



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

On November 2, 2022, 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*.

This Application was originally set down for a hearing on August 10, 2023, at 1:30 PM and then were subsequently adjourned for reasons set forth in the Interim Decision dated August 10, 2023. This Application was then set down for a final, reconvened hearing on September 14, 2023, at 1:30 PM.

V.K. attended the final, reconvened hearing as an agent for the Landlord. The Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties 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, they 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. As well, all parties in attendance provided a solemn affirmation.

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 tenancy started on July 1, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 31, 2023. Rent was established at an amount of \$2,000.00 per month and was due on the first day of each month. A security deposit of \$950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

V.K. advised that the tenant texted him at approximately 10 PM on April 28, 2022, to inform him that he had clogged the toilet, which resulted in water seeping into the common area of the building and into two units below. He testified that the unit directly below the rental unit alerted the superintendent when the first sign of water appeared, and that the superintendent immediately went to the rental unit at approximately 9:30 PM. However, he stated that the tenant acknowledged that water had overflowed and that the tenant denied entry to the rental unit because he was tired and wanted to sleep, so he closed the door on the superintendent.

He submitted that he visited the rental unit the next day, and observed water damage in three different units, as well as damage to the floors, the common area carpets, and the walls. He also stated that a restoration company attended to assess damage to the rental unit on April 29, 2022. He advised that the Tenant called a plumber and had the toilet unclogged on April 30, 2022, and that this plumber discovered that the flapper in the toilet was not working. He stated that he then arranged for his own plumber to fix the flapper as the Tenant informed him that it was not working properly, and that it was like this from the start of the tenancy.

He noted that the Tenant initially indicated that there were problems with the toilet prior

to this, but then later changed his statement to the insurance company by indicating that there were no previous problems with the toilet.

The Tenant acknowledged that he had clogged the toilet, but he did not notice it as he went back to work and had headphones on. He advised that he was alerted to the flood when the superintendent called him due to water flooding downstairs; however, he stated that he received a call from this person and that this person did not come to the door. He testified that he put towels down to dry the rental unit and that he used a bucket to deal with the excess water. He stated that this was the first time he had any issues with the toilet and had never seen or heard any water leaking from the toilet. He submitted that he contacted a plumber, and this person unclogged the toilet on April 30, 2022. He also stated that the plumber indicated that the toilet flapper was not working.

It is his position that while he did clog the toilet, it would not overflow. However, as the flapper was faulty, which was not due to his negligence, this allowed water to continue to flow from the toilet. He confirmed that he was not a licensed plumber and that he did not have any qualifications to confirm his submission that the toilet would not overflow simply due to being clogged.

He advised that he reported this matter to his insurance company and filed a claim on April 29, 2022, because it was his impression that this was his fault. In addition, he did not have any evidence from his insurance company absolving him of fault. He testified that his original email of May 1, 2022, to V.K. admitting that the "toilet has not been working properly since my tenancy began" was not "structured properly". He stated that there was a comma missing in that sentence and that he meant to indicate that this was the first time that the toilet was not working properly. In addition, he reported this clarification of his statement to his insurance company.

V.K. advised that the Landlord was seeking compensation in the amount of **\$3,924.90** for the cost to fix unit 703; however, this has not been completed yet, so this claim is premature. As such, this claim is dismissed with leave to reapply.

He then advised that the Landlord was seeking compensation in the amount of **\$6,974.76** for the strata's cost to repair the common areas damaged by the water leak. He testified that water has seeped onto the floor of the rental unit, into the adjacent corridor between the rental unit and the elevator, and down to the lower floor as well. He stated that there was a big pool of water, which caused the drywall to become wet. He

referenced the invoice from the strata to corroborate the cost of this repair, as well as the evidence of the Landlord paying this amount to the strata.

He advised that the Landlord was seeking compensation in the amount of **\$15,000.00** for the cost to repair the damage to the rental unit. He indicated that the Tenant submitted a breakdown for this repair, from his insurance company, estimating the cost to remedy this matter at \$16,501.66.

The Tenant advised that this breakdown was completed on August 1, 2023, after receiving the Landlord's estimate of this repair. He stated that his insurance company wanted their own estimate. It is his position that the Landlord should be responsible for 50% of the loss due to the faulty flapper, and 25% of the loss because the Landlord did not mitigate by not completing the repairs for such a long time.

