



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, FF

Introduction

This matter dealt with an application by the Landlord for A Monetary Order for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant in person on January 26, 2009 with a copy of the Application and Notice of Hearing in this matter. I find the Tenant was properly served pursuant to s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started on April 27, 2006. The Landlord said that in November, 2007, the toilet in the rental unit overflowed and as a result, a restoration company was called by the Strata Management company to do a clean up. The Landlord also said that the Tenant and the Strata Management company did not say anything to him about it at the time and he only learned about it when he received an invoice in May of 2008 from the current Strata Management company demanding payment for the cost of the clean up.

The Landlord said that after he got the demand for payment he asked the Tenant about it. The Landlord provided a copy of a responding letter dated June 10, 2008 from the Tenant who denied that many of the services listed in the invoice had been provided. In particular, the Tenant claimed that only a small amount of water (not sewage) had leaked onto a small section of carpet and had to be dried. The Tenant argued that this did not justify a bill of \$3,026.59.

The Landlord admitted that he did not know if the services alleged to have been done were in fact done but claimed that the overflow was not the result of a defective toilet therefore the Tenant was responsible for it. Consequently, the Landlord sought to

recover the cost of the clean up bill that the Strata Management company had paid as well as subsequent fines for non-payment.

Analysis

Section 32 of the Act says that a Landlord is responsible for the cost of maintaining and repairing a rental unit unless the Tenant has caused the damage. In this case, the Landlord argued that the Tenant was responsible for the toilet overflowing and therefore was also responsible for the cost of the clean up.

I find that there is no evidence that the Tenant was responsible for the toilet overflowing. In fact, the only evidence provided by the Landlord as to the reason for the toilet backing up was the invoice prepared by the company that did the clean up, which states in part that it was for “technical labour to attend sewer back up.” If the reason for the toilet backing up was due to a plumbing or sewer issue in the rental property, this is not the responsibility of the Tenant but rather the Strata or the owner. In the absence of any evidence that the Tenant was responsible for the toilet backing up, I find that there is insufficient evidence to support the Landlord’s application that the Tenant is responsible for the clean up bill.

Conclusion

The Landlord’s application is dismissed.