



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDC-L, FFL, MNDCT

Introduction

In the first application the landlords seek a monetary award for the estimated cost of repair to a kitchen from damage alleged to have been caused by the tenant's failure to inform them of a water leak. They also seek to recover cleaning costs, translator fees and rent for August 2020.

In the second application the tenant seeks a monetary award for loss of use of the kitchen, threats to health and safety, "noise pollution," loss of use of a laundry facility, an alleged illegal eviction, and for alleged harassment.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant responsible for the cost of repair of water damage in the kitchen? Did she give inadequate notice to end her tenancy, causing the August rent to be payable? Did the tenant fail to leave the rental unit reasonably clean?

If the tenant is not responsible for the water damage, is she entitled to an award for the inconvenience caused by the kitchen repairs undertaken by the landlords? Has there been a threat to her health and safety warranting an award? Have the landlords failed to maintain laundry service and if so, has the tenant suffered any loss as a result? Was the tenant illegally evicted? Has she been harassed by either landlord in such a manner entitling her to damages?

Background and Evidence

The rental unit is a two bedroom suite on the ground level floor of the landlords' home. The landlords live on the top level. There is a second suite on the ground level, rented to another.

This tenancy started in March 2018. The tenant resided there with her mother and her daughter until July 31, 2020. The monthly rent was \$1178.00. The landlords hold a \$575.00 security deposit.

The parties carried on a very pleasant relationship until July of this year. In June the tenant's mother had mentioned to one of the landlords that there was water on the kitchen floor. On July 8 the landlord ZF was in the yard and noticed that the outside wall of the home, below the tenant's kitchen window, was wet. With permission she entered the suite and found extensive water damage below the kitchen sink.

The photos of the damage taken by the landlords at that time are significant. One photo displays the white-painted cupboard area under the sink. The front of the floor of the cupboard is covered in black and dark brown patches of mould/mildew. The floor has caved in at the back of the cupboard. There appear to be strips of black tape applied where flexible water hose passes down under the floor, perhaps in an effort to staunch the flow of water. The front of the floor, where it meets the sink cupboard doors, is arched up in the middle as result of water deforming it. The back and side walls show evidence of repeated, long term water staining with mould/mildew rings arching up the walls.

The floor and walls of a neighbouring cabinet show similar damage.

A view taken from in front of the kitchen sink shows that the baseboard, running under the face of the sink cupboard and its neighbours for perhaps two meters, is heavily darkened with mould/mildew.

Upon seeing this damage the landlords shut off the water and took steps to have a professional look into repairs. There was some discussion with the tenant about who should arrange repairs and, on July 13 the landlords sent the tenant an official letter requesting she repair the kitchen damage, but the landlords quickly undertook the job. It was determined that the cupboards had to be replaced, along with the flooring, which had peeled up, and along with about four square meters of subfloor. The landlords obtained an estimate of \$6300.00 for the work.

The tenant didn't think she'd done anything wrong. The landlords could not understand why the tenant had not informed them of this extraordinary damage. Their friendly relationship ended. For example the tenant emailed the landlord on July 13 saying that because of repairs then underway she had had no fresh drinking water from the kitchen (though the bathroom taps still worked) and demanded the landlords send her \$1000.00 as compensation.

The landlords suggested the tenant move out during repairs. On July 15 the tenant emailed that she would end her tenancy and move out by July 31. The landlords wrote back expressing their regret and indicating their request was that she move out only during repairs.

On July 19 the landlords emailed the tenant noting that a tenant must give "30 days" notice to end a tenancy and therefore the tenant would be responsible for August rent. The tenant wrote back saying that, in that case, she would stay until the end of August, pointing to the provisions of the *Residential Tenancy Act* (the "RTA") that automatically change the effective date of a notice to end a tenancy to the earliest lawful date. The landlords responded indicating the tenant could not stay for August because they had made other plans for the rental unit.

On July 20, the landlords brought this application (but for the cleaning cost claim which was added by amendment on September 18).

The tenant moved out by July 31. The landlords failed to conduct a move-out inspection or prepare the mandatory report required by the *RTA*, just as they had failed to conduct a move-in inspection and prepare a report.

