



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 1, 2020. The tenant confirmed that no documentary evidence was submitted.

The tenant requested an adjournment to seek legal counsel and to determine what if any documentary evidence was to be submitted. The tenant stated that he did not seek an application before the scheduled hearing to adjourn it due to a lack of legal counsel or to determine what if any documentary evidence could be submitted. The tenant stated that he did not know what kind of evidence to submit. I find that the tenant's request to adjourn the hearing to obtain counsel to assist in determining what if any documentary evidence was to be submitted is not required and would be prejudicial to the landlord. On this basis, the tenant's request is denied. The hearing shall proceed.

I find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$8,637.69 which consists of:

\$1,000.00	Insurance Deductible
\$239.40	Emergency Plumber
\$38.50	New Shower Head
\$35.00	Late rent Payment, July
\$6,545.44	Strata, Common Area Damage Charge
\$154.35	Carpet Cleaning
\$525.00	Insurance increase (claim)

The landlord provided a written description which states,

Tenant clogged the toilet and neglected to turn off the water supply even though he was explicitly asked to do so. He also left the apartment overnight unattended during the flood and didn't do anything to contain the flood. In addition, he changed the locks without notifying me, which resulted in additional delays in accessing the apartment and containing the flood the following morning. The total damage cost to 2 units and common areas is in excess of \$50,000.

[reproduced as written]

During the hearing the landlord cancelled item #7, \$154.35, Carpet Cleaning as part of the renovation work to restore the rental unit after the flood, the insurance company replaced the carpet in the bedroom as part of the claim. As such, the landlord stated that this was no longer required.

The landlord clarified that items #3 and #4 listed as:

\$38.50	New Shower Head
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\$35.00 Late rent Payment, July

These items are unrelated to the primary claim of damages caused by a flood. For these items, the landlord stated that the tenant failed to pay rent when due for July and as a result incurred a \$35.00 late rent fee as per the signed tenancy agreement and addendum. The tenant confirmed that rent for July was paid late on the 2nd and does not dispute this claim.

The second item is for the cost of a new shower head for \$38.50. The landlord claims that the tenant removed the existing shower head during the tenancy and re-installed it at the end of tenancy. The landlord stated upon inspection, scratches were found and the shower head was leaking water. The tenant confirmed that he did remove the existing shower head and used his own during the tenancy before reinstalling it at the end of tenancy. The landlord further stated that the shower head was functioning properly at the start of the tenancy but was “scratched up” at the end of tenancy and was leaking. The landlord claims that the showerhead was either damaged during the tenant removing or re-installing the shower head.

The landlord further claims for the following:

\$1,000.00	Insurance Deductible
\$239.40	Emergency Plumber
\$6,545.44	Strata, Common Area Damage Charge
\$525.00	Insurance increase (claim)

The landlord claims that the tenant “clogged” the toilet and failed to turn off the water despite being explicitly told to do so. The landlord claims that the water continued to “run” and the tenant left the rental unit overnight unattended. The landlord was notified by the property management of a flood into the strata common areas and into another unit which caused flood damage.

The tenant argued that the plumber’s invoice dated July 7, 2020 states in part,

De-clogged toilet and assessed flood due to imperfect seal between toilet tank and toilet bowl. Prepared insurance report.

[reproduced as written]

The tenant stated that this shows that the cause of the clogg was not from the tenant’s actions. The tenant stated that the water was continually leaking and he had tried to

unclog the toilet himself without success using towels to clean up around the toilet. The tenant stated that he notified the landlord that he was not home to turn off the water.

The landlord disputes the tenant's claim that the tenant notified the landlord that he was not home to turn off the water. The landlord argues that the tenant had originally text messaged him about the clog. The landlord stated that at that time he notified the tenant to clean up the water leak and to turn off the water. The landlord refers to the submitted copy of the text message which states in part,

Hi Phillip forgot to mention to yesterday that toilet flooded, I thought I had it fixed as I put chemicals to unclog it, but now I flashed the toilet and it didn't flooded again, And even worse here's a picture of current situation.

[reproduced as written]

The date stamp of the message shows Saturday at 10:57pm.

The landlord stated that he had also called the tenant directly and submitted a call log showing an outgoing call at 11:06pm that lasted 2 minutes.

