



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 67 for compensation for damage to the rental unit; and
- return of its filing fee pursuant to s. 72.

L.S. appeared as agent for the Landlord and was joined by V.H. the building’s manager.
R.C. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised having served the Tenant with the Landlord’s application and evidence, which the Tenant acknowledges receiving. Based on its acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* that the Landlord’s application materials were sufficiently served on the Tenant.

The Tenant confirmed that he did not serve documentary evidence in response to the Landlord’s application.

Issues to be Decided

- 1) Is the Landlord entitled to compensation for damages to the rental unit caused by the Tenant?
- 2) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on June 1, 2003.
- Rent of \$762.00 is due on the first day of each month.
- A security deposit of \$337.50 was paid to the Landlord.

The Landlord provides a copy of the tenancy agreement.

The Landlord's agent testified that the Tenant was using a washing machine in his rental unit without the Landlord's permission. I am told that in or about August 2021 the Landlord was notified that water was leaking into a common area in the building, which prompted it to hire a plumber. The Landlord's agent testified that water was leaking through the electrical fixtures. Upon investigation, the plumber entered the Tenant's rental unit and discovered water had leaked from the Tenant's washing machine.

The Landlord's agent further testified that she was notified by the plumber of the source of the water leak and that the plumber had told advised that the Tenant asked that they not report the water leak to the Landlord. The Landlord's invoice includes an invoice from the plumber dated August 13, 2021 for \$283.50. The plumber's invoice includes the following description:

Upon arrival to the job the leak had stopped on the drywall and floor. Inspected [the rental unit] directly above the common area and found a washing machine in the living room of the unit that had just been used and overflowed onto the carpet and the corner of the wall.

Tenant asked technician not to tell management that he had washing machine that caused the water damage.

No further inspection needed.

I have redacted personal identifying information from the passage above in the interest of the parties' privacy.

The Landlord's evidence includes photographs of the common area affected by the leak.

The Landlord's agent further testified that she had a conversation with the Tenant shortly after the leak was discovered in which the agent says she told the Tenant he would be responsible for covering the expense. The Landlord's agent says that in the phone call the Tenant acknowledged he was responsible for the leak but expressed a concern regarding the cost of the repairs.

The Tenant denies responsibility for the water leak entirely and denies using the washing machine on the day in question. He testifies that the washing machine is not unauthorized and that he purchased it at London Drugs. He denies admitting responsibility to the Landlord's agent and denies telling the plumber not to report the leak to the Landlord. The Tenant further testifies that the property is prone to water leaks with the Landlord entering his rental unit in September 2021 to inspect for water leaks.

The Landlord seeks the cost of the plumber and the cost of cleaning carpets in the common area that were soaked from the water leak. The Landlord's agent testified that the carpet cleaning was necessary to clear out the excess water that had absorbed into the carpet in the common area. It was argued this was done to minimize the damage to the property and prevent the risk of mould developing. The Landlord's evidence includes an invoice for a carpet cleaner dated August 17, 2021 for \$157.50.

The Landlord's agent further states that the Tenant has been provided with copies of these invoices prior this application being filed, and that the Landlord made various demands for payment. The Landlord's evidence includes copies of these demands.

Analysis

The Landlord seeks compensation resulting from a water leak.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 32(2) and 32(3) of the *Act* imposes an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

In this instance, I have little difficulty finding that the Tenant breached his obligation under s. 32(3) of the *Act* to repair damage to the common areas of the residential property following the water leak from his rental unit. The invoice from the plumber clearly establishes that the source of the leak was the Tenant's washing machine, which either overflowed or otherwise leaked.

The Tenant denies using the washing machine on the date in question, denies asking the plumber not to report the leak to the Landlord, and denies admitting to the Landlord's agent that the leak came from the washing machine. I find that the Tenant was less than truthful with respect to his denials. The invoice clearly explains the source of the water leak. The Landlord's agent was uncertain when the water leak was reported, only saying it occurred sometime around when the plumber's invoice was provided. Despite this, the Tenant said with absolute certainty that he was not using the washing machine on the day in question. I significantly doubt that the Tenant has specific recollection of the days he used his washing machine in August 2021 as it was not established when the leak had occurred. I put little weight in the Tenant's bare denial.

I find that the Landlord suffered a loss from the water leak originating from the Tenant's washing machine in the amount listed in the invoices provided. I accept the necessity of the plumber to ascertain the source of the leak given it went unreported by the Tenant and had escaped into the common area below his rental unit. I further accept that the

carpet cleaning was necessary to mitigate risk of mould to the carpets, which based on the pictures provided by the Landlord show they were soaked.

I find that the Landlord could not have mitigated its damages under the circumstances.

Accordingly, I find that the Landlord has demonstrated it is entitled to \$441.00 due to the water leak caused by the Tenant (\$283.50 + \$157.50).

Conclusion

The Landlord is entitled to monetary compensation of \$441.00 due to the water leak caused by the Tenant.

I find that the Landlord was successful in its application and is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$541.00** to the Landlord, representing the total of the amounts listed above (\$441.00 + \$100.00).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: November 03, 2022

Residential Tenancy Branch