



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aquilini Properties LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") on January 9, 2019, for a monetary order for damages for the Landlord, claiming against the security deposit, and to recover the cost of their filing fee.

The Tenants and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of their filing fee?

Background and Evidence

The Parties agreed that the month-to-month tenancy began on July 1, 2017, with a monthly rent of \$2,665.09, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$1,285.00 and no pet damage deposit. They said the tenancy ended on December 31, 2018, when the Tenants moved out of their own accord.

At the start of the hearing, the Agent said that they had an amendment to make, but that they were too late to submit it to RTB and serve it on the Tenants. The Agent said it is in the Tenants' favour, so she asked if she could submit it at the hearing. The Agent said they found a contractor to do all the work and that the consolidated amount they are claiming is lower than the amount for which they first applied. With the Tenants' permission, I allowed the Landlord to amend the total being sought from \$3,241.95 to \$1,239.00. The Agent said this means that after deducting the \$1,157.00 left of the security deposit, the Tenants would only owe the Landlord \$82.00. The Parties confirmed that they had agreed that the Landlord could deduct \$110.00 from the security deposit for cleaning and \$18.00 for lightbulbs.

The Agent said on the Application that the Landlord applied to retain the security deposit, in addition to the amount detailed in the Monetary Order Worksheet. The Agent said the flooring and cabinetry were damaged due to the dishwasher having leaked over a long period of time, because the Tenant failed to promptly report the problem to the Landlord. The Agent said that the Tenant advised her that the seal for the dishwasher was loose for a long period of time and would leak during each use, although the latter is inconsistent with the Tenants' evidence of what happened and of what they told the Landlord.

The Tenant said it was an issue of a faulty dishwasher and she said they did their due diligence by contacting the Landlord as soon as they noticed the leak.

The Agent directed my attention to an email string, which she said indicates that the Tenants knew of the problem "for an extended period of time that caused the expanded

flooring and cabinetry damage.” The email to which the Agent refers states the following:

Thu, Apr 5, 2018, at 11:26 AM, [C.M.] wrote:

Hi there,

I have a couple of items that need to be fixed:

1. The black wiring around our [dish]washing machine (the inside) has been loose forever and has led to the machine leaking when we use it, so can someone please come up and help us and fix that?
2. The piece of wood that is attached to the bottom of our kitchen counter has come off, could someone please reattach it?

Let me know when you'd be able to send someone up to help with these repairs.

Kind regards,
[C.]

The Landlord replied to this email, as follows:

Thu, Apr 5, at 11:28 AM, [Landlord's service centre] wrote:

Hi [C.],

Let me know if I have permission to enter by end of day 3pm today or tomorrow between 9-3. Please do not use the washer until it can be checked. Thanks.

Best,
[J.] | Service Department

The Parties emailed each other about the specifics of the service call, and the next day the Landlord emailed to say:

On Fri, Apr 6, 2018 at 11:43 AM [Landlord's service centre] wrote:

Hi [C.],

As per our conversation, I've reinstalled the rubber seal on your dishwasher. The dishwasher shouldn't have been used without the rubber seal attached as it

prevents water from leaking out of the dishwasher while in use. I haven't re-attached the moulding to the cabinetry yet as it appears to have detached from the damage. Please avoid mopping or getting water into the laminate around that area.

I'll be in touch with quotes on cost of the repairs to cabinetry and flooring, right now it seems to be dry. I'll let you know if we need entry. Thanks.

Best,
[J.] | Service Department

The Agent said that the Tenants' first email indicates that the problem had been ongoing and that the Tenants did not in fact contact the Landlord as soon as they noticed a problem. The Agent said the comment that the black seal "has been loose forever" shows that the Tenants were aware that something was wrong with the dishwasher for some time before they contacted the Landlord.

