

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *OPC, CNC, MND, MNSD, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to section 55;
- A monetary order for damage to the rental unit and surrounding areas pursuant to section 67 ;
- A monetary order to retain the security deposit in partial satisfaction of the claim, pursuant to section 38 and recovery of the filing fee, pursuant to section 72.

The tenant applied to cancel the notice to end tenancy, pursuant to Section 47.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession and recovery of the filing fee? Or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy started on March 01, 2006 on a month to month basis. Rent is currently \$665.00 due on the first day of each month. At the outset of the tenancy, the tenant paid a security deposit of \$305.00.

Tenant's Application

The tenant testified that plumbing problems existed since the beginning of the tenancy and she notified the landlord verbally about this on several occasions.

The tenant stated that each time she spoke with the property manager, she would be asked to sign a release which would allow the landlord to enter the apartment, even if

the tenant was not home at the time. The tenant stated that she was not comfortable signing such a release and would refuse to do so. As a result, the problems that she complained of were not attended to. The tenant stated that the faucet on the bath tub leaked and on at least five occasions the bathtub back flowed, leaving a residue in the tub.

On November 29, 2008, the tenant had two visitors over and they all left the apartment to visit a friend. The tenant did not return home until the morning of December 01, 2008 at which point she found that a flood had occurred while she was away. It was evident that maintenance staff had entered her apartment and had moved all her belongings to a dry area in the apartment.

The tenant stated that neither she nor her visitors had plugged the bath tub, and therefore she was not responsible for the water damage and the costs associated with it. The tenant has submitted into evidence photographs depicting the condition of the suite, and five written submissions from friends describing the condition of the suite as poor and in disrepair.

On February 05, 2009, the landlord served the tenant with a notice to end tenancy for causing extraordinary damage to the suite, and the tenant is disputing this notice.

Landlord's Application

The property manager testified that there are 450 apartments on site and maintenance is carried out as and when complaints or requests come into the manager's office and not by appointment. Every tenant who requires repairs inside the suite is verbally asked by the property manager for permission to enter the suite even in the absence of the tenant, for the purpose of conducting the repairs. If the tenant refuses to give verbal permission to enter, the maintenance staff will complete the work only if the tenant responds to a knock on the door. The landlord stated that repairs have been conducted inside the tenant's suite in this manner, through the tenancy as the tenant refuses to give staff permission to enter the suite in her absence.

The landlord stated that there is no form or release to be signed by the tenant. A note is made on the work order to instruct the maintenance staff whether it is okay or not to enter the suite in the absence of the tenant.

On September 24, 2008 the tenant complained about a leaky faucet and the property manager made up a work order. The maintenance staff made three unsuccessful attempts to get it done, as the tenant was not home. The tenant did not call again about the problem. Since that date, maintenance was conducted on two separate occasions and the tenant did not report a leaky faucet.

On December 01, 2008, at approximately 6 a.m., the on site maintenance staff member, GW, received a call from the tenant of an adjacent suite who said that the hallway carpet was soaked with water. GW stated in his written submission that he could hear the tap flowing in the tenant's suite and he banged on the door four times. When he realized that no one was inside the suite, he proceeded to get the key to the suite along with the assistant manager, WL. GW found that the suite was also secured by a locked chain, and so WL called the property manager to obtain permission to enter the suite, by breaking the chain.

Upon entering the suite, GW and WL noticed that the bathtub was overflowing and the faucet was turned on. GW stated that he pulled up his sleeve and removed a stopper that prevented the water from draining and upon doing so, the water level went down immediately and the overflowing stopped. Water damage was also found in and around two other apartments located adjacent to the tenant's suite. WL called a professional company to carry out the required repairs, WL then served on the tenant a one month notice to end tenancy effective March 31, 2009, for extraordinary damage caused to the rental unit.

The landlord has submitted into evidence written statements from GW and WL which describe the sequence of events as mentioned above. He has also filed an invoice from the restoration company in the amount of \$3,383.63 for work done to three suites and the hallway outside of them. The landlord has applied for an order of possession and stated that if an order was issued, he would agree to an effective date of April 30, 2009.

The landlord is also claiming \$3,383.63 for repairs to the suite and the filing fee of \$50.00 and has applied to retain the security deposit in partial satisfaction of this claim.

Analysis

Tenant's application:

Based on the sworn verbal and documentary evidence presented at the hearing, I find that the tenant left the apartment on November 29, 2008 and had secured the door with a locked chain. This chain had to be broken by the maintenance staff to gain entry to the apartment to stop the flooding. The tenant stated that neither she nor her visitors placed the stopper in the bath tub and so she was not responsible for the flooding that occurred.

Based on the evidence, it is more likely than not that the stopper was placed in the bath tub prior to the time that the tenant left the apartment, and therefore I find that the tenant was responsible for the extraordinary damage caused by the overflowing bath tub.

The landlord issued a notice to end tenancy for extraordinary damage caused by the tenant. The notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective April 30, 2009. This Order of possession may be filed in the Supreme Court for enforcement.

Landlord's claim:

To claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent,
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,

- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the Tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses.

Based on the sworn verbal and documentary testimony of the landlord, I find that the tenant was responsible for the flooding that occurred as a result of the bathtub being plugged with the faucet turned on. The landlord has provided evidence to support the cost that he incurred to repair the damage. I find that the landlord took steps to minimize the damage by entering the suite and unplugging the bathtub. I also find that the landlord's claim for restoration costs meets all the components of the above test, and therefore the landlord has established a claim for damages in the amount of \$3383.63. Since the landlord has proven his case, I find that the landlord is also entitled to the filing fee of \$50.00.

I order that the landlord retain \$315.65 which consists of the security deposit (\$305.00) and interest (\$10.65) in partial satisfaction of the claim, and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$3117.98. This monetary order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 pm on April 30, 2009. I also grant the landlord a monetary order in the amount of **\$3117.98**.

The tenant's application is dismissed.

Dated March 24, 2009.

Dispute Resolution Officer