The tenant replied with her own claim on August 12.

Analysis

Liability for Kitchen Water Damage

The central issue between the parties is: who is responsible for the water damage and resultant repair costs.

The photographs presented by the landlords satisfies me that the tenant should have noticed the extensive water damage under her sink a very long time before it was discovered by the landlords of their own accord on July 8.

The tenant indicated that during her tenancy she had no cause to look under the sink and see the damage. I disagree. She is saddle with the responsibility accorded to what the law considers to be a reasonable person. A reasonable person who happens to step into water on the floor in front of a sink may not conclude she must look under the sink for leaks. But a person repeatedly stepping into water in front of the sink should have concluded there might be problem warranting further investigation; like opening the sink cupboard doors and looking inside.

The extent of the “puddling” the tenant might have been exposed to can be extrapolated by the extensive mould/mildew blackening of the exposed white baseboard running along under the front of the cabinets. Significant water loads would have been required in order to produce the darkening effect and it would almost certainly have been water drawn up from the kitchen floor.

The explanation the tenant provided to the landlords, that she noticed the floor water especially on rainy days and thought it was rain coming in somehow, is not a reasonable explanation. Water should not be pooling on the kitchen floor. A tenant has a responsibility to notify a landlord of such things.

I do not accept the tenant’s explanation at hearing that she thought it was water merely splashed from the sink area. That explanation is simply unreasonable.

I do not accept the tenant’s explanation that she never used the sink cupboard or looked there and that she never used the neighbouring cupboard during her tenancy. People consistently view under the sink, even it is merely to hang a towel over the cupboard door. That is the normal storage area for things like dish soap and sundries. The tenant, her mother and her daughter had lived there since March 2018. The proposition that they had opened the cupboard doors under the sink or had not used or looked inside a major storage cupboard in the kitchen is not reasonably believable.

In result I find that the tenant should have notified the landlord of a significant water leak at least months before its discovery on July 8.

This does not make the tenant responsible for the full cost of repair. The water leak appears to have come from a sink faucet. I can only assume it was plumbing failure.

There is no evidence to base a conclusion that the tenant caused the leak, only that she failed to report it in a timely manner. It is possible and, in my view, likely from the damage shown by the landlords' photographs, that significant water had been leaking down the backside of the sink cupboard for a long period of time; perhaps even before this tenancy started.

The exact contribution the tenant's failure to report made to the extent of the total damage cannot be accurately calculated. In these circumstances I find that the tenant's failure to report the water leak was an equal contribution to the total damage and that she is responsible for half the reasonable cost of repairs.

Landlords' Claim for Repair Costs

At this hearing the landlords had filed a single repair estimate from a professional repairman. However, since that filing the landlords undertook and completed the repair work themselves. They have not filed evidence about their efforts and expenses in doing so. Those efforts and those expenses are the true determiners of their loss. The estimate is no longer relevant.

At the start of this hearing it was agreed that while responsibility for the water damage would be determined, the landlords' monetary claim for repair costs would be withdrawn, with leave to re-apply, depending on the determination of liability. Thus, they are free to re-apply seeking half the reasonable costs of repair from the tenant. Hopefully the determination in this decision will cause the parties to embark upon settlement discussions and resolve the matter between themselves.

Landlords' Claim for Transcription Costs

The landlords recorded some July conversations with the tenant. Those conversations were in the parties' mother tongue. The landlords paid \$300.00 to have a professional translator transcribe and render them into English. In my view the recordings formed important evidence and the cost was a fair one. Given the split liability for water damage, I award the landlords \$150.00 of the translator costs.

Landlords' Claim for \$1178.00 for August Rent

I dismiss this item of the claim. The tenant's notice to end the tenancy July 31 was too short a notice under the law but the tenant is right that by s. 53 of the *RTA* such a notice is deemed to change to the earliest lawful date: August 31. The landlords refused the

tenant's continuing possession of the rental unit for August. They cannot now claim August rent.

