

DECISION AND REASONS

Dispute codes

MND, FF

Introduction

This hearing was convened in response to an application by the landlord for compensation from the tenant for the cost of repairs and remediation to the rental unit and common areas, as a consequence of water damage from an overflowed toilet. The landlord also seeks recovery of the filing fee from the tenant. The landlord's claim is supported by a receipt for the restoration work performed to attend to the water damage and consequent dehumidification of the property, in the amount of \$1325.87.

Both the landlord and the tenant appeared in the hearing and each was given an opportunity to participate in the process and each provided testimony.

During the hearing the landlord verbally amended their claim, stating that the landlord is agreeable to seeking only one half (1/2) of the claim on application in the amount of \$662.93 plus the filing fee.

Issue(s) to be determined

Is the landlord entitled to the monetary amounts claimed?

Background and evidence

The landlord testified that the tenant's rental unit incurred a toilet overflow, determined by the tenant's representative to have been caused by a lodged toy in the toilet bowl, causing the bowl to overflow when flushed, then, the toilet would have to have been repeatedly flushed to incur the continuous flow of water from the toilet bowl. The landlord testified the overflow was not a single flush overflow, but was significant and affected the basement of the property. The tenant confirms that in her absence a guest's child caused the toilet to plug and the toilet overflowed. The tenant testified that on her return to the unit she immediately obtained assistance from the management. The water continued to flow from the toilet bowl into the unit, and the water kept running inside the toilet reservoir.

Analysis

It must be emphasized that in order to claim for damage or loss under the Residential Tenancy Act (the *Act*), the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

It must further be emphasized that Section 32 (3) of the *Act* states a tenant's responsibility as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in
state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I prefer different aspects of testimony from both parties. I find the tenant is responsible for causing the toilet overflow. On the balance of probabilities and on reflection and preponderance of the evidence I also find that the amount of the overflow, and consequent water damage, described by both parties could not have occurred solely because of the actions or neglect of the tenant. On this basis I find the landlord's determination to mitigate the claim for repair costs to one half, in the amount of \$662.93, is reasonable.

I also find the landlord is entitled to recover the filing fee in the amount of \$50.

Conclusion

I grant the landlord an order under Section 67 of the Act for **\$712.93**.

If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 28, 2009.