



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL**

Introduction

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

1. An Order that the tenant pay to repair the damage that they, their pets or their guests caused during their tenancy pursuant to Sections 62 and 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, CF, and the Tenants, MP and DP, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord confirmed that he served each Tenant with the Notice of Dispute Resolution Proceeding package and evidence for this hearing by Canada Post registered mail on December 8, 2021 (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail receipts with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenants were deemed served with the NoDRP package and evidence for this hearing five days after mailing them, on December 13, 2021, in accordance with Sections 88(c) and 89(1)(c) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order that the Tenants pay to repair damage that he alleges they caused during their tenancy?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

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

This periodic tenancy began on August 15, 2010. Monthly rent is \$1,275.00 payable on the first day of each month. A security deposit of \$512.50 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord testifies that there were no issues with the plumbing system in the rental unit, mechanical or otherwise. The clogging problem could have been prevented if food particles, dirt and other waste had been removed before going down the drain. No repairs were needed to be done to the drainpipes. The Landlord states that this is not normal wear and tear of the plumbing system. The Landlord believes the Tenants have been careless and negligent by not properly removing solid waste off their children's clothes before washing them in the washing machine.

On July 26, 2021, the Landlord had a plumbing company come in and assess the stoppage in the laundry tub. The description of the work completed follows:

... Homeowner says when washing machine is ran that water backs up into the laundry tub and comes out of stack on 1 1/2 laundry discharge. I recommended the options to clear stoppage. I strongly suggested to hydro scrub which would be the best possible outcome to clear stoppage. There was a copper cleanout on the 2" stack. I removed clean out and began hydro scrubbing after hitting multiple stoppages. I then made 3 15 foot passes with the hydro scrub machine. When I pulled out to test with water, I pulled out a softball size clump of hair which is a build up of hair and dirt and food particles. I then connected cleanout cap back. Then ran hot water for 10

minutes with water then ran a rinse cycle on the washing machine which was draining normally. I am confident that the stoppage had been cleared. ...

The plumber's work invoice was for "*BEST – HydroScrub™ line thru access to clear stoppage; plus [company] Drain Product Treatment, 2 hour max.*" The invoice totalled \$554.83.

The Tenants state they have lived in the rental unit over 10 years. They have 4 children. The Tenants testified that this clogged drain is normal wear and tear that occurs over time with drains. They called the Landlord as soon as they discovered that the laundry drain was backing up. The Tenants stated that this is the first time they have experienced a clog drain being renters.

The Landlord described a time about seven years ago that the drain got clogged from a toy during these Tenants' tenancy. The Tenants stated about two years ago in this 4-plex, a plumber had to access their suite to deal with a plumbing issue that arose in another unit in the building. The Tenants said all the drains in the 4-plex exit on their end of the building.

The tenancy agreement states what is included in the rent, such as: water, stove and oven, refrigerator, carpets, window coverings, garbage collection, parking for two vehicles, cold water only is supplied.

The tenancy agreement also notes who is obligated to make repairs in the rental unit or residential property. The Landlord's and Tenants' obligations are those noted in Section 32 of the Act (set out in the Analysis section). The tenancy agreement also notes emergency repairs are limited to:

- i) major leaks in pipes or the roof,
- ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- iii) the primary heating system,
- iv) damaged or defective locks that give access to a rental unit, or
- v) the electrical systems.

Analysis

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.

Landlords and Tenants each have responsibilities in tenancies. Section 32 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.*
- (2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (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.*
- (5) *A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

The Landlord is seeking compensation for damage and loss, specifically he wants reimbursement of the cost for the plumber's invoice issued on July 26, 2021 for a total of \$554.83. Policy Guideline #16 sets out the four-part test when a party is seeking compensation for damage or loss. In order to determine if compensation is due, it is up to the party claiming the compensation to provide evidence to establish that compensation is due. I must consider whether:

1. a party to the tenancy agreement has failed to comply with the Act, Residential Tenancy Regulation (the “regulation”) or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on all the evidence of the Landlord, he has not established that the Tenants failed to comply with the Act, regulation or tenancy agreement. I find that a clogged drain is reasonable wear and tear during a tenancy, in this case, it has been over ten years. There does not appear to be any damage to the pipes, and I do not find that the Tenants were alerted to the issue until it needed a plumber to fix it. I find pursuant to Section 32(1) of the Act that the Landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. The Landlord must also, having regard to the age, character and location of the rental unit, make the rental unit suitable for occupation by a Tenants. I find that the Landlord is responsible for the plumbing costs in this matter.

I find the Landlord has failed to meet part 1 of the four-part test for compensation for damage or loss. As a result, I dismiss the Landlord’s application due to insufficient evidence without leave to re-apply. Further, as the Landlord was unsuccessful in his application, I do not grant him recovery of the application filing fee.

Conclusion

The Landlord’s application is dismissed without leave to re-apply.

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: February 14, 2022