



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the tenancy started on September 1st, 2010 and ended September 1st, 2011. The rent was \$2600.00 per month and the tenant paid a security deposit of \$1300.00.

The landlord testified that On June 1st, 2011 the tenant notified him that his roommate went on the roof and put his foot through the membrane. The landlord stated that he immediately attended and saw a tarp on the roof. The landlord said that he assessed

the damage and tried to do a temporary repair. He said that he called several roofers for estimates and that they pointed out that the roof was delicate, that the membrane was old and fragile and needed proper repairs. The work was completed several weeks later, and by that time water had seeped into the house and also caused interior damage.

The landlord submitted a claim as follows:

- Roof repair: \$3460.00
- Interior repairs: \$ 540.00
- Sub-total: \$4000.00

The landlord stated that this hearing would not have taken place had the tenant's roommate not gone on the roof. He said that at the end of the tenancy the tenant refused to settle this dispute by keeping the security deposit and that therefore he is claiming the full amount of the repair.

The tenant did not dispute that his roommate went on the roof, and stated for reason that he wanted to clean the skylight. The tenant testified that the tenancy agreement specified in writing that the house was to be taken in an "as is" condition, and that the skylight was already leaking. He also did not dispute that his roommate put his foot through the roof; he stated that the roofers who did the work said that the roof was extremely rotten, that he could not do a normal patch repair, and that for this reason it would be more extensive and would cover two to three times the surface area. The tenant also suggested that the landlord may have exacerbated the damage by trying to repair the roof himself.

Analysis

First, I am satisfied that both parties attempted to minimize their loss and to fix the problem to the best of their ability and I make no finding of liability in that respect. Therefore whether the landlord caused further damage by trying to seal the hole is not relevant, nor do I find the tenant responsible for interior damage caused by a delayed repair by the roofers. Incidents do occur from time to time throughout a tenancy, and they are not necessarily blameable on either party. It is a cost of doing business and landlords are expected to recover these losses when assessing rent.

The burden of proof was on the landlord to provide sufficient evidence that the tenant violated the Act, regulation, or tenancy agreement

Nothing in the Act prevents a tenant from accessing the roof of a rental unit to clean a skylight, and the tenancy agreement is silent about that aspect of the tenant's access to the property. The tenant had no way to expect that he would step onto what the roofer described as an extremely rotten roof. Even if I agree with the landlord that the tenant should not have gone on the roof, the damage was caused by rotting plywood under the membrane. If the tenant had not gotten on the roof, this decaying condition would have remained and revealed itself at some future time with potentially more catastrophic consequences. I find that the landlord merely postponed an incident that was bound to happen. The roof was without dispute old and, as the landlord stated, delicate; it had already expended a significant portion of its useful life and there is no way of telling how long it would have lasted in that condition. One can only presume that with time a leak would have been detected and it is mere speculative to determine what would have been the extent of the damage at that time.

The tenant stated that the landlord inserted a clause in the tenancy agreement that the rental unit was in an "as is" condition. I interpret this clause to mean that the tenant was potentially inheriting underlying problems; however the clause is an unconscionable term. Under Section 32 of the Act the landlord is obliged to provide a property in a state of repair that complies with health and safety housing standards, and, having regard to

the age of the rental unit, makes it suitable for occupation. The landlord cannot impose an unconscionable term in the event problems arise for failing to maintain the property.

The landlord did not prove on a balance of probabilities that the tenants breached the Act or the tenancy agreement by stepping on the roof to clean a skylight.

Conclusion

The landlord's claim is dismissed and the tenant is entitled to the return of the security deposit in full.

Pursuant to Section 72 of the Act, I grant the tenant a Monetary Order for \$1300.00.

This Order may be registered in the Small Claims Court 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: November 24, 2011.

Residential Tenancy Branch