



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for damages to the unit, site or property and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord also seeks recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenants on March 04, 2011.

The landlord, her agent and two of the tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree this tenancy started on September 01, 2010. This was a fixed term tenancy which was due to expire on August 31, 2011. A monthly rent of \$1,500.00 was due

in advance on the first of each month. The tenants paid a security deposit of \$750.00 on August 09, 2010.

The landlords' agent testifies that on January 02, 2011 she received a call from one of the tenants saying there was water in the kitchen. The landlords' agent states the landlord called a restoration company in to clear up the water and a plumber came out on January 03, 2011 to repair the water pipes beneath the sink. After this repair was complete the landlord contacted a contractor who had to come out and replace the flooring in the kitchen and the hallway and laundry room beneath and the garage ceiling which was also water damaged.

The landlords' agent testifies that one of the tenants informed her that they had turned off the heat before they went away on holiday. This caused the pipes to burst and the landlords' insurance company refused to pay for this damage as they said it was caused by negligence.

The landlords' agent states the plumber wrote a letter to say the pipes had burst due to freezing and there is a heating vent under the sink which is there to prevent the pipes freezing. The landlords' agent agrees the landlord did not inform the tenants not to turn off the heat but states this would be a common sense expectation in the winter months.

The landlords' agent states the kitchen, laundry room and front entrance way flooring had to be removed, the floor dried out and the flooring replaced with cheaper linoleum. The landlords' agent testifies that the flooring was new in August, 2010. The restoration company removed the damaged kitchen; laundry and front entrance laminate flooring at a cost of \$1,304.18 and the drywall in the garage ceiling was replaced. The repair cost for the plumbing services for the pipes came to \$305.67 and the restoration company replaced the flooring with linoleum, replaced the base boards and the garage ceiling at a cost of \$2,526.26. The landlord has provided receipts for this work. The landlord also seeks to recover the cost of the laminate as it had only been installed in August, 2010 to the sum of \$1,074.98. The landlord states she does not have a receipt for this. The landlord also

seeks to recover her \$100.00 filing fee paid for this application. The landlord seeks a Monetary Order to recover these costs from the tenants to a total sum of \$5311.009.

The tenant's testify that they did not turn off the heating when they went on holiday and did not tell the landlord that they had. They state the heating was left at 21 degrees and was still on when they got back from their trip. The tenant's states the last tenant left the house on December 19, 2010 and the first tenant was home on January 02, 2011. It was this tenant who found the flood. The tenants have provided copies of their heating bills and state these would have been very different if the heat had been off for 12 days. The tenants also testify that the landlords' son lives in the basement unit of the property and if the heat had been turned off he would have notified his mother the landlord.

The tenant's testify that the leak downstairs was caused by a different event as the washing machine pipes were leaking slowly. This leak went unidentified until now and could not have been caused by freezing pipes as it is an interior wall. The tenants state they called a plumber who found the washing machine had a loose faucet which had been improperly installed. The tenants have provided pictures of these pipes which show rust on the pipes indicating a constant leak. The tenants testify that their plumber also inspected the pipes under the sink and told them there is no evidence of them freezing as none of the pipes have split or burst. The tenants have provided pictures of the original pipes and state these show calcium deposits on the pipes which indicate that these had not been installed correctly either and water leaking had deposited the calcium on the outside of the pipes. The tenants have provided an invoice from their plumber which states the laundry hose was not tightened on installation and the CR 14 Valve bonnet was loose on the stem and should have been checked on installation.

The tenants testify that there was no neglect on their part. They also state the note from the landlords' plumber has some incorrect information in it where he states he changed the hot water shut off not the cold. The tenant testifies that he called the landlords plumber and states the landlords plumber told him he could not say the pipes leaked due to freezing. The tenants argue that his note says it was due to freezing. The tenant states he called the plumber again and the plumber confirmed that there was no way he could know this and

could not say it happened because of freezing. The tenant also states the plumbers' letter is unsigned. At this time the tenants decided to get their own plumber in to look at the pipes.

The tenant testifies that the landlords insurance note says she was denied because they were gone for over four days however they state the landlord did not inform them that they must notify her or her insurance company if they were to be absent from the property for more than four days. The tenant's states the landlord did not tell them not to turn the heating off and state this is something they know not to do in the cold session.

The landlord states her son had to use plug in heaters during the Christmas period and states when she asked him why he did not inform her that the heating was off he stated it was a common occurrence that the tenants would turn the heating off.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

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 S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or 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.

I find that the landlords claim for compensation does not meet all of the components of the above test. The tenants argue that they are not responsible for this damage because they did not turn the heat off to the unit before they went away and the remainder of the tenant's evidence showing the pipes which were replaced do not appear to have been split or burst through freezing. I find that the landlords' arguments and evidence is therefore contradicted by the tenants and no further corroborating evidence has been provided to support the landlords claims. I further find it unlikely that the landlords' son would not mention to his mother that he had no heat in his unit at that time of the year so the landlord could take action to mitigate her loss if it was the case that the heat had been turned off or had malfunctioned. Consequently, it is my decision that the landlord has not met the second or forth portion in the test for damage or loss and her application is dismissed without leave to reapply.

Conclusion

The landlord's application for a Monetary Order is hereby 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*.

Dated: June 24, 2011.

Residential Tenancy Branch