



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenants) S.M. and T.R.	310063459	OLC, FFT
(Landlords) N.N. and V.N.	310063963	MNDL, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants filed claims for:

- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- recovery of their \$100.00 application filing fee;

The Landlords filed claims for:

- \$918.75.00 for compensation for damage caused by the Tenants, their pets or guests to the unit or property; and
- recovery of their \$100.00 application filing fee.

The Tenants, T.R., and S.M., and the Landlords, N.N., and V.N., 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 the hearing process. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and 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. Both Parties said they had received the Application and the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, 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

- Should the Landlords be ordered to comply with the Act and/or tenancy agreement, and if so, in what way?
- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the application filing fee?

Background and Evidence

The Parties agreed that the original tenancy began on May 1, 2018, with a (current) monthly rent of \$1,950.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$975.00, and a pet damage deposit of \$975.00.

I have two applications before me; however, they appear to be about the same matter, an incident that occurred on October 21, 2021, involving a bathroom faucet leak. I'll start with the Landlords, because they have the burden of proof for their claim of compensation from the Tenants.

I asked the Landlords to explain their claim, which they set out, as follows:

We received a phone call from the lower unit tenant on the first floor late at night. They called on October 21, 2021. [S.M.] called that an alarm was going constantly. She said maybe to call the fire department. Since the alarm was

going on first floor, we contacted them; I asked [S.M.] to go and check to see if there is any smoke, and then call the fire department. But I received a phone call from 15 – 20 minutes later, that everything was okay, because the babysitter was with the kids, and she turned off the alarm.

We contacted our lower unit tenant later - 40 minutes later - to ask why the alarm went off. She said there has been water coming from the alarm device in the ceiling. So, I tried to call [S.M.], because she is on the second floor above there. I wasn't able to get her – it was 10 p.m. or later. So, I sent a message and again told her it was an emergency, and we needed her to – see our document 16 – we have not received any response from [S.M.]. I couldn't go to [the Town], because it was late and I had to work. I was still waiting for this phone call. No response until next morning.

Next morning, we found message from [S.M.]. She woke up in middle of night, and checked and found small leak in water under sink. 'That's okay, we are planning to check ourselves, because it's an emergency.' [V.N.] came around 11 the next morning after an emergency at his work. He found an under sink leak – it will show on video. See evidence #2, 3, and video.

So [V.N.] called the specialist and it's been done. Invoice from #8 document. It was okay, but since the water came to the first floor, we had to check for no mould, so we called a restoration company. They came and checked the leaking place to the first floor. See second invoice in documents #9.

. . .

Why we claim the cost, because we think it was negligence from the Tenants' side. The sink had never been checked. If it was checked regularly, it would probably have been found. See especially our picture #2 – it had been leaking for quite long. Even inside the furniture, which embraces the sink was damaged by water, and it was really obvious that it was not just one day. The shelf under the sink is damaged by water. That's why we think it's negligence

The second point in negligence, she said she checked it in the middle of night and she didn't find anything. If it was checked as soon as possible, we don't need to call restoration company, so it would be less expensive. So, I guess that this is my explanation.

The Tenants responded, as follows:

On October 21st, the smoke detector went off, and I tried to turn it off. There was

no cause for it. I called [T.R.] and he suggested calling the Landlord. We both tried to contact the downstairs tenant. I hung up with the Landlord, and 10 minute later, the babysitter came home and turned off the smoke detector. I called [N.N.]. That was the last I knew of it. I went to bed.

I go to bed early, because I have three small children. I turn off my ringer when I go to bed. I saw [N.N.'s] text – see a screenshot of the text of water dripping from the smoke detector, asking, 'can you check under the sink?' So, I checked at 2 – 2:30 a.m. I didn't pull everything out, because my son's bedroom backs to the sink. I responded saying there was no leak that I can see.

I woke up at 5:30'ish and I noticed that there had been a leak. It was not leaking at the time, but where the pipe is right up against the back wall of my son's bedroom, and the shelf is cut out around it, and the water had been leaking straight down behind the shelf. There was a bit of water in a bin that I had under the sink – bathroom storage stuff - but not a whole lot of water anywhere, just some dampness.

