



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

In September of 2010, the Landlord received a complaint of water leaking from the ceiling in a bathroom. The ceiling was below the subject rental unit, which is occupied by the Tenant.

The Landlord enquired with the Tenant about the source of the water. The Tenant informed the Landlord that he had shortened the curtain in the shower stall because his wife has sensitive skin, and did not want the curtain in the bathwater when she was bathing. The Tenant explained the curtain is about two inches below the top of the tub. The Tenant also explained that he hung laundry to dry in the bathroom from the curtain rod, again due to the sensitive skin of his wife.

The Agent for the Landlord testified that when she viewed the bathroom she felt the laundry hanging from the curtain rod and it was soaking wet. She gathered a bit of towel in her hand and squeezed water out of the towel. She also testified that the shower curtain had been shortened and water was likely escaping onto the floor during showers.

The Agent testified that the floor underneath the vinyl flooring was very soft from absorbing water. The floor structure was wet and part of the substructure had to be repaired. The Landlord had to spend \$1,058.40 to repair the floor. The Landlord has claimed this amount from the Tenant. The Landlord had requested the Tenant pay the bill and provided a copy of it and a demand letter to the Tenant. The Tenant refused to pay as he submits that the water leak was from the toilet ring seal on the floor.

The Agent for the Landlord was very upset that the Tenant had gone from door to door disturbing his neighbours asking them to support him in this dispute with the Landlord. The neighbours had complained to the Landlord that they had nothing to do with this. The Agent was also very concerned that the Tenant called a meeting with the onsite property manager and did not inform her of this.

In evidence the Landlord submitted a letter from the company which performed the repairs. The first sentence of the letter reads, "The water pulling around the toilet does not come from the toilet leaking...". Later in the same letter the writer states, "Upon talking to the trade who did the job he informed me that when he lifted the vinyl along the tub the floor underneath was soaking wet and every indication of ongoing moisture, this water could only have come from the shower not the toilet." [Reproduced as written.]

The Tenant alleges that the leak came from the toilet and denies he caused the water damage. The Tenant provided a video of the shower running behind the shower curtain, to illustrate that water was not escaping onto the floor when the shower was running. The Tenant also had several witnesses who wrote statements that they witnessed a test performed by the Tenant of the shower running and no water escaped onto the floor.

In reply to the video evidence the Agent for the Landlord testified that the Tenant had changed the shower curtain from the one she saw with the bottom cut off. The Tenant denied this and asserted this was the same curtain.

The Tenant testified that he now hangs the laundry to drip dry over the inside of the tub and does not hang it from the curtain.

The Tenant submitted articles from the Internet and other sources showing that a toilet ring leak could cause leaking of water. He also alleges that the contractor's repair person told him the moisture problem was from a leaking toilet.

In reply the Agent for the Landlord testified that the toilet had not been leaking, otherwise it would have required a repair from a plumber. The Agent explained that every time a toilet is lifted to work on the floor a new wax ring must be installed.

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement by damaging the floor of the bathroom.

I find that on a balance of probabilities the water leak was caused by either water escaping during showers or from hanging wet clothes to dry in the bathroom. I accept the evidence of the Landlord that the water leak was not from the toilet. In particular, this is supported by the letter from the company contracted with to do the work.

Regardless of whether the water came from the shower or the wet laundry hanging, the Tenant is responsible to make sure he does not cause damage to the Landlord's rental unit. As I find the Tenant caused the damage, he must pay the Landlord for the repairs.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find that the Landlord has established a total monetary claim of **\$1,108.40** comprised of the above described amounts and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 03, 2011.

Residential Tenancy Branch