.

The tenant (D.) testified that the Condition Inspection Report, copies of which were submitted into evidence by the landlord, did not indicate any damage or issues with the door over which the landlord claims plywood was attached. The tenant testified that that they did not make any alterations to the downstairs door. They also did not make any modifications to the garage that was referred to by the landlord. The Condition Inspection Report was signed and dated October 31, 2018, by the tenant and the landlord. The Report, I note, refers to "plumbing damage" that the landlord sought to retain the security deposit.

The tenants further testified that they do not and did not use baby wipes. They have a 6-year-old son, and they do not use wipes, but instead use paper and soap. Further, they testified that the tenant's wife, the co-tenant, is in menopause and as such would have no use for baby wipes. As to the S.O.S. pads, they remarked that "we're not the sort of people who'd do that [i.e., flush them or put them down the drain]." The tenants reiterated that the sump pump was old and aging and that the damage was not their fault, and that they did not use tampons or baby wipes.

They continued, testified that while they are "not accusing anyone, but" the downstairs tenants were a group of young females who have pets. And, that baby wipes, from their understanding, are sometimes used to clean pets. They spoke of the bad relationship with the downstairs tenants, who were yelling and screaming at them.

The tenants testified that they provided the landlord with their forwarding address on November 2, 2018, and that the landlord did not return their security deposit within 15 days. The landlord testified that he filed for dispute resolution on November 14, 2018, and therefore within the 15 days permitted under the Act.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following criteria on a balance of probabilities for me to award compensation:

1. has the respondent failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

Compensation for Unpaid Utilities

The tenancy agreement requires the tenants to pay for 60% of the utilities, which included water, sewer, hydro and gas. The landlord claims that “The [water and sewer] bill for the last 2 years came to $1,058.60. 60% of which is $635.16 owed to me as unpaid utilities while staying at my rental property.”

The landlord submitted a municipal water and sewer invoice with a billing date of December 19, 2018. However, the bill indicates that as of October 3, 2018, a date on which a penalty of $20.83 was imposed, the previous bill amount was $727.77. I also note that the tenants vacated the property on October 31, 2018, and the landlord moved into the property thereafter. Therefore, the balance that accrued between October 3 and December 19 of $330.83 (excluding the $20.00 penalty) represents an undetermined portion of the tenants’ use (including whatever the downstairs tenants’ use was)

between October 3 and October 31 and of the landlord's use after October 31. In short, the landlord provided no meaningful calculation or documentary evidence proving what the tenants' actual usage was between October 3 and the end of the tenancy.

That said, taking into consideration the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that (A) the tenants failed to comply with the tenancy agreement by not paying the utilities, (B) the loss would not have been suffered but for their non-compliance, and (c) that the amount is $449.16. I calculate this award as follows: $727.77 from previous bill + $20.83 penalty = $748.60 - 40%.

I therefore grant the landlord a monetary award of $449.16 for unpaid utilities.

Compensation for Damage/Alteration to Basement Door

The landlord claims that the tenants made alterations to the basement door by attaching a large piece of plywood to the front of the door and seeks $250.00 for repair and material costs. The tenants dispute that they made this alteration.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord failed to provide any evidence, over and above his oral evidence and a photograph of the plywood, that the tenants made the alterations as alleged. A photograph of the plywood over the door at the end of the tenancy is not conclusive in and of itself. There is no photographic evidence of the state or condition of the door at the start of the tenancy. Moreover, the Condition Inspection Report fails to note any issue with the plywood covering the door.

Section 21 of the *Residential Tenancy Regulation* states that, "In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary."

In this case, all that we have is the landlord's claim that the tenants attached the plywood and a post-tenancy photograph.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenants breached the Act, the regulations, or the tenancy agreement, and thus has not proven the claim for compensation related to the door.

As such, I dismiss this aspect of his claim without leave to reapply.

Compensation for Unauthorized Use of Garage

The landlord claims that the tenants were not authorized to use the third garage. He submitted that the tenancy agreement provided the tenants with two garages, not three. He claimed that the tenants' use of the third garage resulted in a monetary loss of $3,000.00. This was calculated on the basis that the landlord rents out the third garage at a rate of $150.00 per month and that the tenants were in the property for 20 months. The tenant disputed that they used the third garage.