In the hearing, the Agent also directed my attention to photographs of the:

- base of cabinet right of dishwasher showing how the base has split and expanded on the floor;
- side view of cabinet damage showing it is warped and changed shape;
- cabinet flooring damage – a close up view of the second photograph showing warping and cracking of the cabinet.

In the hearing, the Tenant said that those photographs are accurate and that there was damage, but she said it was due to the faulty appliance and that they notified the Landlord as soon as they noticed water on the floor.

The Tenant noted an email she sent to the Agent dated December 27, 2018, at 12:29 p.m., in which she said (similar to her testimony in the hearing):

...I just want to make it clear as I have from day 1 that we were never aware that [the] dishwasher was not functioning properly. I did mention in my very first email that the black wiring in the dishwasher had been loose forever. This is how it appeared from when we moved in actually and it appeared as though that was how it was supposed to be. There was never any leak, at least any leaks we were aware of. And as soon as I realised there was something leaking, I contacted the office. I did not neglect this manner in any way, and you can check

my history because I always contact the office when I do see an issue. So I just want to emphasize this is not a case of negligence and it is a case of a malfunctioning dishwasher.

...

Kind Regards,
[C.]

In the hearing the Tenant said: "That rubber seal thing never looked right from the start. We just pushed it back in. . . the next time that I ran it I noticed there was a leak. As soon as I saw water on the floor I said there is something going on here and that is when I let them know."

The Landlord said that they provide an emergency line for any water issues and it is posted in conspicuous areas in the building.

The Tenant said in the hearing:

It wasn't an overwhelming amount – just a little puddle under the dishwasher. It was enough that it would take about six paper towels to sop it up. I didn't think that this was an emergency issue, because we were able to clean up the water, and that this wasn't a time to call the emergency number.

The condition inspection report ("CIR") indicates that the dishwasher, kitchen floor, and cabinets were in "good" condition for the move-in inspection signed by the Parties on June 27, 2016. The kitchen floor and cabinets are noted as "damaged" in the move-out CIR signed by the Parties on December 31, 2018, and the dishwasher was noted as in "good" condition. The Agent's comments on the end of the CIR were:

End of Tenancy

Damage to rental unit or residential property for which the tenant is responsible:
Partial suite clean \$110.00 – Damaged flooring from leak \$1,361.77 – Remove and reinstall cabinets \$1,433.93 – disconnect dishwasher and reconnect \$446.25, 3 light bulbs \$18; total \$3,369.95.

The Tenant signed the CIR indicating that she did not agree that this report fairly represents the condition of the rental unit for the following reasons:

I agree that this is accurately the state of the unit, however, I do not agree that we are responsible for the damage due to the leaking dishwasher, as we had no control over it/were unaware.

The Tenants gave their forwarding address on the CIR on December 31, 2018.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party who applies for monetary compensation against another party has the burden to prove their claim on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. In your case, the burden of proof is on the Landlord to establish:

1. That the Tenant violated the Act regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

[the “Test”]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Tenants said they noticed the black rubber seal (or wiring) was sticking out of the dishwasher from the start of the tenancy and that they thought this was “how it was supposed to be.”

The Tenants said they contacted the Landlord as soon as they noticed water on the floor in front of the dishwasher. This was in April 2018. However, the Tenants also testified that they noticed the “black wiring” or what I infer to be the black rubber seal sticking out of the dishwasher from the start of the tenancy in July 2017 or approximately ten months before the Tenants noticed leakage on the floor. However, rather than contacting the Landlord’s service centre to enquire about the piece sticking out of the dishwasher, the Tenants said they tried to stick it back in. I find it is more likely than not that the rubber seal sticking out of the dishwasher indicated that the appliance was damaged from the start of the tenancy and may have been leaking some water into the surrounding cabinets until it made its way to the floor in front of the

dishwasher. I find that both Parties hold some responsibility in this regard for not noticing this at the move-in condition inspection. I have taken this into consideration in my overall allocation of responsibility in this matter.

