

## **Decision**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for tenant's failure to pay agreed-upon damages to the rental unit for replacement of the toilet.

Despite being served with the hearing documents by courier sent on June 10, 2011, the respondent tenant did not appear.

### **Issue(s) to be Decided**

The issues to be determined, based on the testimony and evidence, are:

- Whether or not the landlord is entitled to monetary compensation pursuant to a contractual obligation arranged between the tenant and the landlord.
- Or, whether or not the landlord is entitled to monetary compensation for damages under the Act.

### **Background and Evidence**

The tenancy began January 2005 and the rent is \$685.00 per month. The landlord testified that in November 2010 the tenant caused damage to a toilet in the unit that necessitated its replacement. The landlord testified that the tenant freely accepted responsibility for the damage and the parties entered into a written agreement in which the landlord would pay to have the toilet replaced, and the tenant would reimburse the landlord for the expenditure in a negotiated repayment plan. The landlord testified that the tenant was to pay \$448.55 in 4 monthly installments of \$100.00 each and a final installment of \$48.55. The landlord testified that the tenant did pay \$100.00 but defaulted on the payment plan agreement thereafter. The landlord was seeking a monetary order to force the tenant to comply with the plan and to finish paying the remaining installments to satisfy the \$348.55 debt.

## **Analysis**

With respect to agreements between tenants and landlords, Section 62 of the Act gives the dispute resolution officer authority to determine

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
- (b) any matters related to that dispute that arise under the Act or a tenancy agreement.

The dispute resolution officer may make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act. And may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the regulations or a tenancy agreement .

Section 1 of the Act, defines “tenancy agreement” as follows:

***"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

In the case before me, the parties entered into a subsequent agreement associated with this tenancy. However, I find that this contract can not be considered as part of the tenancy agreement. In this regard, I find that I do not have the jurisdiction to determine the reciprocal rights and responsibilities under a contractual agreement other than the tenancy agreement. For this reason, I find that I am not able to grant the landlord's request for an order to force the tenant to comply with terms agreed-upon under the payment plan.

That being said, I find that can consider an application for a monetary claim in damages. With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

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 section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. 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. 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. But a tenant is not required to make repairs for reasonable wear and tear.

In regard to the claimed costs for the damaged toilet, I find that, according to the regulations, the responsibility for maintenance or repairs of plumbing fixtures falls to the landlord, and a tenant would only be liable if there was wilful negligence on the part of the tenant or some action that caused the damage in a manner that was not due to normal wear and tear. I accept the landlord's testimony that the agreement signed by the tenant verifies that the actions of the tenant were responsible for the damage to the toilet and that this damage went beyond normal wear and tear.

Accordingly, I find that the evidence to support the monetary claim for compensation does satisfy the above test for damages. However, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item or finish in the home would be.

I find that, presuming the toilet was new at the outset of the tenancy, this fixture would be at least 5 years old at the time it was damaged beyond repair. According to the Guideline, the average useful life of a toilet is set at 20 years. Given the above, I find

that under section 67 of the Act, the landlord is entitled to be reimbursed a total of 75% of the replacement cost of the toilet, for a total of \$336.41. I find that the tenant has already paid \$100.00 towards the cost, leaving \$236.41 still outstanding.

Therefore I find that the landlord has established a total monetary claim of \$286.41 comprised of \$236.41 remaining debt owed for the toilet and the \$50.00 fee paid by the landlord for this application.

### **Conclusion**

I hereby grant the Landlord a monetary order under section 67 of the Act for \$286.41. This order must be served on the Respondent. Should the tenant fail to pay the debt, in compliance with the order, the landlord is at liberty to issue a One-Month Notice to End Tenancy for Cause to terminate the tenancy under section 47(1)(l) of the Act and may proceed accordingly. The payment of the monetary order may also be enforced, if necessary, through an application to Small Claims Court.

The remainder of the landlord's application is dismissed without leave.

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: September 12, 2011.

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Residential Tenancy Branch