Finally, V.K. advised that the Landlord was seeking compensation in the amount of **\$3,800.00** for the loss of two month's rent due to the Landlord being unable to rent the unit because of repairs that need to be completed. However, he was informed that this claim was also premature as the tenancy only ended on August 31, 2023. As such, this claim has been dismissed with leave to reapply.

Analysis

Upon consideration of the evidence 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 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 Tenant 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 Tenant 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?

I also find it important to note that 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. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord’s claims for compensation it is evident that the crux of this matter hinges on whether or not the Tenant is negligent for the damages caused by the over-flowing toilet. I find it important to note that the Tenant stated in his signed statement of claim to his insurance company, dated June 28, 2022, that “I went to use the toilet and flushed the toilet and went back to my desk on the other corner of the house. After about 2-3 hours I came back to the entrance and noticed water. I thought the water was coming form [sic] the laundry but then realized it was the toilet the [sic] was overflowing. It was still overflowing at that time.” He then indicated that after scooping water out of the toilet, turning off the valve, mopping up the water, and waiting for the water to dry, it was only then that he “got a call from the strata after I found the water overflow saying there was water in the unit below.” However, his solemnly affirmed testimony provided was that he was first alerted to this issue when he was informed by the superintendent that water was flooding in the unit below his. I find the

contradiction and inconsistency in the Tenant's statement to his insurance company and his solemnly affirmed testimony causes me to question the reliability of the Tenant.

Furthermore, when reading the Tenant's email, dated May 1, 2022, the Tenant indicated that "The day the overflow happened on April 28th is the first time this has happened and that the toilet has not been working properly since my tenancy began." The Tenant also noted that he filed a claim with his insurance company on April 29, 2022. While the Tenant then later claimed to his insurance company, on August 1, 2022, that his statement should have been read with a comma that implied that this was the first time that the toilet did not work properly, I find that even if this statement is read with a comma, it does not change the meaning or interpretation of the statement. In my view, if it truly was the case that this was the first time that the toilet did not work properly, the Tenant's first part of the statement indicating that this was "the first time this has happened" would encapsulate the notion that the toilet operated without issues, and this second part would then have been unnecessary and redundant to state.

Given that the Tenant has already been found to have provided contradictory testimony above, and given that this "clarification" was then provided to his insurance company more than three months after the incident occurred, this further causes me to be dubious of the truthfulness of the Tenant's testimony. I find it more likely than not that this suggestion that a comma was missing in his statement was created later, in a vain attempt to portray a scenario that did not exist. Ultimately, on a balance of probabilities, I am satisfied that there was an issue with the flapper previously, that this had been ongoing for a period of time, and that the Tenant neglected to inform the Landlord about the issue.

Finally, I note that the Tenant has not provided any report from his insurance company absolving him of any negligence for this incident. Given that this happened such a long time ago, I find it reasonable to conclude that the insurance company would have determined if the Tenant was at fault for this or not. Furthermore, given that there was a Repair Scope & Estimate created by a restoration company due to this insurance claim, I find that this supports a reasonable conclusion that this matter was determined to be the Tenant's fault.

In assessing the totality of the evidence and testimony before me, I find V.K. to be a more credible witness than the Tenant. He provided consistent, logical testimony which was supported with documentary evidence where available. On the contrary, the Tenant provided inconsistent and contradictory testimony that was clearly an attempt to portray

an alternative scenario that seemed plausible. However, I find that the dubious and questionable nature of the Tenant's testimony causes me to doubt his credibility. As such, I find that I prefer the Landlord's evidence on the whole.

Given this conclusion, I am satisfied that there was, more likely than not, an ongoing problem with the toilet that the Tenant failed to notify the Landlord of. Had the Tenant advised the Landlord of this problem, and if this was repaired, I find that there would not have been a flood of water to the extent that occurred. As the Tenant was clearly and fully negligent for this matter because the flapper issue with the toilet was never reported to the Landlord, I grant the Landlord a monetary award in the amounts of **\$6,974.76** and **\$15,000.00**, to remedy these matters.

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

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

Calculation of Monetary Award Payable by the Landlord to the Tenant

Repairs to common area	\$6,974.76
Repairs to the rental unit	\$15,000.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$22,074.76

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$22,074.76** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 13, 2023

Residential Tenancy Branch