

## **DECISION**

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

### **Introduction**

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for Cause, for a monetary order for damage to the unit, site or property, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing, the landlord testified that the tenants had vacated the unit on or about May 31, 2010, and therefore the Order of Possession is not required

Both landlords and one of the tenants gave affirmed evidence and the parties were given the opportunity to cross examine each other on their evidence. No other witnesses were called by the parties.

### **Issues(s) to be Decided**

Are the landlords entitled to a monetary order for damage to the unit, site or property?  
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2009 and ended on May 31, 2010 after the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause. Rent in the amount of \$1,100.00 was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$550.00.

The landlords testified that the tenants caused a toilet to overflow which caused water damage to the carpet and the ceiling in the living room below. The landlords issued the notice to end tenancy dated May 8, 2010 with an expected move-out date of June 8, 2010, which states:

- Tenant has caused extraordinary damage to the unit/site or property/park; and
- Tenant has not done required repairs of damage to the unit/site.

The landlords went to the unit after the tenants called, then went home to get a phone number for a plumber. The plumber attended the unit that evening and said it was going to be a big job and he'd be back the next day to do the repairs. The landlords are claiming \$200.00 for carpet cleaning, \$105.00 for paint to paint the living room ceiling, \$50.00 for the plumber, \$100.00 for their own time and gas, \$120.00 for a painter and \$2,200.00 for loss of revenue because the unit was not rentable for two months. The landlords' insurance company was not called because the deductible was too high.

The landlords further testified that the tenant had lied to them by saying that the water was from a leaky toilet or worn out washer, and the plumber told them the toilet was plugged. The landlords feel the tenant should have known that the toilet was overflowing and therefore were negligent.

The male tenant testified that he went to work in the morning, and upon arriving home at about 6:00 p.m., his wife having just arrived there, advised him that the toilet was overflowed and she had turned off the water to the toilet. The landlord was phoned, and the tenants had soaked up much of the water with towels by the time the landlords arrived. The landlord turned the water back on and there was no leak. The landlords went home and the tenants went out for dinner. When they arrived home at 7:30 or 8:00 p.m. they noticed water dripping in the ceiling of the living room and called the landlords again to advise them. The landlords then called a plumber who advised it would be a big job and he shut off the main water supply. When he came back the next morning, he told the tenant he was going to cut a hole in the living room ceiling. The tenant questioned that because the toilet was on the other end of the house and showed the plumber.

They found no leaks. The plumber replaced some parts inside the tank, and took the old parts with him and there were no further leaks.

### **Analysis**

In order to be successful with a claim for damages, the onus is on the claiming party to prove all 4 parts of the test for damages as follows:

- the damage or loss that exists;
- that the damage or loss occurred because of a breach of the *Residential Tenancy Act* or the tenancy agreement;
- the amount;
- what efforts the claiming party made to mitigate the loss or damage.

Firstly, the landlords have failed to establish the cost of the damage, having provided me with no evidence or any receipts. The landlords have not proven that the tenants did anything to cause the damage, accidental or otherwise. The landlords claim that the plumber told them the damage was caused by an overflowing toilet, however the tenant testified that the plumber replaced parts inside the toilet tank which fixed the problem. If the toilet had overflowed, the landlords have not proven that the tenants knew or ought to have known that the water was running and ignored it. The plumber was not called to provide any evidence on the cause of the flood, and the landlords have not provided me with any report of the plumber to indicate that the tenants were negligent or ought to have known that the toilet would cause damage to the unit that day. Further, the landlords have not proven what steps were taken to have the unit re-rented in a reasonable time after the tenants vacated.

I also caution the landlords with respect to the notice to end tenancy. *The Residential Tenancy Act* allows a landlord to issue a 1 Month Notice to End Tenancy for Cause but the *Act* also requires that the tenant be given one full month notice, which must be given before the day rent is due at the latest. Because rent is due on the 1<sup>st</sup> day of the month, the landlord must give the notice on the last day of the month or before, and the notice

must show that the tenants are expected to vacate the rental unit on or before the last day of the following month.

### **Conclusion**

For the reasons set out above, the landlords' application for damages is hereby dismissed without leave to reapply.

The landlords' application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order that the landlords return the security deposit to the tenants within 15 days.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 12, 2010.

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Dispute Resolution Officer