



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-25425-21

In the matter of: 107, 1276 MAPLE CROSSING BOULEVARD
BURLINGTON ON L7S2J9

Between: Irina Andriychuk Landlord

and

Parag Sehra Tenant

Irina Andriychuk (the 'Landlord') applied for an order requiring Parag Sehra (the 'Tenant') to pay compensation for the damages caused by the Tenant or a person the Tenant permitted in the residential complex

This application was heard via videoconference on January 19, 2022.

The Landlord and the Tenant attended the hearing as did the Landlord's Representative, Edward Sullivan and the Tenant's Representative, Jordan Nieuwhof.

Preliminary Matter:

1. The Tenant's Representative brought forward a preliminary issue regarding the validity of the L2 since an N5 was not served prior to the L2 being filed.
2. Section 89(1) of the Residential Tenancies Act states:

A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex;*

3. The Act does not make it a precondition that a Notice to Terminate, such as an N5, is necessary when the only remedy being sought by the Landlord is for compensation and not an order for eviction. The Application by the Landlord was

filed on October 20, 2021, while the tenancy did not terminate until Oct. 31, 2021, therefore the Application is acceptable.

Determinations:

Mutually Agreed Upon Facts

1. The appliance in question is a Kenmore top-loading washing machine. Although the actual age of the washing machine was not ascertained, it is known to be at least seven years old.
2. When the Tenant took possession of the unit, the Landlord had supplied the operating manual for the washing machine to the Tenant.
3. In July 2021 a flood occurred in the rental unit. An occupant of the rental unit, only identified as "Bob", was doing a load of laundry. He left the rental unit while the washing machine was operating but the Tenant was home. The washing machine failed to drain and the water spilled over the top of the appliance, causing a flood in the unit.
4. Water spilled out on to sections of the floors in the two bedrooms and the living room of the rental unit.
5. When the clothing was removed from the washing machine, the drain functioned properly.
6. Both parties agree that an item of clothing clogged the washing machine that day.
7. The resulting water spillage would later cause the cork underlay under the hardwood to be saturated. The excess moisture caused damage to the hardwood flooring to the point where replacement was necessary.
8. The Landlord purchased a new washing machine.

Landlord Testimony

1. The washing machine manual indicates that smaller items should be placed in a garment bag before being washed and the washing machine should not be left unattended while in use.
2. The Landlord testified that she saw "Bob" remove an item from the drain hose but did not know what he removed.

Tenant Testimony

1. The Tenant testified that he and his roommate, "Bob", have used the washing machine at least once a week for ten months and had never encountered a problem like this prior to the incident.

2. The Tenant stated he thought the drain hose sucked up Bob's "shorts" but Bob later found the shorts elsewhere. The Tenant did not know what blocked the drain hose.
3. The Tenant saw water on the floor from his bedroom and he immediately stopped the machine, started cleaning up the water, and contacted the Landlord.

Negligence

1. The main issue is whether negligence on the part of the Tenants resulted in the flooding and subsequent floor damage in the rental unit.
2. Paragraph 3 of *Mustapha v. Culligan of Canada Ltd.*, [2008] 2 S.C.R. 114, 2008 SCC 27 states:

A successful action in negligence requires that the plaintiff demonstrate (1) that the defendant owed him a duty of care; (2) that the defendant's behaviour breached the standard of care; (3) that the plaintiff sustained damage; and (4) that the damage was caused, in fact and in law, by the defendant's breach.

3. There is no question that a duty of care exists, and that the Landlord sustained damage. The issue is whether the standard of care was breached by the Tenant.
4. In this case the Tenant has done laundry for years without any problem and used this machine for over 10 months without problem. The flood was a solitary event and there was no evidence to the contrary.
5. Neither the Landlord nor the Tenant provided evidence to verify what item was found clogging the drain hose. Therefore, there was not enough evidence to establish whether the clothing item found was small enough that it warranted the use of a garment bag.
6. It's also unknown whether the clog was caused by a latent defect in the machine itself that allowed the article of clothing to clog the drain. The Landlord chose to replace the washing machine with a new one rather than repair it. As such, there was no way to ascertain whether the drainpipe was clogged due to human or mechanical error.
7. We find there was not enough evidence to establish a breach in the standard of care. The Landlord has not proven that the washing machine was used by the Tenant or his occupant in a way that damage could reasonably be foreseen. Furthermore, the Tenant, upon seeing the water on the floor, immediately stopped the machine, informed the Landlord of the situation, and started to clean the overflow, thus meeting the duty of care owed to the Landlord upon discovery of the flood.

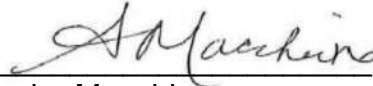
8. For these reasons, the Landlord has not established that the Tenant or an occupant of the rental unit, wilfully or negligently caused undue damage to the rental unit.

It is ordered that:

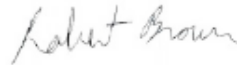
1. The Landlord's application is dismissed.

February 1, 2022

Date Issued



Sandra Macchione
Member, Landlord and Tenant Board



Robert Brown
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.