



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S FFL**

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$361.66 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were served the notice of dispute resolution form and supporting evidence package via registered mail on June 6, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The tenants confirmed receipt of the notice of dispute resolution but denied that the package contain photographs of the damage the landlord claims the tenants caused to the rental unit. The landlord testified that the envelop he sent contained the photographs.

In any event, the tenants stated that they were prepared to proceed with the hearing, and to allow the landlord to rely on the photographs, regardless as to whether or not they had copies of the photographs.

As such, I find that the tenants are deemed served with the notice of dispute resolution form and supporting evidence package on June 11, 2019, five days after the landlord mailed them.

The tenants testified that they served the landlord with their evidence package (which consisted of a series of text messages between the landlord and the tenants) by leaving it under the windshield wiper of his car, which was parked outside of his house. The landlord denies having received such a package. The landlord consented to the text messages being admitted into evidence, however, as they were previously saved on his telephone and he could access them during the hearing.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$361.11; and
- 2) recover his filing fee?

Background and Evidence

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

The parties entered into a written, month-to-month tenancy agreement starting July 1, 2018. Monthly rent was \$1,500.00 and was payable on the first of each month. The tenants paid the landlord a security deposit of \$750.00. The landlord still retains this deposit.

The tenancy ended on July 1, 2019.

The parties agree that on April 4, 2019:

- the landlord received a call from the commercial unit below the tenants' rental unit stating there was a water leak coming from the ceiling;
- the landlord texted the tenants asking them to check under their bathroom sink for a leak (which was located directly above where the water was dripping on the ceiling);
- the tenants texted back they were unaware of any leak, but would check under the sink; and
- the tenants check for leaks under the sink, found none, and texted as much to the landlord.

The parties disagree as to when the landlord entered the rental unit to inspect the bathroom sink himself. The tenants testified it was on April 5, 2019 and the landlord testified it was on April 6, 2019. The tenants entered a text message dated April 5, 2019 into evidence where the landlord wrote "Just checked it now. It may need plumber to look at cold water pipe. I'll let you know when he's available."

The parties do agree that when the landlord attended the rental unit, he found no leak under the bathroom sink. The landlord testified that this led him to believe that the leak was inside the walls of the bathroom, and that he would need to have a plumber attend the rental unit.

The parties agree that the plumber attended the rental unit on April 9, 2019. The tenants were not in attendance. The landlord testified that the plumber discovered water underneath the tenants' washing machine, and that it appeared the water had been there for a while. The landlord testified that water had seeped up the walls around the washing machine.

The washing machine is in a door-less closet in the bathroom. The clothes dryer sits atop the washing machine. The landlord testified that there is approximately six inches between each side of the washing machine and the walls of the closet. The door to the closet is directly opposite the toilet, so that when one sits on the toilet they are looking directly at the washing machine. The sink is at the opposite end of the bathroom.

The landlord testified that the water seepage on the walls was only visible once the washing machine was removed from the closet. He testified that, however, the water underneath the washing machine would be visible to a person sitting on the toilet.

The tenants deny having seen any water beneath the washing machine.

No documentary evidence was provided regarding the cause of the leak. However, the landlord did not suggest that the tenants were responsible for causing the leak. Rather, the landlord is seeking compensation from the tenants on the basis that they either saw the water pooled under the washing machine, or ought to have seen it, and failed to notify him of it so that he could repair it. He claims that this was negligent conduct on the part of the tenants, and that this negligence caused the water leak to damage the rental unit and the ceiling of the commercial unit below.

The tenants deny that the water was visible without removing the washing machine. They deny that water could be seen beneath the washing machine when sitting on the

toilet. They deny that they were negligent in not reporting the leak to the landlord, as they were not aware of the leak, and cannot reasonably be expected to have been, as it was not visible to them without removing the washing machine.

The landlord submitted an invoice for the repairs to the rental unit of \$337.72. The landlord testified that he incurred additional costs \$23.94 for sending the notices of dispute resolution and supporting evidence packages to the tenants.

Analysis

Authorities

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

Section 32(3) states:

Landlord and tenant obligations to repair and maintain

32(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.

So, the landlord must prove that the damage to the rental unit was caused by the neglect of the tenants. To do so, the landlord must prove that the tenants saw or ought to have seen the water under the washing machine for a long enough time before April 4, 2019, so that if the tenants notified the landlord of the water, the landlord could have cleaned it up and prevented the leak.

Application of the law to the facts

The landlord provided no photographs which show the water under the washing machine. All photographs provided were taken after the washing machine was removed. As such, I cannot say whether or not the tenants ought to have been able to see the water from their vantagepoint on the toilet.

Additionally, no evidence was provided as to when the bulk of the damage (to walls in the closet) caused by the water actually occurred. It is possible that by the time the water was visible from the toilet, the damage needing repairing was already done. I have no evidence before me as to the length of time the water was visible beneath the washing machine.

I find that there is insufficient evidence to be able to determine if the tenants were negligent and that, if they were, whether this negligence caused any damage. I cannot say if the tenants were able to see the water under the washing machine, or that if they could, that their prompt notification to the landlord of this would have prevented the damage from occurring.

As such, I find that the landlord has failed to meet the evidentiary burden placed upon him by Rule 6.6. As such, I dismiss his claim.

As the landlord was not successful, I decline to award him his registered mail costs, or his filing fee.

Per Policy Guideline 17.C.1, I order that the landlord return the full amount of the security deposit (\$750.00) to the tenants in accordance with the Act.

Conclusion

The landlord's application is dismissed, without leave to reapply.

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: September 17, 2019

Residential Tenancy Branch