Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S
FFT, MNDCT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution, filed on May 13, 2019, the Landlords requested monetary compensation from the Tenants, authority to retain their security deposit, and to recover the filing fee. In the Tenants' Application for Dispute Resolution, filed on July 22, 2019, the Tenants requested monetary compensation from the Landlords, return of their security deposit, and to recover the filing fee.

The hearing of the parties' applications was conducted by teleconference at 1:30 p.m. on August 20, 2019. 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 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 respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

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

2. Are the Tenants entitled to monetary compensation from the Landlords?

3. What should happen with the Tenants' security deposit?

4. Should either party recover the filing fee?

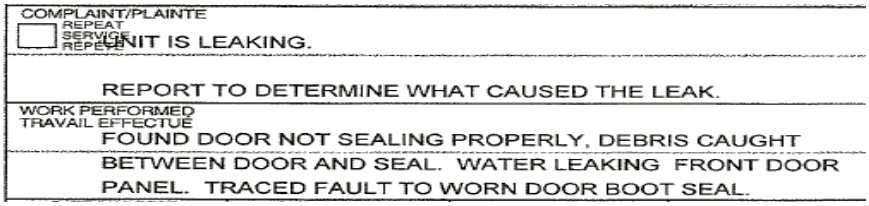
Background and Evidence

Introduced in evidence was a copy of the tenancy agreement confirming that this tenancy began October 15, 2018. Monthly rent was $1,300.00 and the Tenants paid a security deposit of $650.0 and a pet damage deposit of $325.00. T.I. confirmed that they returned the pet damage deposit to the Tenant and continue to hold the $650.00 security deposit.

In support of their monetary claim the Landlord T.I. testified as follows. T.I. stated that on March 15, 2019 a flood occurred in the rental unit. T.I. further stated that the Tenant, A.R., called her and informed her that the washing machine was flooding and the water was pouring into the basement as well. T.I. claimed that the Tenant, A.R., informed her that they were washing horse blankets at the time the flood occurred.

T.I. testified that the washing machine which caused the damage was in fact owned by the Tenants as during the tenancy the Tenants removed the Landlords' washing machine and installed her own as the Landlords machine had problems with the spin cycle (although in written submissions the Landlords claimed this was done without their knowledge or consent). She testified that the original washing machine was located in the rental unit when they purchased it in 2016, but was not able to say how old the washing machine was.

T.I. stated that when the flood occurred, they hired a third party inspector from G.S. Ltd. who completed an assessment and determined that it was the boot seal that was leaking. A copy of the invoice was provided in evidence and upon which the technician noted the following:



COMPLAINT/PLAINTE
REPEAT SERVICE REPEAT
UNIT IS LEAKING.

REPORT TO DETERMINE WHAT CAUSED THE LEAK.

WORK PERFORMED
TRAVAIL EFFECTUE
FOUND DOOR NOT SEALING PROPERLY, DEBRIS CAUGHT BETWEEN DOOR AND SEAL. WATER LEAKING FRONT DOOR PANEL. TRACED FAULT TO WORN DOOR BOOT SEAL.

T.I. submitted that as they are not experts they hire a restoration company who in turn came in and assessed the damage as several thousand dollars and suggested an insurance claim be made. T.I. also stated that the restoration company stated that it was clear the flooding occurred from the leaking boot seal, not the plumbing. Following this they made an insurance claim.

T.I. stated that the Tenant, A.R., confirmed she would obtain and maintain tenants' insurance, yet that did not occur, as such when the flood occurred the Tenants were without insurance.

In terms of the $1,198.70 amount claimed, the Landlords claimed the $1,000.00 insurance deductible, the $98.57 for the inspection invoice, and $100.00 for the filing fee.

The Landlord further stated that although the Tenant agreed not to use the washing machine after the flood, she continued to use it without any issue.

In response to the Landlords' claims, the Tenant, A.R. stated as follows.

A.R. confirmed that she put in her own washing machine January 27, 2019.

A.R. stated that when the flood occurred she was home and had just started a load of laundry. She stated that it was only on for a few minutes and she heard a beeping noise. She went to the laundry room and saw water under the sink. She then went to the basement and saw approximately six inches of water on the floor.

The Tenant stated that she was at the rental property when the restoration company attended and they did approximately six further cycles and the machine did not leak.

The Tenant claimed that the representative told the Tenant that the Landlord should hire a plumber.

The Tenant noted that when G.S. Ltd. attended the rental unit, the Tenant wasn't home to discuss the flood with the technician.

