

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order. Both parties were represented at the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenant's agent testified that on the morning of February 21, 2010 she discovered that the toilet was blocked. The tenant made 3 attempts to telephone the landlord's agent Y.P. but was unable to reach her and left several voicemail messages.

Approximately 4 ½ hours after discovering the problem the tenant telephoned plumber who was unable to determine the cause of the blockage despite plunging and augering the toilet. The tenant paid the plumber \$270.01 as well as an additional \$17.70 for replacing a corroded water supply tube and seeks to recover these costs. On February 25 the tenant sent the landlord an email in which she described the problem with the toilet, the work performed by the plumber and requested that the landlord correct the problem.

Y.P. testified that she did not receive any voicemail messages and that the first time she became aware there was a problem with the toilet was on February 25 when she received the tenant's email. Y.P. agreed that the tenant was entitled to recover the \$17.70 spent to replace the water supply tube. Y.P. arranged for her plumber to inspect the toilet and after several inspections and attempts to clear the blockage, replaced the

toilet. Y.P. testified that when the old toilet was removed from the rental unit, a small plastic bottle, approximately 4 ½" x 1" was found lodged inside the toilet and that the toilet was damaged in the process of dislodging the bottle. The landlord provided a photograph of the bottle. The landlord seeks to recover \$607.60 as the cost of attempting to clear the obstruction and replace the toilet.

The tenant's agent testified that the tenant did not see the bottle when it was removed from the toilet and that she was not responsible for the bottle having been in the toilet.

Analysis

While the *Residential Tenancy Act* has provisions whereby tenants can recover the cost of emergency repairs provided they follow the procedures outlined in the Act, the cost of such repairs are not recoverable if the tenant is at fault for the damage for which repairs are required. I accept that the bottle obstructed the toilet. The parties agreed that this tenancy has lasted for at least 5 years and I find it highly unlikely that the bottle could have stayed in the toilet for that length of time without having caused problems earlier. While the tenant herself may not have caused the bottle to become lodged in the toilet, it is possible that her guest could have dropped the bottle in the toilet. In assigning blame to the tenant I am not suggesting that she deliberately caused the toilet to become blocked, but her liability is the same regardless of whether the action was deliberate.

I find that the landlord has proven on the balance of probabilities that the tenant or her guest caused the obstruction. As the landlord agreed that the tenant was entitled to recover the \$17.70 charge to replace the water supply tube, I award the tenant \$17.70 and I dismiss the remainder of the tenant's claim. The tenant will bear the cost of her filing fee. I find that the landlord is entitled to recover the cost of service calls to work on the toilet as well as the cost of replacing the toilet. As the toilet had depreciated somewhat with age, I find it appropriate to discount the invoice by 15% and I award the landlord \$516.46. I find that the landlord is entitled to recover the filing fee paid to bring the application and I award the landlord a further \$50.00.

Conclusion

The tenant has been awarded \$17.70 and the landlord has been awarded \$566.46. Setting off these claims as against each other leaves a balance of \$548.76 owing by the tenant to the landlord. I grant the landlord a monetary order under section 67 for \$548.76. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 22, 2010

Dispute Resolution Officer