

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This is an application by the Landlord for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit and the recovery of the filing fee. Both parties attended the hearing by conference call and gave affirmed testimony.

At the beginning of the hearing the Landlord's agent states that the issue with the security deposit was worked out with the Tenant and did not have to be addressed in this hearing. The Tenant did not dispute this.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the unit, site or property?

Background and Evidence

The Landlord states in this claim that the Tenant was responsible for a 3 inch dead tropical fish found "between the toilet and toilet flange's middle, hence when flushing the toilet, the water would leak to the unit below it via the floor gap". This caused water to flow to the suite below the rental unit through the floor and ceiling. This statement was made by the Landlord's plumber in the provided statement.

The Tenant states that the no water overflowed into his bathroom from this water leak and as such could not have been caused by a blockage. The Tenant states that the most likely scenario was that the wax seal failed and water leaked through the floor and ceiling this way. The Tenant states that the caretaker who reported the issue to the Tenant was present and noted that there was no water leak in the bathroom area around the toilet. The Tenant states that the occupant of the effected unit below him attended his suite and through talks and observations between the two, noted that every time the toilet flushed a gush of water would flow into the unit below.

The Landlord is claiming \$134.40 for the attendance of the plumber to the rental unit. The invoice states that the plumber attended to "repair toilet drainage". The Landlord is also seeking to recover the cost of \$1,120.00 for the repair work of the suite below affected by the water leak. The Landlord has provided a copy of the invoice from the company.

The Landlord is also seeking the recovery of \$150.00 for a mail box key that was not returned by the Tenant. The Tenant confirms that he did not return the key by accident. The Landlord has provided no receipts or invoices to support this cost. The Landlord states that the mail box was vandalised and is not aware of who is responsible for the damage.

Analysis

I am satisfied that both parties were properly served with the notice of hearing and evidence packages. Both parties confirmed receipt of the packages.

Based upon the contradictory evidence of both the Landlord and Tenant and a lack of supporting evidence, I find that on a balance of probabilities that the water leak was not caused by overflow or the negligence of the Tenant. The likely scenario is as the Tenant points out, the wax seal failed and water flowed through the floor and ceiling spaces. As such, I find that the Landlord has failed to establish his claim and this portion of the application is dismissed.

The Landlord's claim for the cost of \$150.00 for the replacement of the mail box key is I find excessive. The Landlord has provided no receipts or invoices to support the claim of \$150.00. The Tenant confirms returning the wrong key to the Landlord. I find that the Landlord has established a claim for compensation for the replacement of a mail box lock. I award to the Landlord \$50.00 for the services of a locksmith and \$20.00 for the replacement of a lock. The Landlord is entitled to the recovery of the \$50.00 filing fee. I grant the Landlord an order under section 67 for the balance of \$120.00.

Conclusion

The Landlord is granted a monetary order for \$120.00.

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: February 18, 2011.

Residential Tenancy Branch