



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

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

- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,500 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Effect of End of Tenancy

The tenancy ended on October 31, 2020. As such, the tenant no longer requires an order that the landlord comply with the Act. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,500; and
- 2) recover the 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 tenancy agreement starting September 1, 2015. By the end of the tenancy, monthly rent was \$750 and was payable on the first of each month. The tenant paid the landlords a security deposit of \$400 which the landlords continue to hold in trust for the tenant.

The rental unit is a basement suite in a two-unit single detached house. The landlords live in the upper unit.

The parties agree that, on August 2, 2020, the washing machine in the upper unit started to leak. The washing machine is located directly above the tenant's bedroom. Water leaked from the upper unit into the tenant's bedroom and dripped onto the tenant's bed.

The tenant testified that she discovered water had leaked onto her bed around midnight when she turned in for the evening and sat on the bed. She testified the bed was "soaking wet". She testified that she texted landlord SJ immediately and that he came down to the rental unit the next morning. She testified that she slept on the couch that night.

The tenant testified that when SJ came to the rental unit, he looked at the mattress but that he did not touch it. She testified that he told her that he would have the mattress cleaned. The tenant told SJ that it was too wet to be cleaned, as the water had soaked through to the box spring. She testified that the morning after the flood she actually discovered that some of her possessions underneath the bed had been soaked with water.

She testified that the landlord did not take any action to remove or clean the mattress in next two days and that after two days the mattress started to smell, so she removed it and the box spring from the rental unit and placed them outside. Shortly thereafter it rained, and they were soaked through.

SJ testified that he did not go down to the rental unit immediately after the tenant advised him of the leak because the tenant said it wasn't necessary. He testified that when he did go down to the rental unit the morning after, he observed that only the corner of the mattress was wet (between 10% to 15% of the total surface area). He testified that the tenant lifted the mattress and he saw that only about 5% of the surface area of the box spring was wet. He did not see any possessions underneath the bed soaked with water.

SJ testified that immediately after inspecting the mattress he returned upstairs and called a cleaning company who advised him they could attend the rental unit on August 5, 2020 (three days after the leak was reported). In a written statement SJ provided in advance of the hearing, he wrote that the cleaning company told him over the phone

that “they have water remover for these exact kinds of situations and showed no reservations about doing the job.”

In his written statement, SJ continued, “I notified the tenant immediately stating that we would need to book [the cleaning company] quickly and she refused it as an option. Two days after the incident the mattress and box spring were outside in the rain making them completely unsalvageable.”

The cleaning company never attended the rental unit as a result.

The tenant denied that the cleaning company could have cleaned or dried out the mattress. She submitted a letter from the cleaning company that she obtained in preparation for this hearing in which a “call centre supervisor” of the cleaning company wrote:

In regards to the cleaning for the mattress that was saturated with dirty water from the washing machine.

And the absolute most we or any other carpet cleaning or restoration company would be able to do is clean the top and sides of the mattress. There is unfortunately no machine powerful enough to extract water from the inside of the mattress, therefore, dirty water will remain inside the mattress and since mattress is are very thick, it will take a very long time for the water to dry up. With it being so warm right now, the mixture of heat and moisture creates the perfect environment for bacteria, mold and slash or mildew to grow inside the mattress. Our professional recommendation would be to have the mattress replaced.

The landlords submitted an email from the same “call centre supervisor” who provided the statement to the tenant. In that email she wrote:

[The tenant] has recently touch base with me in regards to the email you sent are.

In correspondence to that email about the mattress, although the mattress was damaged due to the flood, we can only make recommendations over the phone. We would not be able to recommend replacement of mattress until after we have been there and have done a proper assessment.

As per [the tenant's] previous email, we are happy to assist our customers with any questions or concerns about the services we provide, however, moving forward we unfortunately cannot continue any further correspondence on this issue as we have not done any work in regards to the matter.

The landlords argued that I should assign no weight to the tenant's letter from the cleaning company as the company was unable to inspect the tenant's mattress in order to provide an accurate opinion as to the potential for remediation.

