

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *GSN Construction v. Pajouh*, 2022 NSSM 53

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Date: 20220907
Docket: SCCH 515297
Registry: Halifax

Between:

GSN Construction Ltd.

Appellant (landlord)

- and -

Mohsen Danesh Pajouh and Qudsieh Rabani

Respondents (tenants)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: Via zoom on August 29 and September 2, 2022 in Halifax,
Nova Scotia

Appearances: For the Appellant, Wakin Ghosn, owner

For the Respondents, self-represented

BY THE COURT:

[1] This is an appeal by the Landlord from a decision of the Director of Residential Tenancies dated June 2, 2022. That decision dismissed the landlord's application to terminate the tenancy on the basis of alleged water damage to the kitchen counter-top and cabinets, and water damage in the bathroom. A counterclaim by the tenants for a minor rent abatement was also dismissed (but is not being appealed).

[2] The premises in question is the lower unit in a house in Halifax which the tenants had been renting since June 1, 2019. Rent was \$1,200.00 per month, and the landlord holds a \$600.00 security deposit.

[3] The house is approximately 50 years old. The landlord bought it in 2018 and claims to have done a complete renovation before renting it out. There was another tenant in occupation for a few months before it was leased to the tenants and their family.

[4] The tenants have vacated as of the beginning of August 2022, so vacant possession is no longer an issue. The issue that remains is whether or not the tenants are responsible for damage and, if so, at what cost.

[5] There are two distinct areas of damage.

Kitchen counter-top and cabinet

[6] The main complaint by the landlord is the condition of the laminate counter-top and the cabinets below the sink.

[7] Mr. Ghosn testified that he found out about these issues when he was called to assist the tenants with a plugged sink in March 2022. There does not seem to be any real connection between the minor plumbing issue and the damage complained of, but when he was under the sink, he noticed that the cabinet wood seemed to be rotting. The laminate countertop was also noticed to be water damaged.

[8] The parties do not disagree that there is damage. What they do not agree upon is how the damage was caused and who is responsible.

[9] Mr. Ghosn and his witness, Teddy Zaghoul who gave an estimate to repair the damage, believe the tenants were at fault for leaving excess water on the

countertop which damaged the laminate and ultimately found its way through cracks and seams into the cabinet below, causing the wood to rot.

[10] The tenants, or more specifically Mr. Danesh Pajouh, blames poor workmanship which left gaps around the sink and at the edges of the counter-top, which were either not caulked at all or which were caulked with a product that was not waterproof. The tenants called a witness, Saman Roohafza, who has been working in construction for about 9 years, the last 4 for his own company. He was asked by the tenants to give his opinion on why the counter-top and cabinets were deteriorated. He found the counter-top to be swollen, which he suggested could only have happened if water was allowed to penetrate at the edges where there is some exposed chipboard. He said that he examined the areas that had been caulked and found that they had used a product that is intended for baseboards and trim, not for areas that get wet. He also saw gaps around the sink and backsplash which were not sealed, and which likely were where water was able to get through causing the damage to the cabinets.

Bathroom

[11] The tenants installed a hand-held bidet sprayer to the toilet, which the landlord (until educated) mistakenly assumed was being used to spray the bathroom floor. Wayward spray caused some damage to the drywall behind the toilet, which Mr. Danesh Pajouh tried to repair in a makeshift way. Mr. Danesh Pajouh does not dispute responsibility for this damage but believes it only requires a minor repair.

Cost to repair

[12] The landlord has mentioned different damage repair estimates at various times. His most recent estimate was from a company called ECL Inc., which is dated June 14, 2022. The person who authored this estimate was not called as a witness, and there is no record of its existence shown in the Registry of Joint Stock Companies. Though I give it minimal weight, it sets out a scope of work which includes removing and replacing the countertop, cabinet and sink and plumbing fixtures. That portion of the work is quoted at \$2,825.00 plus tax. It also quotes \$1,550.00 plus tax for repairing the area behind the toilet.

[13] Lastly it quotes \$450.00 to clean up the stove and fridge. This is a complaint that the landlord did not appear to have raised at Residential Tenancies, and it is hard to understand how he would have known that this would have been needed since the tenants did not move out until much later.

Discussion

[14] I am not convinced that the tenants deliberately or carelessly caused the damage to the kitchen countertop and cabinet. I believe the most likely cause was poor installation which left them vulnerable to water damage. There is no evidence to suggest that the tenants allowed water to sit on top of the countertop for hours at a time. The tenants seem to me like reasonable, responsible adults.

[15] The bathroom damage was undoubtedly caused by the tenants. It is easy to see how water could have escaped the toilet, given that the bidet attachment would have been used multiple times per day. If the sprayer was not installed properly, or was damaged causing it to work improperly, this would have increased the risk of water escaping and would have been the tenants' sole responsibility.

[16] Based on the photos, a significant piece of the drywall is impacted and deserves a proper repair. The estimate prepared by Teddy Zaghoul placed the cost of fixing this at \$875.00 plus tax back in March.

[17] Allowing for some leeway, I find that the sum of \$1,200.00 (including tax) would be adequate to repair the bathroom damage.

[18] The alleged cost to clean the stove and freezer is disallowed completely. There is no evidence that these appliances would have required anything more than a trivial amount of cleaning.

[19] In the result, I hold the tenants responsible for \$1,200.00 in damage. Given that there is a \$600.00 security deposit which the landlord is entitled to offset, the net result is that the tenants owe the landlord the further sum of \$600.00.

ORDER

[20] This court accordingly orders:

- a. The Order of the Director of Residential Tenancies dated June 2, 2022, is varied to provide as follows:
 - (a) The landlord may retain the \$600.00 security deposit.
 - (b) The tenants are ordered to pay to the landlord the additional sum of \$600.00.

- (c) There is no order for costs.

Eric K. Slone, Adjudicator