The landlord's evidence as to whether the tenants used the third garage is inconclusive. There is some indication that the tenants' vehicle may have been parked in the third garage, but there is certainly no evidence to support his claim that the tenants used the third garage for each of the 20 months that they rented. And I place little weight on the landlord's hearsay evidence in which the downstairs' tenants claim that the tenants used the third garage. By all accounts the relationship between the upstairs and downstairs tenants was fractious, and without having the downstairs tenants testify, I am not confident as to the truthfulness or veracity of any claims made by the downstairs tenants.

I further note that, while the tenancy agreement permitted the tenants the use of two garages, there is little evidence of the landlord or, more importantly, the former property management company, explicitly advising the tenants that they were not to use the third garage. Moreover, there is no evidence that the landlord suffered a loss of $150.00 per month for any alleged unauthorized use of the garage.

The landlord claimed that if the tenants had wanted to use the third garage that they could have done so for $150.00 a month, but there is no evidence that the tenants were ever informed of this at the start of the tenancy. There is no evidence of a third party, such as the downstairs tenants, wanting to use the third garage such that the landlord was deprived of the ability to rent it out.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenants breached the Act, the regulations, or the tenancy agreement. As such, I need not consider the remaining three factors of the above-noted four-part test.

I dismiss this aspect of the landlord's claim without leave to reapply.

Compensation for Damage to Plumbing System

Sections 32(3) and (4) of the Act states that

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

In this case, the landlord claims that the tenants' actions, whether by negligence or intent, resulted in a clogged sump pump. He argued that the tenants have a small child and that therefore the baby wipes could only have come from the upstairs tenants. He further argued that the only sinks into which an S.O.S. pad could have been put were the upstairs sinks. The tenants disputed this and noted that they have a 6-year-old boy, and therefore would not use baby wipes; also, the tenant's wife is menopausal and would not be using a tampon or such item as was found in the sump pump. Further, that they simply are not the type of people who would put the S.O.S. pads in the drain. They also submitted that the downstairs tenants were young females who owned pets, and that they may have been the responsible party.

As an arbitrator, one often brings their own experience to cases before them. As the 44-year-old father of a five-year-old child, it is my experience that the use of baby wipes usually stops after the child is toilet trained at 3 or 4. I find it highly unlikely that a family would be using baby wipes on a six-year-old. I further find it highly unlikely that a menopausal woman would use feminine hygiene products. Finally, while the sinks may not have allowed certain items like an S.O.S. pad from being put down (for example, the upstairs sink with garburator), a toilet is sufficiently suitable for flushing such items. There are, after all, toilets in both the upstairs and downstairs rental units.

Moreover, if the downstairs tenants were a group of young females (and I note that the landlord did not dispute the tenant's description in this regard), then it is more likely than not that they were using feminine hygiene products, versus the upstairs tenants.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to prove that the tenants caused the blockages and clogs in the sump pump.

That the upstairs and downstairs rental units are on a shared water and sewer system means that the S.O.S. pads, the baby wipes, and the feminine hygiene products could have come from either the upstairs tenants or the downstairs tenants. While the tenants may have used baby wipes and S.O.S. pads, so, too, could the tenants in the downstairs rental unit. The fact is, such products could have entered the plumbing system and ultimately the sump pump from either of the rental units. And, in the absence of any conclusive evidence that such products entered the system from the upstairs rental unit, I cannot find on a balance of probabilities that the tenants are the culpable party.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has failed to meet the onus of establishing that the tenants breached the Act, the regulations, or the tenancy agreement. I need not consider the remaining three factors of the above-noted four part test.

As such, I dismiss that aspect of the landlord's claim without leave to reapply.

Compensation for Filing Fee

I grant the landlord a monetary award of $100.00 for the filing fee.

Monetary Award and Order

I grant the landlord a monetary award in the amount of $559.16 ($449.16 in unpaid utilities and $100.00 for the filing fee). I order that the landlord retain $559.16 of the tenants' security deposit in full satisfaction of the above-noted award.

I also order that the landlord return the balance of the security deposit in the amount of $640.84. A corresponding monetary order for the tenants is issued with this decision.

Conclusion

I grant the landlord a monetary award in the amount of $559.16. The landlord may retain this amount from the tenants' security deposit and must return the balance of the security deposit in the amount of $640.84 to the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 20, 2019

Residential Tenancy Branch