The landlords additionally argued that the tenant failed to mitigate her damage by:

- 1) not immediately asking the landlords to come down to inspect the mattress when she first discovered the leak;
- 2) not allowing the landlord an opportunity to attempt to remediate the mattress via cleaning; and
- 3) placing the mattress outside where she knew or reasonably ought to have known that it would have been damaged by the elements, thus eliminating any chance of the mattress being cleaned or repaired.

The tenant argues that the mattress was irreparably damaged at the time she discovered it following the leak and that no actions which the landlord claims she ought to have done it would have made any difference to how the damage to the mattress should have been addressed.. She alleges that the mattress was soaked through such that the box spring was wet and that this indicates that the mattress was beyond repair.

She testified that she paid roughly \$1,200 to purchase the mattress and box spring five years ago. The tenant submitted two quotes for a replacement mattress and box spring, one for \$1,440 and another for \$1,902.88. She did not provide any evidence as to the specifications of the damaged mattress, so I am unsure as to whether the mattress is for which she provided quotes are of a comparable quality.

Analysis

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.

(the “**Four-Part Test**”)

Section 32(1) of the Act states:

Landlord and tenant obligations to repair and maintain

32(1)A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

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.

So, the tenant must prove it is more likely than not that the landlords breached the Act by failing to adequately maintain the residential property (that is to say, they failed to prevent the leak), that she suffered a quantifiable amount of loss as a result of this breach, and that she acted reasonably to minimize her loss. I will address each of these requirements in turn.

1. Did the Landlords Breach the Act?

The landlords admit that they flood came from the upper floor. Allowing a flood to occur is a prime example of a landlord's failure to maintain the residential property in an appropriate state of repair for habitation. A properly maintained residence does not leak water through the ceiling into a basement.

The landlords have breached section 32 of the Act. The first part of the Four-Part Test is satisfied.

2. Did the Tenant Suffer a Quantifiable Loss as a Result of the Breach?

a. Replacement or Cleaning?

The parties do not dispute that the tenant's mattress and box spring were damaged as a result of the leak. Rather, the parties disagree over the extent of the damage caused. Based on the evidence of the parties, it is clear that water soaked through the mattress and into the box spring. SJ testified that, the morning after the leak, he observed that

5% of the surface area of the box spring was wet. The tenant did not provide a percentage estimate of the surface area of the box spring that was wet but did suggest that the water had soaked through the box spring as well and damaged items underneath her bed.

The landlords argued that, despite the fact that water had soaked through the mattress and onto the box spring, the mattress could have been cleaned and reused. As such, they argue, the tenant is not entitled to an amount equal to the replacement cost of the mattress. The tenant argued that the mattress was beyond saving, and no amount of cleaning would have made it usable again.

The letter the tenant provided from the cleaning company, in part, stated:

And the absolute most we or any other carpet cleaning or restoration company would be able to do is clean the top and sides of the mattress. There is unfortunately no machine powerful enough to extract water from the inside of the mattress, therefore, dirty water will remain inside the mattress and since mattress is are very thick, it will take a very long time for the water to dry up.

The landlords' argued that this letter should be discounted, as the cleaning company had not examined the mattress. They provided a second letter from the same cleaning company which, in part, stated:

In correspondence to that email about the mattress, although the mattress was damaged due to the flood, we can only make recommendations over the phone. We would not be able to recommend replacement of mattress until after we have been there and have done a proper assessment.

I accept the landlords' argument that, because the cleaning company did not examine the tenant's mattress, they cannot make specific recommendations as to whether the mattress could be adequately cleaned or not. However, in the letter provided by the tenant, the cleaning company provides general information about the scope of their cleaning abilities, which are not specific to the tenant's mattress. This general information is useful in determining whether cleaning of the tenant's mattress was at all possible. This general information is not contradicted by the second letter from the cleaning company submitted by the landlord.

Based on the first letter, I understand that cleaning companies can only clean the top and sides of mattresses, and not the insides of a mattress. I also understand that there is no machine that can extract water from the inside of a mattress. As such, if I determine that there was water on the inside of the mattress, it would follow that the tenant's mattress could not have been adequately cleaned.