So, from [N.N.'s] text, she indicated that [V.N.] would be coming around 9 a.m. to check. So, I went to work and came home at 10:45 a.m. to see how things were going. [V.N.] still wasn't here. I texted [N.N.], who said he was on his way. He arrived shortly after. Then the plumber came and [V.N.] and I had correspondence over phone about what was going on, the next step, and what we could expect in the next couple days

On February 9th – almost 4 months later, we received the invoices for the leak.

We believe if it was indeed an emergency, they could have come here, or got the downstairs tenant to knock on our door. There are numerous ways they could have tried to contact me. It is a 20-year-old house and the tap failed. We did what we could, and I don't believe we are responsible, as the Landlords are supposed to be doing monthly inspections. And if they wanted us to be checking the sinks regularly, they should have told us to. That should be indicated in writing.

I asked the Landlords how old the residential property is and when it was last renovated. They said it is 20 years old, as is the sink.

I noted from the Landlords' photographs of the leak, that it appears there is some minor mould and stains from a leak. I asked the Landlords if they checked beneath the sinks

when they inspected the residential property. They said:

We check everything every time. We tried to do it every month. The last inspection before leaking, I do check every time,; this was pandemic time, and probably the monthly inspection was delayed, and also because someone was sick in the family and not clear if we should come. We might not have done a home inspection in September or October [2021].

The Tenants are responsible to check the property and let Landlords know as soon as possible. And [S.M.] has been always good and always checked and let us know that anything was wrong with the property so we can fix it. This time we complained, because on the shelf you can see the water damage.

The tenant living downstairs even sent me pictures of water coming, but unfortunately, I didn't submit this as evidence.

I asked the Landlords about their claim for compensation from the Tenants of \$918.75, and how they chose the plumber. They said:

He's been doing work previously with us. I used the plumber a couple of years before when did the downstairs renovation, and I talked to the restoration company and asked them if they could do the work. They said I have to call a plumber, and that no insurance going to cover it.

I called around and this plumber was available in 1 – 2 hours. 'I will come and fix it.' But this time I asked how much it going to cost, but he said he's going to present me an invoice. Anyway, he did come probably around 3:30 or 4:00 p.m. and [S.M.] was home and he fixed the problem.

I asked the Landlords about their house insurance covering the repair, and they said:

Yes, but I called the construction company to do restoration. They came to do the inspection. My concern is that it was a leak between the floors and any event of leaks – at this time, he used an inspection device. He used a 'therma' device [he wasn't sure what it was called] to check the floors and he used it and didn't find any leaks, but he found it in the tenant upstairs. Then in a week or so, he sent a guy to repair it and do anti-mould and stuff.

If the restoration would have found bad damage, I would have to apply [for

insurance coverage]; if not damaged, we cover it from our side. I already have the expense of insurance with tenants living there. It would be even more expensive [if we claimed it], so we avoided the additional expense. We decided to not call insurance company, if the expense is not more than \$1,000.00, otherwise we would call the company. The deductible is \$500.00.

The Tenants responded, as follows:

It seems to me that the leak is obviously what caused the smoke detector to go off. That leak could have started 10 minutes, or two days before; how does that make us negligent? We don't live under the sink to ... how are we to find it. They do monthly inspections, and it has never really been spoken about that we're supposed to check these things. To be honest, even if we did and we closed the cupboard door and walked away, and the leak starts two minutes later, that doesn't make us negligent

The picture shows damage to the shelf – a melamine shelf - and I had storage bins for hair products sitting on top of it, and there was a little bit of water...

When I took everything out from underneath the sink, most of the water had been going directly down and not on the shelf. It was going in where the shelf was cut and going straight down. I go underneath the sink daily to grab products, so it's not that it doesn't get looked at often. It just wasn't a visible leak.

There's a picture showing where it goes, and there's a gap there between the shelf and the pipe. Truthfully, the time between I checked at 2:30 a.m. and 5:30 a.m., I don't know what difference it would have made if I had noticed it in the middle of the night.