Further, from the photographs of the cabinets at the floor level, I find it more likely than not that there were more instances of leakage than the one time that the Tenants admitted having noticed it. The type and amount of damage apparent in the Landlord's photographs are inconsistent with a one-time leak.

I find on a balance of probabilities that the Tenant should have alerted the Landlord to the rubber seal as soon as they noticed it.

Section 32 of the Act states:

(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.

Section 37(2)(a) of the Act requires tenants to leave rental units "reasonably clean, and undamaged except for reasonable wear and tear". I find a tenant's responsibility in this regard includes alerting the Landlord to flaws or defects in appliances in the rental unit that the tenants notice.

Policy Guideline #1 ("PG #1") clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning and repairs of residential property, and obligations with respect to services or facilities. Under the heading "Services and Facilities" PG #1 says: "A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation." However, if a Landlord does not know that a service or facility is not working properly, they cannot repair it.

Section 33 of the Act deals with "emergency repairs", which notes that they are made for the purpose of repairing (1)(c)(ii) "damaged or blocked water or sewer pipes or plumbing fixtures" [emphasis added]. While I find that a broken dishwasher is not an emergency, because it does not have to be used, as for instance, a shower does, the amount of water involved with using a dishwasher can cause significant damage, if not properly sealed against leakage.

Applying Law to Evidence

I find that the Tenants are responsible for the effects of having neglected to alert the Landlord of the black rubber seal sticking out of the dishwasher and for continuing to use the dishwasher, despite this apparent flaw; however, there is no evidence before me that the Tenants were responsible for the condition of the appliance, itself. As such, I find the Landlord's claim for compensation for work on the dishwasher is inappropriate and not part of the Tenants' breach of the Act. I find the Tenants' behaviour in this regard is consistent with having breached the first two steps of the Test.

1. That the Tenant violated the Act regulations, or tenancy agreement; and
2. That the violation caused the Landlord to incur damages or loss as a result of the violation.

The Landlord's amended claim sets the value of the damage or loss at \$1,239.00, although the Agent did not break this down into specifics like she had with the initial amount claimed in the monetary order worksheet (the "Worksheet"). However, the Worksheet set out the components of the repairs, as follows:

	<u>Activity</u>	<u>Cost</u>	<u>% of Cost</u>
1.	Dishwasher out/in cost	\$ 446.25	13.8%
2.	Flooring removal/install	\$1,361.77	42%
3.	Replace water damage	<u>\$1,433.93</u>	<u>44.2%</u>
	TOTAL	3,241.95	100%

The Agent said a company did all this work for the Landlord at a reduced rate of \$1,239.00. I find it reasonable to infer that the amount attributed to the work on the dishwasher would have been a comparable percentage. Therefore, I find the cost of "dishwasher out/in cost" is \$170.98 or 13.8% of the total cost to the Landlord.

I find the Landlord has established the third step in the test of the value of the loss as the cost of the second and third item on the above noted list. I find these calculate to $1,239.00 - 170.98 = \$1,068.02$.

I find that the Landlord fulfilled the fourth step of the test of minimizing the cost of the repair by finding a contractor who charged less than was initially estimated by the Landlord.

I award the Landlord **\$1,068.02**, which when set off against the remaining security

deposit of \$1,157.00 results in \$88.98 owing to the Tenants in the balance of the security deposit.

As the Landlord has been successful in the Application, I award them recovery of the \$100.00 filing fee. Accordingly, the end result is that the Tenants owe the Landlord \$11.02, which I award the Landlord.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is successful.

The Landlord has established a monetary claim of \$1,068.02. I authorize the Landlord to retain the Tenants' remaining security deposit of \$1,157.00 in satisfaction of the claim, leaving \$88.98 owing to the Tenants. However, the Landlord is also awarded recovery of their filing fee of \$100.00. The net result is that the Landlord is awarded a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of \$11.02.

This order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 16, 2019

Residential Tenancy Branch