Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation for monetary loss or other money owed of $1,037.90; and to recover the $100.00 cost of her Application filing fee.

The Tenants and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on October 1, 2020, with a monthly rent of $1,700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $850.00, and no pet damage deposit.

In the hearing, the Landlord explained her claim, as follows:

> For context, I live in a duplex, with a legal basement suite. They were newly built. I moved in, in September 2020; no one else had lived there.
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> We did a full inspection, and everything was in working order. The plumbing has a sump pump in the basement that is separate from upstairs, which the plumber confirmed – it's included in my evidence
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> In March of 2021, [the Tenants'] toilet wasn't flushing, and both the toilet and the tub were backed up. We tried [drain cleaner], but it had no effect. I called four or five plumbers for quotes, and most were asking for a lot, since it was after hours. They told us not to flush upstairs until they arrived.
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> When the plumber arrived, he had to use a camera to investigate the blockage. He found baby wipes and Q-tips blocking the pipes and he said this had burned out the [sump pump] motor. The plumber said we should get an alarm box before it gets this far again. The plumber waived the visit fee and . . . and charged $2,076.90. He sent the invoice to me.
>
> We spent two months talking with insurance companies, but in the end, they turned down the claim. I thought we could we get together for a repayment plan.

> A month later, I offered to cover a portion of the bill – the new alarm – and a couple dollars more, in case I could have found a cheaper plumber. [The Tenants] said they didn't think they were responsible, because it was an accident. They said they would pay for the $650.00, but not the labour cost. I said that should be included. They disagreed. We came to no agreement.

The Landlord submitted a copy of the plumber's "Official Plumbing Report", stating:

> The sewage pump down stairs failed due to baby wipes getting stuck and causing the motor to burn out. NOTE: Everything from the basement enters that pump chamber. Everything from upstairs flows on grade to city sewers. Note: It would not be possible for upstairs [sewage] to enter the sump even in the case of a back up due to a one way valve/check valve installed on the piping.

In the plumber's invoice, he said:

> Sewage was backing up in the basement. We discovered a sump with a failed pump. We opened the chamber and inspected the pump/sump chamber then noticed objects that can cause the pump to jam and burn out. We removed the pump and inspected it. We cleaned out the chamber and ensured the lines are clear. We supplied and installed a new sump pump with a new float. Also supplied and installed a new high water alarm system with a new float. We put the piping back together and tested everything is sealed not leaking and functioning normal again. New pump with install $1,289.00. New alarm box with float installed $389.00. Cleaning all old debris from sump, so it doesn't get stuck and plug new pump $300.00. Waived camera and call out----

The total billed on this invoice was $1,978.00 plus GST of $98.90, for a total of $2,076.90. The Landlord said that the sump pump was new in 2020.

The Tenants testified, as follows:

> We have our own version of events. Similar but. . . in October 2021, she made a comment to let us know if there's any back up – she mentioned it before we moved in. In March 2021 the work was done. We were not allowed to look at the damage or the baby wipes. On the actual report the wording is vague. We contacted insurance company about it.
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> We had a bit of back and forth with ourselves and [the Landlord]. Our insurance wouldn't cover it, because they said it was under the house - her liability –

not ours. An insurer will only cover you for what you have lost. We can't make a claim, because it is not our property. The cause of the damage was the wipes.

There's something else: we're adamant that we didn't put anything down the toilet like that. Our adjuster came out to visit for the same claims, where sump pumps had been burned out. We asked if the Landlord could make a claim on her insurance, but she didn't want to make a claim on her part because of the deductible. You can only make a claim, if you're legally liable for it. We had no update until June 10 from the adjuster, saying that the claim wouldn't be covered.

The next point is that we were in touch with the owner of the property, and we asked about the original plumbers. We corresponded with them. We got the original make, model, and price of the pump that was damaged.

On August 4th, we received a break down of payments made in good will. This is no admission of guilt - we denied it. So, the breakdown is sent, covering the plumber and the cleaning of the pipes. She said unless we pay in full, she would give us no references. I thought that this was made in bad faith. She tried to make us pity her - saying she pays for everything in the house - to pressure us into paying more. We confirmed the $650.00 that we would pay, and she said she would cover the rest.

