



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 25, 2020 (the “Application”). The Landlord applied for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants confirmed they were prepared to address the full amount of compensation sought on the Monetary Order Worksheet being \$9,447.58.

The Landlord sought an adjournment based on health issues relating to the current pandemic. The Landlord did not intend to have someone appear with her at an adjourned hearing, she said she hoped she would feel better. I asked the Landlord why she did not have someone attend the hearing to assist her and she mentioned not having family in the province. The Tenants did not consent to an adjournment given they had waited four months for the hearing and wanted the issues dealt with.

I considered rule 7.9 of the Rules of Procedure (the “Rules”). I declined to grant the Landlord an adjournment for the following reasons. The Landlord was holding the Tenants’ security deposit and had been for four months. The Tenants had waited for four months for the hearing and wanted the issues dealt with which was understandable. The Landlord chose to make the Application. These are legal proceedings. The Landlord should have ensured she was able to proceed on the hearing date or should have arranged to have someone assist her. I was not satisfied the Landlord had taken adequate steps to have someone assist her. I did not find it

relevant that the Landlord does not have family in the province as these are conference calls and therefore people can easily attend whether they live in the province or not. I was not satisfied the Landlord had an adequate plan in place to ensure she would be able to proceed at the next date if the hearing was adjourned.

I note that, although the Landlord was emotional during the hearing, the Landlord was clear in her testimony and submissions and was able to answer questions.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cost for plumbing company	\$540.97
2	Deductible for insurance company's contractor	\$1,400.00
3	Change in deductible due to claim	\$100.00
4	Change in insurance amount due to claim	\$575.00
5	Total amount of repair costs	\$7,406.61
6	Filing fee	\$100.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 15, 2019 and was a month-to-month tenancy. Rent was \$2,400.00 per month due on the 15th day of each month. The Tenants paid a \$1,200.00 security deposit.

The parties agreed the tenancy ended March 14, 2020.

The parties agreed the Tenants provided their forwarding address to the Landlord on the Condition Inspection Report (the "CIR") and in an email one month prior to the end of the tenancy.

The parties agreed the Tenants did not agree in writing that the Landlord could keep some or all of the security deposit at the end of the tenancy.

A CIR was submitted and the parties agreed it is accurate. It shows a move-in inspection was done March 09, 2019 and the CIR was completed and signed by both parties. It shows a move-out inspection was done March 14, 2020 and the CIR was completed and signed by both parties.

The parties agreed the Tenants received a copy of the CIR on move-in in person on the date of the inspection.

The Tenants testified that they took a photo of the CIR and received a copy of it by email upon move-out. The Tenants did not know when they received a copy by email. The Landlord testified that she sent the CIR to the Tenants by email the same date as the inspection.

The Landlord confirmed all of the compensation sought is as a result of the toilet in the third-floor bathroom flooding on June 29, 2019.

Landlord's Position

The Landlord testified as follows.

She lived in the basement suite of the rental unit. On June 29, 2019, Tenant A.S. knocked on her door and asked her to come upstairs because water was coming from the ceiling. She went upstairs and saw water coming from the living room ceiling. She went and shut off the water valve. She went up to the third-floor bathroom and saw that the rug was dry. There was no water overflowing from the toilet. She did not touch the floor. She called 911 because she thought a water pipe in the ceiling had broken. The water eventually stopped.

She called her insurance company. Someone from the insurance company attended the rental unit and measured the humidity in the third-floor bathroom. The insurance person found that the floor, baseboards, cabinets and walls were soaked with water. The insurance person said the water was coming from the bathroom. The Tenants had

closed the water valve to the toilet. The insurance person told her to call a plumber and test the toilet with the Tenants present.

Tenant A.S. said Tenant T.B. would be home for the toilet test but Tenant T.B. did not answer the phone or open the door.

On June 30, 2019, she tested the toilet as directed by the insurance person. She turned the sink on and made sure there was no leaking. She flushed the toilet and water flooded all over the bathroom floor which is shown in the video submitted.

