



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord submitted this application just prior to the hearing date held in relation to the tenant's application requesting return of the deposit paid. Return of the deposit has previously been decided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$446.60 for cleaning costs?

Is the landlord entitled to compensation in the sum of \$100.00 for miscellaneous costs?

Is the landlord entitled to compensation in the sum of \$4,439.20 in damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenant and 3 co-tenants moved into the rental unit in January, 2011. Rent was \$1,900.00 due on the first day of each month. This was a fixed term tenancy that required the tenants to vacate on April 30, 2011. The unit was in the upper portion of a home that has a lower rental unit. Condition inspection reports were not completed.

The landlord submitted a copy of a plumbing bill dated April 1, 2011, in the sum of \$431.20. A lid to a tin can had been flushed down the toilet, which caused the toilet to overflow into the unit below. The landlord attempted to repair the toilet and when his efforts failed, the next day the plumber was called. The landlord found a toilet snake under the tenant's bed; which suggested to the landlord that the tenant had attempted to complete the repair himself.

The tenant denied that they flushed anything down the toilet but did testify that he had used a snake on the toilet as they did not wish to be responsible for a plumbing bill. The tenant stated he was denied the opportunity to view the toilet removed by the plumber, even though he had requested to do so.

The tenants moved into the unit on short notice; on January 5, 2011, the landlord had a professional cleaning company clean the home. The landlord submitted copies of photographs of the home after the tenant vacated; showing unsorted garbage and the need for cleaning. The landlord supplied a copy of a May 4, 2011, invoice for cleaning, paid by VISA. The invoice indicated that the door frames, baseboards, cupboards, fridge, under the stove and fridge, patio door and floors were cleaned.

The tenant disputed the need for cleaning and reviewed each of the photographs, indicating that he believed the unit was reasonably clean. For example, the photograph of the toaster and area around the toaster was covered in crumbs; however, the tenant felt this was not unreasonable.

The landlord submitted a copy of a June 6, 2011, estimate for work to be completed at the rental unit in the sum of \$2,408.00. The landlord testified that the lower unit was damaged as a result of the overflowing toilet. The quote indicated that drywall would be replaced, the area prepped, electrical work would be completed, treatment for mould would take place, insulation would be replaced, paint and reinstallation of lights and removal of protection would be required.

The landlord submitted that the cost of this work should be the responsibility of the tenant's as the repairs were due to the tenant's negligence.

The tenant responded that there had been other leaks in the upper unit and that they should not be responsible for this cost. The tenant stated the estimate was prepared long after their tenancy ended; the landlord responded that he has not had the work completed as a new occupant moved into the lower unit.

The landlord claimed costs for time spent completing miscellaneous cleaning.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, on the balance of probabilities, that the tenants or one of their guests, were the only individuals who could have been responsible for the lid being flushed down the toilet. The tenants had lived in the unit for 3 months, during which time no problems with the toilet were reported. The inability of the tenant to view the toilet does not alter my finding that the tenant's were responsible for the damage. I find that the landlord is entitled to the compensation claimed for the plumbing costs.

In relation to the cleaning costs, I find on the balance of probabilities, taking into account the photographs of the unit, that the tenant did not leave the unit in a reasonably clean state as required by the *Act*. Therefore, I find that the landlord is entitled to cleaning costs verified by the invoice. Further, I find that the landlord did have the unit fully cleaned at the start of the tenancy.

In relation to the estimate for repair submitted by the landlord, I find, on the balance of probabilities that the landlord has failed to provide evidence of the damage he claims was caused by the tenants. An estimate was completed; however, no evidence, such as photographs, was supplied of this damage. The landlord submitted photographs of the need for cleaning and, based on the extent of the work the landlord stated must be completed as the result of the toilet overflowing, I find the absence of supporting evidence leads me to dismiss the portion of the application requesting loss of water damage repair. I was not convinced, on the balance of probabilities, that the estimate submitted related to repairs required below the toilet in the upper rental unit.

The landlord requested compensation for loss of rent revenue during the time repairs would occur; as I have dismissed the claim for repair costs I find that the claim for loss of rent revenue is also dismissed.

The miscellaneous claim by the landlord is dismissed. The landlord may consider costs for personal time as a possible business expense.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$927.80, which is comprised of damage or loss under the Act and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$927.80. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim is dismissed.

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: November 28, 2011.

Residential Tenancy Branch