



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Just Virani Cosulting Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 7, 2020 seeking an order to recover the money for damages to the rental unit, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 13, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenants and the landlord each attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the tenants confirmed they were personally served with the notice of the hearing on February 8, 2020, and then the landlord’s evidence on February 23, 2020. There are three witness statements on each confirmation of service completed by the landlord on February 8, 2020.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord applied for a monetary order for \$464.10 in damages that occurred from December 2019 to January 2020. This is, as claimed by the landlord: \$262.50 for work

done to the kitchen sink; and \$201.60 for kitchen ceiling damage from the tenants' bathroom leaking from above.

The landlord spoke to the terms of the tenancy agreement, referring to the document entitled 'House Sharing Application and Agreement' that they sent as documentary evidence. The tenancy began on November 1, 2017, with the rent amount of \$2,300.00 payable on the 1st of each month. There was a payment of a security deposit in the amount of \$1,150.00. The current rent amount is \$2,495.00. The tenants verified this information in the hearing.

The agreement contains the statement, at paragraph 8: "We [i.e., the tenants] will be responsible for the repairs, maintenance and any damage including damage caused by accident."

The landlord also provided as evidence a copy of the Condition Inspection Report that they completed and signed jointly with the tenants prior to the start of the tenancy on October 14, 2017.

The landlord stated:

- The work done to the kitchen sink became a necessity in December 2019.
- This was due to a clogged drain that needed immediate attention.
- The tenants called the landlord initially to inspect the problem.
- Days later, the landlord viewed the issue with one of the tenants present, and they worked together to try to find the appropriate parts to fix the problem.
- That tenant left, and according to the landlord, stated that a plumber may be needed.
- Another one of the tenants then spoke to the landlord on the immediate problem of a clogged kitchen sink, and, in the landlord's version of events, asked for a plumber to attend to fix the problem.

The landlord then made the call to a plumber, and a receipt in the landlord's evidence of that visit lists: "hair, junk, and a pair of rags" as present in the drain.

The tenants take issue with responsibility for the clogged drain. They point to the landlord's messages to them that describe the plumber utilizing a 30-foot augur as part of the work. They submit this points to a deeper drainage problem involving the structure of the house as built, and with consideration to its age. They added in their testimony in the hearing that they were doing dishes in the sink because the dishwasher was not working.

Regarding the damaged ceiling due to water leaking from the unit above, the landlord presented that he visited the unit on his own when this was a problem, at the moment the water was leaking into his kitchen ceiling in the unit below.

Regarding the damaged ceiling due to water leaking from the tenants' unit above, the landlord presented that he visited the tenant's unit when this was happening in the moment. He observed an excess of water on the bathroom floor, overflowing from the sink and onto the floor below. He also observed excess moisture on the window. He gave the present tenant instructions on keeping the unit air fresh, and to exercise caution so that an excess of water did not fall onto the floor beneath the sink.

The tenants' position is that this leak water damage is also due to the age and structure of the building. In a message to the landlord, they described family members' efforts to keep the walls and flooring clean and free from excess moisture.

The tenant raised the issue with the Residential Tenancy Branch by way of inquiry. A representative of the branch pointed the tenants to section 32 of the *Act*, which refers to landlord and tenant obligations to repair.

Analysis

To be successful in a claim for compensation for damage or loss the applicant bears the burden of giving enough evidence to establish the following:

1. That the damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The relevant portion of the *Act* regarding landlord and tenant obligations to repair and maintain is section 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.

(4)A tenant is not required to make repairs for reasonable wear and tear.

The relevant portion of the *Act* regarding emergency repairs is section 33:

- (1)In this section, "emergency repairs" means repairs that are
- (a)urgent,
 - (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c)made for the purpose of repairing
- ...
- (ii)damaged or blocked water or sewer pipes or plumbing fixtures,

(2)The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(4)A landlord may take over completion of an emergency repair at any time.

Based on the evidence and the oral testimony of both parties, I find section 33 of the *Act* is applicable, and the tenants are responsible for the cost of repair. I make this finding for the following reasons:

- I accept from the plumber's report that there were specific identified foreign objects present in the drain.
- I accept the submission that the objects caused the blockage.
- From the length of the tenancy thus far, I accept that the tenants are the source of the materials in the drain.
- I am satisfied the landlord has established they were not informed about the malfunctioning dishwasher prior to this hearing.
- The amount paid to the plumber represents a reasonable amount for the repairs made.

In this situation, I find the tenants must pay -- bearing responsibility as per section 32 -- for repairs for these damages caused as a result of neglect, with foreign material of an obscure nature blocking the drainage in the kitchen sink.

Additionally, the terms of the tenancy agreement provide: "[The tenants] will be responsible for the repairs, maintenance and any damage including damage caused by accident." I find this clause applies in the current situation: the tenants are responsible for the foreign objects blocking the drainage system.

The cost for repairs by a plumber is reasonable and I grant an order to the landlord to recover this amount.

To address the issue of the ceiling damaged by leaking water from the tenants' unit above, I find the tenants are responsible for the damage caused to the ceiling below. The photos presented by the landlord show a significant amount of water. Minus evidence to the contrary, I accept the landlord's account that the water leaked from the unit above, with their explanation of what they observed in the bathroom above as leading to the problem being reasonable.

Thus, I find section 32(3) of the *Act* applies, and these costs belong to the tenants, where the damage was "caused by the actions or neglect of the tenant." I find the explanation of the tenants in regard to the efforts at cleanliness in regard to mold and mildew do not apply to this situation where damage is caused by an excess amount of water present on the floor, observed by the landlord as presented in their account.

For these reasons, I grant the compensation for this ceiling repair to the landlord.

I find the landlord is entitled to the costs of repair to damages caused by the tenants, in the amount of amount of \$464.10. This is not an unreasonable cost to bear given the circumstances, with due consideration to the efforts made by the landlord to attempt to resolve the situation amicably with the tenants.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 32, 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$564.10 for repair amounts and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 7, 2020

Residential Tenancy Branch