We made the payment out of good will, with no admission of guilt. We spent months in insurance claims, and then the Landlord tried to change tactics

On November 4th, the sump alarm went off. The plumber said it was the same issue. He showed us how to flush the system to clean a blockage, That alone shows it's an issue with the plumbing. In my opinion this will happen again.

Our daughter who's two now; we've never used baby wipes, but we would not put them in the toilet. She's still not able to use the toilet herself.

The Landlord said:

The initial backup when they first moved in – when inspection done - there was dust from the contractors, and we had it all cleaned out, but I mentioned it, because it was there initially; but it was resolved before they moved in.
That wasn't the issue, it wasn't dust gravel from contractors. They found baby wipes - I didn't mean to blame your daughter - I just didn't think it was intentional.

Maybe it wasn't you guys; it could have been friends or someone else - not you - shoving baby wipes.

As far as the deductible. I tried with my own insurance, but that $2,000.00 is too small of a claim with the deductible. It was impossible for me to have made a claim on it.

We had more of a heated discussion. I was upset, you were upset. I never said you would get a bad reference. I was just hoping we could figure it out . . . I was upset, but not threatening.

When the sump alarm went off in November, we called the plumber the next day. He said there was no issue with the plumbing. I told them how to turn off the alarm.

He didn't open the pipe of where the camera was, but he said if something gets blocked, then the flow of water of other taps and shower will clear the blockage. Nothing was broken because the alarm caught it early

The Landlord said that the Tenants made more payments – an additional $450.00. So, $1,037.90 is what is left owing. The following chart sets out the amounts billed, paid, and owing.

	Receipt/Estimate From	For	Amount
1	Trust It Plumbing	Parts & labour	$2,076.90
2	Trust It Plumbing	New alarm box	($389.00)
3	Tenant	Already paid surplus rent	($200.00)
4	Tenant	More surplus rent	($450.00)
		Total monetary order claim	**$1,037.90**

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. However, section 32 also states that:

> (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.
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> (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.

The undisputed evidence before me is that the plumber found that there were baby wipes and Q-tips blocking the rental unit pipes, and which caused the sump pump motor to fail and the blockage to happen in March 2021.

The Tenants acknowledged having a two-year old child who is not yet toilet trained; however, they denied having put any baby wipes down the toilet.

I find from the plumber's report that what ends up in the basement suite pipes that the plumber examined comes solely from the rental unit. As such, it raises questions in my mind about how the baby wipes could have entered the plumbing system, if not from the Tenants.

Given all the circumstances before me, I find on a balance of probabilities that it is more likely than not that the Tenants did put the baby wipes and the Q-tips down the toilet, which caused the blockage in March 2021. The Tenants did not provide any alternative as to how the baby wipes ended up blocking the plumbing pipes for the rental unit, if not put there by the Tenants. There is no evidence before me that there is anything else wrong with the plumbing, which was new when the Parties moved into the residential property, approximately six months prior to the plumbing blockage.

Accordingly, I find that the Tenants are responsible for the cost of the plumber's invoice from March 2021. I note that the Tenants have already paid $650.00 toward this bill. In addition, the Landlord paid for the alarm box, which worked in November 2021, and alerted the Parties of another blockage that was forming at that time.

As a result of my findings, I award the Landlord with **$1,037.90** from the Tenants, pursuant to sections 32 (2) and 67 of the Act. I also award the Landlord with recovery of her $100.00 Application filing fee from the Tenants, pursuant to section 72 of the Act.

I grant the Landlord a Monetary Order of **$1,137.90** from the Tenants in this matter, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in her Application, as she provided sufficient evidence to establish on a balance of probabilities that the Tenants were responsible for the drain blockage in the rental unit in March 2021.

I find that the remaining amount owing on the plumber's bill is **$1,037.90**, which amount I award the Landlord from the Tenants. The Landlord is also awarded recovery of her **$100.00** Application filing fee for this proceeding.

The Landlord is granted a Monetary Order of **$1,137.90** from the Tenants. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: March 08, 2022

Residential Tenancy Branch