I have already found that water permeated through the mattress and into the box spring. As a box spring is located directly below the mattress, this indicates that water soaked

through the mattress before reaching the box spring. Accordingly, it follows that water soaked into and inside of the mattress. Therefore, based on the general information contained in the first letter from the cleaning company, I find that the mattress could not have been adequately cleaned. As such, the mattress had to be replaced.

Neither party made any submissions as to whether the box spring itself had to be replaced. They spoke of the mattress and box spring as a single unit. I accept that water had soaked into the box spring as well. I also accept the tenant's testimony that water had damaged her belongings under the box spring, which indicated water made its way inside the box spring. For this reason, as with the mattress, I find that this required the box spring to be replaced.

b. Value of Mattress and Box Spring

The tenant provided two quotes for replacement mattresses and box springs: one for \$1,440 and another for \$1,902.88. I am unsure how these two mattresses and box springs compare to those damaged by the leak. However, the tenant testified that she paid roughly \$1,200 for the former mattress and box spring five years ago. Based on the similar cost (adjusted for inflation) I am satisfied that the mattress and box spring costing \$1,440 is of a similar level of quality.

However, the tenant is not entitled to recover the full amount of the replacement cost of the mattress and box spring. The leak did not damage a brand-new mattress. The leak damaged a five-year-old mattress, which has a depreciated value. Policy Guideline 40 addresses this issue, and indicates that the arbitrator should consider the "useful life" of the damage item:

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item.

That evidence may be in the form of work orders, invoices or other documentary evidence.

While this policy guideline refers only to items owned by landlords, the principles are applicable to a tenant's property that is damaged due to the actions of the landlord. Policy Guideline 40 does not list a useful life for a mattress but does provide a useful life for "furniture" of 10 years. While I am not certain that a mattress is considered "furniture", I find that this estimation is a reasonable one for mattresses.

The damaged mattress and box spring were five years old at the time they were damaged. As such, I find that their replacement value is 50% of the cost of purchasing a new, comparable mattress and box spring.

The tenant has satisfied the second and third parts of the Four-Part Test.

3. Did the Tenant Act Reasonably to Minimize her Loss?

The landlords argued that the tenant failed to reasonably minimize her loss in three ways:

- 1) not immediately asking the landlords to come down to inspect the mattress when she first discovered the leak;
- 2) not allowing the landlord an opportunity to attempt to remediate the mattress via cleaning; and
- 3) placing the mattress outside where she knew or reasonably ought to have known that it would have been damaged by the elements, thus eliminating any chance of the mattress being repaired.

I have already found that the mattress and box spring required replacing. As such, I do not find that the fact the tenant moved these items outside, causing them to become rain-soaked and prevent the landlords from attempting to clean them is as failure to minimize her loss. The mattress and box spring could not have been adequately cleaned. As such, it was not reasonable for the tenant to maintain them in a state so that cleaning could have been attempted.

The landlords did not state what, if anything, they would have done differently had they been allowed to inspect the mattress the night of the leak, rather than the following morning. As it happened, the course of action chosen by the landlord was to call a cleaning company, who advised them it would be three days before they could attend to clean the mattress. I am not sure how their inspecting the mattress the night of the leak would have made any difference to the landlords' actions. I doubt the cleaning company was taking calls at midnight, and, even if they were, I have no reason to think that their availability would have been any different than it was the following morning.

As such, I find that the tenant acted reasonable to minimize her loss, and that the fourth part of the Four-Part Test is satisfied.

Pursuant to section 67 of the Act, I order that the landlord pay the tenant \$720, representing 50% of the cost of a new, replacement mattress and box spring.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, she may recover their filing fee from the landlords.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlords pay the tenant \$820, representing the following:

| | |
|--------------------------------------|--------------|
| 50% replacement cost of new mattress | \$720 |
| Filing fee | \$100 |
| Total | \$820 |

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: January 13, 2021

Residential Tenancy Branch