Following receipt of the invoice from G.S. Ltd, the Tenants communicated with them directly at which time the owner, J.G. wrote:

> I just talked to my tech who was at the house and we both come to the conclusion that there is no way the water could have come from the boot seal. If the boot seal was leaking you would see water on the floor at the front of and under the washer. If the boot seal was totally shot water would be pouring out of the machine as soon as water entered the tub section. The only way to get 6" of water on the floor would be if the water was pouring through the machine with noone around to stop the water by turning the taps off. We found some debris between the door and seal. If indeed the washer was used for a period of time after we were there would indicate to me although the boot seal was worn it wasn't leaking to any degree. If it was you would see water on the floor everytime the machine was used.

[underlining added by Tenants]

In their Application, the Tenants sought monetary compensation for the cost to do their laundry at the laundromat as well as the increase in their electrical utility as a consequence of the dehumidifier running after the flood. In support of this they provided a copy of two electrical utility invoices. They did not provide any receipts relating to laundry.

The Tenants also sought return of their security deposit.

In reply the Landlord reiterated that the inspection from G.S. Ltd. confirmed it was the technicians' view that he issue arose from a faulty washing machine.

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.

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.

In the case before me the Landlords claim the Tenants caused water damage to the rental unit as a result of their malfunctioning washing machine. The evidence provided by the Landlords indicates a technician came to this conclusion.

The Tenants dispute the Landlords' claim. They testified that after the flood the washing machine was run several times and did not leak. They also provided an email from the same company where the Landlord's technician was employed, wherein the owner writes that he discussed the matter with the technician and they concluded that the washing machine was not the source of the leak.

The report from the technician and the email from the company's owner are technically "hearsay". While hearsay evidence is admissible in hearings before the Residential Tenancy Branch, the problem with hearsay evidence is that the writer is not available at the hearing to provide affirmed testimony or respond to questions—in this way, their written out of court statements are not able to be challenged or clarified. I find that the conflicting conclusions present in the report from the technician and the email from the company's owner cannot be reconciled without their attendance at the hearing.

Notably, on the report from the technician, the "complaint" noted is "unit is leaking". This suggests the technician was informed that the cause of the leak was the unit itself and not any plumbing issues. It is therefore possible the technician did not look beyond the unit itself. Again, the only way to determine this would have been to speak directly to the technician, and as they were not a witness in the proceedings, that information is not available.

In all the circumstances, I find the Landlords have failed to prove on a balance of probabilities that the monetary losses relating to the flood *occurred due to the actions or neglect of the [Tenants] in violation of the Act or agreement.* As such, I find the Landlords have failed to prove the Tenants should compensate the Landlords for this loss.

The Tenants seek monetary compensation for the cost to wash their laundry at a laundromat. They failed to provide any receipts to support such a claim. As such, I find the Tenants have failed to provide proof of the *actual amount required to compensate them for these claimed losses.* Further, documentary evidence indicates the Tenants may have continued to use the washing machine after the flood. For these reasons I dismiss this portion of their claim.

The Tenants also seek compensation claiming that their electrical utility increased due to the use of dehumidifiers. In this respect the Tenants only provided two invoices which cover the time period around when the flood occurred; they did not provide the previous years' invoices as a comparison. Without historical information, I find they have submitted insufficient evidence to support a finding that their electrical utility increased due to the use of dehumidifiers. Consequently, I find the Tenants have submitted insufficient evidence to support a finding that their electrical utility increased by the amount alleged. As such I dismiss this portion of their claim.

I will now turn to the Tenants' request for return of their security deposit.

The Move-out Condition Inspection Report filed in evidence confirms that the Tenants provided the Landlords with their forwarding address on April 27, 2019, the same day as the inspection was conducted.

The Landlords applied for Dispute Resolution on May 13, 2019; as May 12, 2019 was a Sunday, the Landlords applied within the strict 15 day limit imposed by section 38 of the *Act.* As a result, section 38(6), the "doubling provisions" do not apply.

As I have dismissed the Landlords' monetary claim, the Tenants' security deposit is to be returned to them in its entirety. As the Tenants have enjoyed more success in this application than the Landlords I also award the Tenants recovery of the filing fee for a total monetary award of **$750.00.**

Conclusion

The Landlords claim for monetary compensation from the Tenants for losses incurred due to water damage is dismissed.

The Tenants claim for monetary compensation from the Landlords for the cost of laundry and electricity is dismissed.

The Tenants are awarded a Monetary Order in the amount of **$750.00** representing return of their security deposit and recovery of the filing fee. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 26, 2019

Residential Tenancy Branch