The Tenants had thrown something in the toilet, flushed it and left the bathroom. Water was left on the bathroom floor for so long that it came through the ceiling.

A few days after June 30, 2019, a plumber attended and pulled a mesh-like object out of the toilet. The plumber tested the toilet and water came through the ceiling. The plumber removed the caulking and said the flange had failed because water was on the floor for such a long time. The plumber replaced the flange. The plumber flushed the toilet and there was no leaking.

The insurance company addressed the damage from the flood in two stages. First, they removed baseboards and cabinets in the bathroom that were ruined by water damage and made sure everything was completely dry. They then repaired the damage.

There were no further issues with the toilet after the plumber removed the mesh-like object from the toilet and fixed the seal.

1 Cost for plumbing company \$540.97

The Landlord confirmed this request is to cover the cost of the plumber attending. The Landlord testified that the insurance company would not pay for this cost.

2 Deductible for insurance company's contractor \$1,400.00

The Landlord confirmed this request is to cover the deductible she paid to her insurance company to make a claim and have them fix the damage.

3 Change in deductible due to claim \$100.00

The Landlord confirmed this request is to cover the \$100.00 increase in her insurance deductible that resulted from the claim for the flood.

4 Change in insurance amount due to claim \$575.00

The Landlord confirmed this request is to cover the increase in her insurance costs. The Landlord testified that she usually paid \$1,849.00 for insurance but this was increased to \$2,280.00 when she renewed her insurance because of the claim for the flood.

5 Total amount of repair costs \$7,406.61

The Landlord advised that this request is to cover the entire cost of the repairs to fix the damage from the flood. The Landlord testified as follows. She was told by other landlords that she would be uninsurable if she made two claims within five years. This scared her as the security of her house has been affected. She contacted her insurance company who did not say they would not insure her if there was another claim. Her insurance company did say that the claim would be removed from her record if she paid back the full costs of the claim. The full cost of the claim was \$7,406.61. This is the amount the insurance company paid to fix the damage. This amount does not include the cost of the plumber.

Tenants' Position

Tenant A.B. testified as follows.

She was at the rental unit on the day of the flood. She was taking a nap. Tenant A.S. came and told her water was dripping from the lights. Water was trickling from three lights. They grabbed pots and pans. They thought the water was coming from the bathroom and ran upstairs. There was a small puddle of water around the toilet. They shut off the water valve to the toilet. Tenant A.S. went and got the Landlord. The main water valve was shut off. The Landlord called 911. The ceiling is vaulted and so would have collected water from the upstairs toilet. The water flowed for 45 minutes and came out of the lights for 20 minutes.

Tenant T.B. let the plumber into the house but none of the Tenants were present for the plumber's inspection. The Tenants do not know how the mesh-like object got into the toilet. The Tenants cannot tell from the photos what the mesh-like object is. The mesh-like object looks old and could have been there for a long time. The mesh-like object could have been a left over building material. As well, there was a broken flange and seal. The wax seal is meant to stop water from leaking below the toilet.

The Tenants spoke to another plumber who said the flood could have occurred due to an improper wax seal or a seal that is old or has pre-existing issues. An improper wax seal and broken flange was the issue. This is why water reached the ceiling below. The issue with the seal and flange were not the Tenants' fault as the caulking around the toilet had to be removed to get at these issues.

Tenant A.B. submitted that the Landlord acknowledged in emails that the rental unit was not built to the highest standards. Tenant A.B. submitted that the toilet was not up to code. Tenant A.B. submitted that the Tenants should not be responsible for the damage and should not have to pay the \$7,406.61 the Landlord wants to pay. Tenant A.B. submitted that the damage was not due to the negligence of the Tenants and that one flush could have added to something pre-existing.

