



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damages and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

At the commencement of the hearing the Application was amended to reflect the correct legal last name of the respondent.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order in the sum of \$650.86?

Is the Landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced on November 1, 2006 and terminated in October 2007. The parties agree that in May 2007 problems with the rental unit toilet resulted in the toilet being replaced.

The Landlord testified that on May 29, 2007 a toothbrush had been flushed down the toilet and that repairs were required. The Landlord stated that the Tenant paid \$140.00 toward an original repair bill in the amount of \$873.47. The Landlord stated that they have removed charges from this bill for the cost of a snake rental and shop vac rental, resulting in a balance of \$650.86 owed by the Tenant. The landlord testified that the toilet was approximately 8 years old.

The Tenant testified that she immediately became aware that her child had possibly flushed a toothbrush down the toilet and that she went to the on-site manager to report the problem. The Tenant stated that she was told she would not be responsible for any cost and that if she had been told the repair would be her responsibility she would have sought alternate means to fix the toilet through friends who might assist.

The Tenant testified that the evening the problem occurred a repair person came to the unit. The tenant stated that on May 30 a repair person came to the rental unit with a new toilet. The tenant testified that the toilet had worked but that it had been somewhat substandard throughout her tenancy. The Tenant testified that when the plumber arrived at the rental unit on May 30 she did not pay too much attention as she felt confident that she was not going to be responsible for payment.

The Tenant stated that she did make several payments during her tenancy as she was afraid that any failure to pay could result in eviction. The Tenant stated that she did not sign anything agreeing to accept the cost of repair. The Tenant testified that at the time of move-out in October 2007 she spoke with the on-site manager who told her that she did not need to worry about any further payments.

The landlord submitted a plumbing bill as evidence which indicates that on May 29, 2007 a toothbrush was removed from the toilet but that the toilet would still not drain properly. The invoice states that there was an item wedged inside the toilet that could not be removed. The costs include \$255.13 for a new toilet, \$7.53 in hardware and \$320.00 labour.

The Landlord testified that it is not likely the on-site manager would tell the Tenant that further payments were not required.

Analysis

It is important to note that in a 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

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 Respondent 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

In this instance, the burden of proof is on the claimant, that being 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 respondent. 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 that were incurred

The Tenant has accepted that her child did flush a toothbrush down the toilet. This problem was immediately reported to the Landlord who arranged repair. I have no evidence before me to lead me to reject the Tenant's claim that she would have attempted alternate means of repair if there were to be costs assigned to her. I do believe that past payments by the Tenant, during her tenancy, may have been the result of her fear that lack of payment could result in the termination of her tenancy. The Landlord did not bring the on-site managers to this hearing so that I could consider their testimony as to what was said to the Tenant at the time repairs were arranged.

The parties agree that the Tenant has paid \$140.00 toward costs. It is not unreasonable to expect the Tenant to be responsible for some costs of repair of the toilet. However; I do not accept that the Tenant was responsible for the cost of a new toilet.

The evidence submitted by the Landlord indicates that once the toothbrush was removed and the old toilet reinstalled the toilet still did not flush properly. I accept the Tenant's testimony that the toilet had never flushed particularly well, but that it was not so substandard to have caused the Tenant to report this to the Landlord. There is no evidence that whatever else may have caused the old toilet to flush improperly was the fault of the Tenant. I find that there is inadequate evidence to establish that the damage which resulted in the toilet being replaced was due to actions or neglect of the Tenant.

Therefore, I find that the Tenant is responsible for a reasonable contribution to the cost of repair for removal of the toothbrush. I do not accept that the Tenant is responsible for overtime labour rates and do find that if the Tenant had been made aware of the potential costs she would have first sought out assistance from other sources to remove the toilet and investigate the cause of the problem.

I find that the Landlord is entitled to the costs for removal of the toilet, removal of the toothbrush and reinstallation of the old toilet. I find that the amount of \$140.00 paid by the Tenant has provided adequate compensation equivalent to labour and any associated costs. I dismiss the Landlord application for costs related to the purchase and installation of a new toilet.

As I have determined that the Tenant has made adequate payments to the Landlord I find that the Landlord is not entitled to filing fee costs.

Conclusion

The Landlord claim for a monetary Order is dismissed and I find that the Tenant has provided the landlord with adequate compensation for the repair.

I find that the landlord is not entitled to filing fee costs.

Dated June 24, 2009.

Dispute Resolution Officer