



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damage to the unit, site or property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 4, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

Issues(s) to be Decided

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damage and if so how much?

Background and Evidence

This tenancy started on December 15, 2009 as a subleased fixed term tenancy with an expiry date of August 31, 2010 and then a new tenancy with the Landlord commenced on September 1, 2010 with a fixed term ending February 28, 2011. Rent was \$1,960.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$950.00 on or about December 15, 2009 and a pet deposit of \$950.00 on or about February, 2010. The tenancy ended February 28, 2011.

The Landlord said that the Tenants are responsible for water damage to the rental unit below the Tenants' unit because the Tenants did not take adequate precautions to insure water would not escape out of the shower. The Landlord said that water leaked into the walls in the Tenants' bathroom because they did not have adequate shower curtains around the tub/shower and as a result it leaked down into the rental unit below and caused damage which the Landlord paid to repair.

The Landlord said the repairs and his claims are as follows:

Handyman repair work	\$1,406.72
Materials	\$ 283.32
Carpet Cleaning	\$ 65.00
Compensation to Unit#5	<u>\$ 500.00</u>
Total	<u>\$2,255.04</u>

The Landlord continued to say that he called a plumber and handyman in to assess and repair the water leak problem. The tenant in unit 5 advised the Landlord of the problem on September 16, 2010 and the Landlord attended to the problem on September 17, 2010 and completed repairs by October 7, 2010. The Landlord said that the plumber discovered two leaks in the pipes during the repairs, but the Landlord said they were caused by the repair work. The Landlord said the water damage was solely caused by the Tenants using the shower incorrectly. He said the shower curtains did not go completely around the tub so water splashed on the walls and floor. The Landlord continued to say when the wall got wet it leaked into the wall and then down the wall into the rental unit below.

The Landlord provided his plumber D.W. as a witness. The Witness first said the leak in the wall was caused by a break in the piping and the inadequate use of the shower curtains while the Tenants were showering. During questioning by the Landlord the Witness said the water damage to unit 5 was solely the result of water splashing out of the shower and then leaking down the wall.

The Tenant said that she believes it is more likely that the water problem and damage to unit 5 resulted from leaks in the piping as they lived in the unit from December, 2009 to September 2010 with no problems of leaks due to water escaping from the shower. She continued to say the house is very old and there are a number of problems with the house. As well the Tenant said she did buy a third shower curtain to enclose the shower completely and there continued to be water leaking problems. The Tenant said that she concluded that those problems were from breaks in the piping not water escaping from the shower. The Tenant said they used the shower with the curtains that were supplied with the unit and they were not given special instructions about the use of the shower. The Tenant said she did not notice any large amount of water on the floor after they showered and she believed the shower curtains did contain the water from escaping. The Tenant said she believes it is more probable that the leaking water came from broken piping than from water escaping from the shower. The Tenant provided pictures of the shower and shower curtains. The shower is walled on three sides and is open to the front.

Analysis

Section 32 says (1) a landlord must provide and maintain residential property in a 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.

There was much contradictory evidence and testimony as to whether the water damage originated from escaping water from the shower or from leaking pipes. The Witness's testimony was in contradiction as well, as he first said the water leaks were caused by a break in the piping and then he said the water damage was solely the result of water escaping from the shower. The Landlord agreed there were two leaks in the piping, but he said they were caused by the repair work. There was no evidence provided that this was the case. The Tenant said they had been in the unit for 10 months with no water leaking issues so she believed the problems are more probably caused by a break in the piping than water escaping from the shower. As well the Landlord said the walls in the shower leaked if a shower curtains did not surround the tub while showering. Given that this is a built in shower it brings into question with the shower walls were maintained to a water proof standard. It appears from the Landlord's evidence that they

were not water proof. It is the Landlord's responsibility to maintain a rental unit to a reasonable standard and that standard includes water proof walls in a built in shower.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent. If the applicant cannot establish proof that the respondent was solely responsible for the damage then the burden of proof is not met. There was agreement from all participants that there were breaks in the piping. The evidence from the Witness was contradictory as he first said there were leaks in the piping and then he said the water damage was from water escaping from the shower, therefore I am discounting the Witness's testimony as unreliable. I find that the Landlord has not established proof that the water damage was **solely** caused by the Tenants' negligent so consequently I dismiss the Landlord's application without leave to reapply.

As well since the Landlord has not been successful with this matter he will bear the cost of the filing fee for this proceeding in the amount of \$50.00 which he has paid.

Conclusion

The application is dismissed without leave to reapply.

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*.

Residential Tenancy Branch