Landlord's Reply

The Landlord testified as follows in reply. It is not possible that the large mesh-like object was in the toilet from building materials as she and the Tenants lived in the rental unit without issue up until June 29, 2019. She did monthly inspections of the rental unit and noted nothing wrong 10 days before the flood. The second opinion of a plumber submitted by the Tenants is not dated and was authored by a one-person company. She did not know the plumber who attended the rental unit to address the flood as it was one of four companies provided by her insurance company.

Evidence

I have reviewed all evidence but note the following in particular.

The invoice from the plumber who attended the rental unit which states:

Removed blockage in upstairs main bathroom toilet. Flushed toilet and found leak from flange. Added on extension for the toilet. New wax ring and tested for leaks. No leaks at this time.

The plumber's report which states:

When arrived on site the toilet located on the 3rd floor was plugged. By using a toilet auger i received a object that appears to be some kind of mesh product. Once the object was removed the toilet was well tested. Then someone down stairs noticed there was leak in the ceiling located directly below the toilet that overflowed. Removed the toilet and found the wax seal had failed and that the flange was a bit too low. Installed a toilet flange extension ring to allow a better seal. Installed new seal, braided supply line and siliconed around base of the toilet. Test all well tested and cleared of any debris at this time. (mistakes in original)

An invoice for \$1,400.00 for the insurance deductible for restoration services.

Insurance documents showing the Landlord's deductible was \$1,400 and premium was \$1,849.00 in 2019.

Insurance documents showing the Landlord's deductible was \$1,500.00 and premium was \$2,280.00 in 2019/2020.

A video of the mesh-like object being pulled out of the toilet.

A video showing the toilet flushed without issue after the mesh-like object was removed.

Photos of the mesh-like object.

A video of the toilet being flushed and overflowing.

A statement from a plumber submitted by the Tenants.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR and testimony of both parties, I accept that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the CIR and testimony of both parties, I find the Landlord complied with her obligations in relation to the move-in and move-out inspections and therefore did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the testimony of both parties, I accept that the tenancy ended March 14, 2020.

Based on the testimony of both parties, I accept that the Tenants provided their forwarding address to the Landlord for the first time in an email one month prior to the end of the tenancy.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or claim against it. The Landlord therefore had 15 days from March 14, 2020 to repay the security deposit or claim against it. The Application was filed March 25, 2020, within time. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Sections 32(3) and (4) of the *Act* state:

(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.

There is no issue that there was a flood in the rental unit June 29, 2019 originating from the third-floor bathroom which caused damage to the rental unit. The parties agreed on this. The issue is whether the Tenants are responsible for the flood and damage.

Based on the testimony of the Landlord, invoice from the plumber who attended the rental unit, report from the plumber who attended the rental unit, photos referred to above and videos referred to above, I am satisfied the flood and resulting damage was caused by a mesh-like object plugging the toilet as well as an issue with the flange and wax seal on the toilet.

I place very little weight on the statement of a plumber submitted by the Tenants given the statement is not dated, not signed, does not outline what evidence the person

reviewed and given the person did not attend the rental unit or personally observe the issues.

I am satisfied the mesh-like object plugging the toilet was the Tenants' fault. The video and photos show the object is large. The Tenants had lived in the rental unit for more than three months when the flood occurred. I find it very unlikely that the large mesh-like object was in the toilet for three months, caused no issues for three months and then happened to cause an issue June 29, 2019. This does not accord with common sense.

I am not satisfied the issues with the flange and wax seal were the Tenants' fault. These parts are under the toilet base. The toilet was sealed to the floor with caulking. I am not satisfied the Tenants could have caused an issue with these parts given they did not have access to them. I am not satisfied based on the evidence provided that these parts were affected by water sitting on the floor given the toilet had caulking around the base of it. If the issues with the flange and wax seal were caused by water sitting on the floor, I would expect this to be reflected in the plumber's invoice or report; however, it is not. Nor am I satisfied based on the plumber's invoice or report that the plugged toilet caused the issues with the flange and wax seal.

In the circumstances, I am satisfied the flood and resulting damage were partly due to the actions of the Tenants and partly due to issues with the flange and wax seal.