I asked the Parties for any last statements they had before we ended the hearing, and this is what they said:

The Landlords said:

Since weren't able to come for home inspection in regular schedule, we definitely would have caught any leaks. Again, our point is that it is their responsibility to check it, and according to pictures and videos, we don't believe it has been checked properly

The Tenants said:

To [N.N.'S] point about being unable to do home inspections at that time. If our onus was to be checking for leaks and under the sinks, that should have been communicated to us; otherwise, they were just not doing home inspections. There was nothing like – 'Please look for these things, since there's no inspection due to Covid'. We did our best and it is just the wear and tear of the taps. Underneath the sink, I looked at quite often. It was not a leak that was noticed until the fire alarm went off.

[S.M.] and I have been home owners, We're not, not checking things and not caring for their property, but it is a 20-year-old faucet, and it said on the invoice that the faucet failed. This was not something we noticed. We couldn't hear water running. We're often gone camping for a few days. It could have happened. We heard no water running. If we checked it, and it happens two minutes later, that's not negligence. It just wore out.

The Tenants' Application was for the Landlords to comply with the Act or tenancy agreement in terms of responsibility for such repairs, which I will address in my analyses.

The Parties both submitted copies of the plumber's invoice, which states the following:

The main bath room faucet on the sink beyond repairs. Removed and replaced the lavatory faucet with new single handle ...

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 let them know how I analyze the evidence presented to me. I explained 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. I said that in this case, the Landlord must prove:

1. That the Tenant 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”)

Policy Guideline #1, “Landlord & Tenant – Responsibility for Residential Premises” (“PG #1”), is a guideline intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property, and obligations with respect to services and facilities.

PG #1 states:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet ‘health, safety and housing standards’ established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Further, Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. It states:

The useful life is the expected lifetime, or the acceptable period of use of an item

under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage that might be caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the any responsibility the tenant may have for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of a faucet is 15 years. The evidence before me is that the faucet is 20 years old and had no years or 0% of its useful life left.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

In this case, and based on the evidence before me overall, including the plumber's invoice, I find that the faucet was to blame for the leak, and that the faucet was 20 years old and beyond its useful life. The plumber said that it was beyond repair and had to be replaced. As a result, I find that the Tenants are not responsible for replacing a faucet that was five years beyond its useful life.

The Landlords' testimony was that their evidence proves that "...it had been leaking for quite long". The Landlords said that they inspected every aspect of the residential property; however, as they were unable to find this leak in their inspections, it seems unreasonable to expect that the Tenants would find it. Further, the Landlord said in the hearing: "And [S.M.] has been always good and always checked and let us know that anything was wrong with the property so we can fix it." From this I infer that the Landlords trusted the Tenants to be on top of issues that arose in the tenancy.

As such, I find that the Tenants were not negligent in their duty to maintain the

residential property, pursuant to section 32 of the Act, which states: “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...”.

Accordingly, I find that the Landlords are unsuccessful in their claim for compensation from the Tenants in this matter, and I dismiss the Landlords’ application wholly without leave to reapply.

I find that the Tenants are successful in their claim for the Landlord to comply with their responsibilities pursuant to the Act. As a result, I find the Tenants are eligible for recovery of their **\$100.00** application filing fee from the Landlords, pursuant to section 72 of the Act. The Tenants are authorized to **deduct \$100.00 from one upcoming rental payment** in complete satisfaction of this award.

Conclusion

The Landlords are unsuccessful in their application, as they were claiming compensation from the Tenants for a faucet that had been in place five years longer than its useful life. As such, the Tenants are not responsible for replacing something that the Landlords should have replaced five years prior. The Landlords’ application is dismissed wholly without leave to reapply.

The Tenants are successful in their application for the Landlords to comply with the Act in maintaining the residential property pursuant to section 32 of the Act, and the Policy Guidelines. The Tenants are awarded recovery of their **\$100.00** Application filing fee from the Landlords. The **Tenants are authorized to deduct \$100.00 from one upcoming rental payment** in complete satisfaction of this award.

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 09, 2022

Residential Tenancy Branch