Landlords' Claim for Cleaning Costs

It is a tenant's duty to return the rental unit to her landlords "reasonably clean" (s. 37(2) *RTA*). That duty is irrespective of the state of cleanliness at the start of a tenancy. I have reviewed the photographic evidence and determine that the tenant left the rental unit reasonable clean but for the stove top and the fridge lining. I consider \$50.00 to amply cover the reasonable cost of cleaning those appliances.

The landlords failed to conduct a move out condition inspection with the tenant, as they are required to do by s. 35 of the *RTA*. Had they done so I consider it likely that, as often happens, any minor cleaning the landlord requests would have been done right then by the tenant. Accordingly, I award the landlords \$25.00 of the cleaning cost.

Landlords Filing Fee

I award the landlords recovery of \$50.00 of the filing fee.

Tenant's Claim for Loss of Use

While the tenant did not cause the water leak causing the damage, I find that the landlords did not cause it either. It was not a result of their direct actions or their failure to properly maintain the rental unit. It is truly an unexpected and unfortunate accident that caused inconvenience for all.

As a result, I determine that the tenant was obliged to put up with the repairs that were conducted in July, the same way any homeowner would be expected to do. I dismiss her claim loss of use of the kitchen area.

Tenant's Claim of a Threat to Health and Safety

Open Kitchen Floor: There was period during one day of repairs when a portion of the kitchen subfloor lay open before it was covered over with new plywood. Had this situation lasted, the tenant may well have been entitled to an order that the floor be made safe. There is no evidence that the tenant suffered any damage or loss as a result and so her claim for money is dismissed.

Stairs Landing: For the same reasons, the tenant's claim for money due to the absence of a stair railing is dismissed.

Tenant's Claim of Noise Pollution

The noise was that of a saw working during the kitchen repair. This item of the tenant's claim is dismissed for the same reasons her claim for loss of use of the kitchen was dismissed. It was a normal part of the repair process that she was obliged to endure.

Tenant's Claim of Illegal Eviction

I find that at no time did the landlords give the tenant a Notice to End Tenancy. She was not evicted. The correspondence makes clear the landlords suggested she move out only during repairs to the kitchen. The tenant could have declined the landlords' insistence that she leave by July 31, relying on the fact that her notice to end the tenancy self-corrected to August 31. She did not. It was not a case of illegal eviction. I dismiss this item of the claim.

Tenants' Claim of Harassment by the Landlords

The tenant makes three claims regarding her harassment allegation. First, that the landlord ZF illegally entered the rental unit at 9:00 p.m. on July 14. Second, the landlords recording conversations with the tenant. Third, that the landlord video recorded the tenant without her permission.

The tenant says that on the night of July 14 the landlord entered the rental unit without permission by turning the door knob and opening the door. The landlord ZF testifies that it was the tenant's mother who opened the door for her. Both versions are credible and I can find no basis to prefer one's recollection of events over the other. I find that the tenant has failed to prove on a balance of probabilities that her version is correct. She has failed to prove any wrongful entry.

It is apparent the landlords recorded a conversation with the tenant. It was the subject of the professional translator's work, referred to above. The tenant points to the Criminal Code of Canada but those provisions relate to intercepted conversations. It would appear there is no law against recording a conversation between two people where at least one of them consents to the recording. The admissibility of such recordings is a different matter. In this case, the content of the translator's transcript,

was not challenged by the tenant, though the import of the conversation was. I find that there was no harassment.

There was no evidence entered during this hearing that would indicate the landlords made a video recording of the tenant. However, the same rules for audio recordings would apply in my view.

I dismiss the tenant's monetary claim for harassment.

Conclusion

The tenant is responsible for half the reasonable cost of repairing the water damage in the kitchen. Those damages are to be assessed on further application by the landlords.

The landlords are entitled to a monetary award totally \$175.00. I award the landlords recovery of \$50.00 of the filing fee. I authorize the landlords to retain the total award of \$225.00 from the security deposit they hold.

The tenant's application is dismissed. She is entitled to a monetary award for the \$250.00 remainder of her security deposit.

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: October 23, 2020

Residential Tenancy Branch