



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

On April 15, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

B.H. attended hearing as an agent for the Landlord, and both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

B.H. advised that each Tenant was served a separate Notice of Hearing and evidence package by email on April 27, 2021, and Tenant L.G. confirmed that they received these packages. She also confirmed that she did not have any opposition to the manner with which these packages were served to them. Based on this undisputed evidence, I am satisfied that the Tenants have been duly served these packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

L.G. advised that the Landlord was served their evidence by email on October 7, 2021. B.H. confirmed that the Landlord received this evidence and had no opposition to the

manner with which this evidence was served. As such, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 16, 2020, that rent is established at an amount of \$1,800.00 per month, and that it is due on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that a move-in inspection report was completed on October 15, 2020, and a copy of this inspection report was submitted as documentary evidence for consideration.

B.H. advised that the Landlord is seeking compensation in the amount of **\$157.50** because it is the Landlord's position that the Tenants are responsible for a plumbing repair. He stated that he was informed by the Tenants via email on March 15, 2021 about a clog in the bathroom sink, which was approximate five months after the tenancy started. There had been no issues with the sink at the time the Tenants moved in, as the speed and functionality of the drains were checked at this time. Moreover, there are no records of any issues with the drain since the property management company started overseeing the rental unit. A plumber was hired to unclog the drain and it was the plumber's professional opinion that the source of the clog was likely due to the Tenants' use of the sink. He referenced the plumber's report, submitted as documentary

evidence, which read, “in my opinion if this sink was operational when the tenants first moved in than [sic] it was there [sic] further actions that would have caused the sink to become plugged in this manner.” He also referenced the invoice and pictures submitted to support the Landlord’s position that this issue was due to the Tenants’ negligence.

The Tenants advised that they do not dispute the Landlord’s submissions; however, it is their belief that they used the sink normally and this issue falls under the Landlord’s responsibility to repair as this is considered reasonable wear and tear. They made attempts to clear the clog themselves, but given the age of the pipes, this was likely due to a buildup over a considerable period of time. They stated that they have never had this issue in any of the other places they have rented, that a razor blade cap that was found in the drain was not theirs, and they submitted that the other maintenance issues in the rental unit support their belief that the sink was not likely maintained properly in the past. They stated that there have been no similar blockages since the repair, which supports their position that there is nothing that they are doing which would have caused this issue in the first place. They also stated that the plumber indicated to them, at the time of the repair, that this clog was due to a buildup of debris over a long period of time; however, he did not respond to the Tenants’ request to put this statement in writing.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the Landlord's claim for compensation in the amount of \$157.50 for the plumbing repair, I find it important to note that a move-in inspection report was conducted between the parties and there was no indication that there was an issue with the sink draining on the report. Furthermore, there is no evidence that the Tenants had an issue with the sink draining until some five months after the tenancy commenced. While the Tenants have provided some potential explanations and reasons for their belief that this clogged sink issue was not due to their usage, I find that the most important evidence to consider is the assessment of the professional tradesperson that conducted this repair. When considering this report, in my view it is clear from the plumber's judgement that had this sink drain been operating normally at the start of the tenancy, then the clog was likely due to the negligence of the Tenants as the tenancy progressed.

When reviewing the totality of the evidence before me, I am satisfied, on a balance of probabilities, that the Tenants were more likely than not responsible for this clog. As I

find that the Landlord has sufficiently substantiated this claim for damages, I grant the Landlord a monetary award in the amount of **\$157.50** to satisfy this claim.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Plumbing repair	\$157.50
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$257.50

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$257.50** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in 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: October 19, 2021

Residential Tenancy Branch