A text message reply from the landlord also states

Hi again Ron. Just to reiterate,

- 1) please turn off the water supply to the toilet*
- 2) wipe off any excess water from the floor to avoid damaging the sideboard as well as vanity wood (it can rot if water gets under)*
- 3) do you currently have renter's insurance? The building strata requires that both tenants and landlords have active insurance. Landlord's insurance only goes into effect after renter's insurance.*
- 4) Please don't put any chemicals or do any major repairs on your own—that's part of being a landlord. The clogged toilet can be repaired with a plunger in most cases unless there is a major issue, which I don't think should ever happen unless paper towels or hygiene products are flushed down the toilet.*

Please let me know in the morning if the issue is still there. Have a good night.

[reproduced as written]

The landlord provided undisputed testimony that he gave instructions to the tenant in the phone call to "shut off the water supply using the shut off valve next to the toilet."

The landlord also asked the tenant if the clog was serious and he was told that it was just a clog and he would take care of it. The landlord had asked for an update in the

morning and that he could attend with a plumber to ensure everything was ok if necessary.

The landlord argued that the main issue is that the tenant after discovering the clog failed to turn off the water after being told to. The landlord stated that the tenant then left the rental unattended allowing the water to continue to leak/run causing damage. The landlord stated that he was notified the next morning by the building manager that the rental unit was leaking into the unit below and had been trying to contact the tenant many times without any answer. The landlord attended the unit to discover that the rental unit door was locked and that his emergency set of keys did not work. The landlord stated that the tenant had changed the locks without notifying him. The landlord tried to contact the tenant again without any response. The landlord and the building manager then called a locksmith for emergency access. The landlord incurred an added expense of \$239.40 for the emergency locksmith. The landlord stated that the water was delayed in being turned off by at least 70 minutes after he was notified in the morning. The landlord stated that had the tenant turned off the water when instructed and did not leave the leaking toilet unattended the extensive flood would not have occurred. The landlord also stated that he paid a \$1,000.00 insurance deductible for the claim for the flood; \$6,545.44 for the damage to the common areas of the strata; and \$525.00 for an estimated future insurance cost increase due to the claim. The landlord has submitted a copy of an email from his insurance agent detailing the estimated increase of "\$105.00 per year for the next five years."

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find that the landlord has failed to establish a claim for the \$35.00 late rent payment fee for July. Residential Tenancy Branch Regulations, Section 7 (1) (d), Non-refundable fees charged by landlord states in part,

A landlord may charge any of the following non-refundable fees subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

On this basis, I find that the landlord's term for late payment fees is contrary to the Act and is unenforceable. As such, this portion of the landlord's claim is dismissed.

On the landlord's second item of claim for \$38.50, I find on a balance of probabilities that the landlord has established a claim. The landlord provided undisputed evidence that the shower head was functioning properly without leaks at the start of the tenancy; the tenant removed the shower head to install his own; the tenant re-installed the shower head at the end of tenancy; and the shower head was leaking when inspected and found with scratches. The landlord also stated that this all occurred within 1 ½ months of the tenancy starting.

On the remaining items of claim,

\$1,000.00	Insurance Deductible
\$239.40	Emergency Plumber
\$6,545.44	Strata, Common Area Damage Charge
\$525.00	Insurance increase (claim)

I find that the landlord has been successful. Despite the tenant arguing that the cause of the clogg was due to an "imperfect seal" between the toilet tank and toilet bowl the continuing leaking of water could have been resolved had the tenant turned off the water line to the toilet when instructed. This is shown in the landlord's submitted text message exchange between the landlord and tenant. The landlord further stated that this issue was further exacerbated by the tenant leaving the rental unattended overnight; changing the locks to the rental unit without notice or permission of the landlord. The tenant also argued that he had notified the landlord that he was not home when he received the landlord's text message has not been established as the landlord has disputed this argument. The tenant was unable to provide any evidence in support of this claim. I find that the tenant failed to act to minimize/prevent the damage caused by the water leak. As such, the landlord is entitled to these portions of the monetary claim filed.

The landlord has established a total monetary claim of \$8,348.34. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the

landlord to retain the \$900.00 security deposit and the \$900.00 pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$6,648.34.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 *Residential Tenancy Act*.

Dated: October 7, 2020

Residential Tenancy Branch