The plugged toilet was not reasonable wear and tear. The mesh-like object which plugged the toilet should not have been put down the toilet. I am satisfied the Tenants breached section 32 of the *Act* by not taking responsibility for the repair of the toilet and flood damage caused in part by their actions.

I am satisfied the Tenants' breach resulted in financial loss to the Landlord given the Landlord had to pay for the toilet to be unplugged and the flood damage repaired. Given my findings above, I am satisfied two issues caused the flood and damage, one of which was the Tenants' fault. Therefore, I am satisfied the Tenants are in general responsible for 50% of the damage and financial loss.

1 Cost for plumbing company \$540.97

I am satisfied the Landlord had to have a plumber attend the rental unit to unplug the toilet as a result of the Tenants' actions.

I am satisfied based on the invoice from the plumber that the Landlord had to pay the plumber \$540.97 to attend the rental unit and fix the toilet. The invoice includes the following:

- \$150 per hour for labour for a total of \$355.50
- \$99.00 site visit charge
- \$22.14 WC extension kit
- \$5.23 wax ring regular
- \$8.34 brass water closet bolts
- \$25.00 hand snake drain clean
- 5% GST

Given the plumber fixed issues the Tenants were at fault for and issues the Tenants were not at fault for, I am not satisfied the Tenants are responsible for the entire amount. I am satisfied the following amounts arise from the Tenants' breach:

- \$177.75 for half of the labour cost
- \$99.00 site visit charge (full amount awarded because plumber had to attend to unplug toilet)
- \$25.00 hand snake drain clean
- 5% GST
- Total = \$316.83

I find the cost of the plumber and materials reasonable and award the Landlord \$316.83 for this request.

2 Deductible for insurance company's contractor \$1,400.00

I am satisfied the Tenants' actions contributed to the flood damage to the rental unit. I am satisfied the Landlord had to have the flood damage fixed.

I am satisfied based on the insurance documents and invoice that the Landlord had to pay a \$1,400.00 deductible for restoration services to fix the flood damage through her insurance company.

I am satisfied the Tenants are partially responsible for the cost of the deductible and award the Landlord half the amount of the deductible being \$700.00.

3 Change in deductible due to claim \$100.00

I am satisfied based on the insurance documents that the Landlord's deductible increased from \$1,400.00 to \$1,500.00 between 2019 and 2019/2020. I am satisfied the deductible was increased due to the claim given the "Discounts" notes on the insurance documents. I did not understand the Tenants to dispute this point. I am satisfied the Tenants are partially responsible for the claim and award the Landlord \$50.00 as half the increase.

4 Change in insurance amount due to claim \$575.00

I am satisfied based on the insurance documents that the Landlord paid \$1,849.00 for insurance in 2019 and \$2,280.00 for insurance in 2019/2020. I am satisfied this was due to the claim given the "Discounts" notes on the insurance documents. I did not understand the Tenants to dispute this point. I am satisfied the Tenants are partially responsible for the claim. I find the difference to be \$431.00 and award the Landlord \$215.50 as half the increase.

5 Total amount of repair costs \$7,406.61

I decline to award the Landlord the cost of the repairs. The Landlord chose to claim through insurance and those costs have been addressed above. Claiming through insurance was part of mitigating the loss. It is open to the Landlord to chose to pay the costs back to her insurance company; however, the Tenants are not responsible for this choice. I am not satisfied the Landlord has to pay the entire cost back. I am not satisfied the Landlord will be uninsurable if another claim is made given this information was not confirmed by her insurance company.

6 Filing fee \$100.00

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the Act.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Cost for plumbing company	\$316.83

2	Deductible for insurance company's contractor	\$700.00
3	Change in deductible due to claim	\$50.00
4	Change in insurance amount due to claim	\$215.50
5	Total amount of repair costs	-
6	Filing fee	\$100.00
7	TOTAL	\$1,382.33

The Landlord can keep the \$1,200.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$182.33 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$1,382.33. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$182.33. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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: August 25, 2020

Residential Tenancy Branch