



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on January 4, 2021, in which the Landlord sought monetary compensation from the Tenant in the amount of \$8,300.85 for the cost of repairs to the rental unit due to a flood and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on May 10, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?

2. Should the Landlords recovery the filing fee?

Background and Evidence

In support of her claim, the Landlord testified as follows: this tenancy began February 1, 2020; monthly rent was \$2,085.00 per month; and, the Tenant paid a \$950.00 security deposit. The tenancy ended on in March of 2021.

The nature of the Landlord's claim relates to damages caused by a flood which occurred in the rental unit on November 13, 2020. The Landlord stated that she received notice that a flood had occurred from the strata council after which she went to the rental unit and met with some members of the strata council, N. and A., as well as the cleaning lady. The Landlord confirmed that at that time the flood had been contained, the plumber had been called, and they were awaiting their assistance.

In terms of the cause of the flood, the Landlord stated that the Tenant hired a cleaning lady, J., and she was either sweeping or mopping in the bathroom and the mop struck the toilet water source valve and broke the valve. The Tenant was not at the rental when this happened as he was on his way to work. The cleaning lady called him to try to figure out how to manage the situation. The cleaning lady then contacted a strata member at the direction of the Tenant. Luckily there was a crew working on the building and they shut off the water for the entire building thereby minimizing the damage.

The Landlord submitted an estimate which set out the "scope of work" which was required and which included \$7,800.45 for the restoration and repairs as well as a further \$400.40 for the plumber. The Landlord also submitted evidence relating to moving and storage costs in the amount of \$1,200.00.

The Landlord confirmed that they did not make an insurance claim. She stated that to her knowledge, the Tenant had insurance and attempted to make a claim but they refused it. The Landlord also stated that the Tenant tried to contact the cleaning lady, but apparently she has not been responding.

In response to the Landlord's claim, the Tenant testified as follows. He confirmed that there was a flood in the rental unit at the time his cleaning lady was cleaning the bathroom.

The Tenant further confirmed that he did not oppose the amounts claimed by the Landlords as he had no reason to believe that they did not incur the costs claimed.

The Tenant stated that he opposed a finding a liability for the damage as he believes the cause of the flood was the aged water pipes, not the actions of his cleaning lady. He stated that the building is 30 years old and the water pipes are original, such that they are 30 years old. The Tenant further stated that the pipes have a 10-year lifespan and they needed to be changed well before the breakage occurred. In support of his position, the Tenant submitted an estimate from a plumber who wrote that the pipes were 30 years old and needed to be replaced. The Tenant further stated that the pipes were polyB and that was discontinued in the late 1980's and early 1990's.

Although the Tenant does not believe he is responsible for the costs, the Tenant stated that he tried to make an insurance claim. The insurance company refused to cover it because he contracted the work to someone else.

The Tenant also stated that there is no water shut off to the entire apartment. The Tenant stated that the only way the water was shut off was when the crew shut off the entire rental buildings water such that the water damage was exaggerated by this flaw.

In response to the Tenant's submissions, the Landlord confirmed the building was built in the late 1980's. She further confirmed that to her knowledge the pipes have not been updated. She stated that the building was owned by her family "since the beginning" and the building was built to code and municipal bylaws at the time of insulation.

The Landlord submitted that the only reason the pipe broke was the force of the cleaning lady. The Landlord also noted that her plumbing report made no mention of the age of the pipes as a contributory factor.

The Landlord also stated that there is in fact a water shut off by the boiler/hot water tank. She stated that they turned off the entire building as that was their decision in that moment, rather than going into the individual unit.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Landlord claims the cost of repairs to the rental unit due to flooding which occurred while a cleaning lady hired by the Tenant was cleaning the bathroom. The Landlord submits that the force used by the cleaning lady around the toilet damaged the toilet water source pipe.

The Tenant denies liability for the damage and submitted evidence that the cause of the flood was the deficient pipes which he says were at least 30 years old. This was supported by an estimate provided to the Tenant by a plumber. The Tenant also testified that the type of pipes were no longer used. The Landlord did not dispute the Tenant's testimony in this regard and confirmed the pipes had not been updated in the 30 years the building had been in existence. She noted that it was built to code at the time.

Residential Tenancy Branch Policy Guideline 40 provides for a table setting out the useful life of building elements. No item, including metal/concrete culverts, have a useful life over 25 years. While there is no line item for plumbing pipes, I find it likely plumbing pipes would have a useful life less than that of a metal or concrete culvert.

On balance I find it more likely that the pipe broke as the pipe had passed its useful building life. Additionally, I find it broke as a result of the fragility of the pipe due to age, not the actions or inaction of the Tenant or those hired by the Tenant to clean the unit. I therefore find the Landlord has failed to meet the burden of proving that the Tenant, or the Tenant's contracted cleaning lady, was the cause of the broken pipe and the resulting damage.

I therefore dismiss the Landlord's claim in its entirety.

Conclusion

The Landlord's claim 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: June 10, 2021

Residential Tenancy Branch