



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the unit site or property, compensation for damage or loss and recovery of the filing fee.

The Tenants and the Landlord attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord indicated at the outset of the hearing that he was withdrawing the carpet damage portion of his claim and only wanted to proceed with his claim related to the damage from the toilet overflowing.

The Landlord's Application was filed on October 18, 2011 and sent to the Tenants along with the Landlord's evidence by registered mail on October 20, 2011. The Tenants confirmed that they received these documents in October 2011. The Tenants submitted evidence on January 04, 2012 in response to the Landlord's Application. The Tenants testified that they sent their evidence to the Landlord by registered mail on January 05, 2012. The Landlord testified that he had not received the documents prior to the hearing on January 09, 2011. The Rules require that a party serve their evidence no later than five days prior to the hearing. I find that the Tenants failed to serve the Landlord with the evidence five days prior to the hearing and I accept the Landlord's testimony that he had not received their evidence. The Tenants had sufficient time from October to January to provide their evidence so that it was received by all in advance of the hearing, however, the Tenants waited until it was just a few days prior to the hearing to submit their evidence and they deprived the Landlord of this information prior to the hearing. As a result, I find it appropriate to reject the Tenants evidence as it was not served in accordance with the Residential Tenancy Branch Rules of Procedure. The Tenants raised no objection to this and the hearing proceeded. Tenants gave oral evidence at the hearing in lieu of their written submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the unit site or property, compensation for damage or loss and recovery of the filing fee?

Background and Evidence

The parties agree that they had a tenancy agreement which commenced in February 2005 and ended on September 30, 2011 when the Tenants moved out and the Landlord moved in. The parties agree that the rental unit had a total of three bathrooms, two upstairs and one downstairs. The parties agree that the rent was \$1450.00 per month, due on the first of the month. The Landlord returned the Tenants' security deposit at their request when the tenancy ended. The Landlord filed an Application for dispute resolution on October 18, 2011.

The Landlord is seeking compensation for damage by the Tenants as the main upstairs toilet overflowed in the rental unit during their occupancy and damaged the linoleum floor in the bathroom and ceiling of the bathroom directly below. The Landlord testified that he has filed a claim with his insurance company for the damage, but they require him to pay a \$1,000.00 deductible to proceed with the repairs. The Landlord is requesting a monetary order against the Tenants for \$1,000.00 plus the cost of the filing fee for his Application.

The Tenants testified that when the damage to the rental unit occurred, their elderly mother who is 91 years of age was living with them temporarily, as she was on a wait list for a care home. The Tenants stated that on August 11, 2011 their elderly mother used the main upstairs bathroom and the toilet overflowed. The Tenants stated that they discovered this when they went upstairs and found their elderly mother in shock standing in a pool of water in the main bathroom. The Tenants stated that they used towels and a shop vacuum to clean up the water and used a heater to dry the areas. The Tenants stated that one week later they patched the ceiling that was damaged with a special bathroom primer to prevent mildew and mould.

The Tenants stated that they have been in the rental unit since 2005 and the main upstairs toilet was a problem for a long time as it can overflow due to the rainy season or winter conditions or certain types of toilet paper which cause it to back up. The Tenants stated they had always been able to deal with this toilet themselves before, plunging it as needed, but their elderly mother was not capable of dealing with a problem toilet and as a result the incident occurred. The Tenants stated that none of the other toilets were a problem, just the main upstairs toilet.

The Tenants stated that before their elderly mother moved in with them in June 2011, they had phoned the Landlord to request that he send a plumber as they wanted the shower knob to be properly attached or replaced; the tub cold water to be fixed; the bathroom sink tap to stop leaking and pooling on the counter; and the upstairs toilet to be augured or snaked. The Tenants stated that the Landlord responded by sending a plumber to the rental unit. The Tenants complained to the Landlord that after four visits to the rental unit the plumber was charging the Landlord for work that was not being done properly or completely and they were not satisfied with him. The Tenants stated that the plumber was focussed on fixing a sink and did not deal with their toilet issue. The Tenants stated that the Landlord told them that the work they'd requested had been paid for and that the plumber should come back to resolve any issues they were not satisfied with and that the Tenants should contact the plumber. The Tenants stated that they tried to contact the plumber but he was on holidays for a while. The Tenants advised the Landlord in August that a toilet and a washer had overflowed, and requested a plumber to come to complete the work that was still not done. The Tenants stated that they are busy as they have a business to run and it was difficult to coordinate a time with the plumber, however, eventually September 6, 2011 was agreed to and the plumber came on that date to resolve their plumbing concerns.

The Landlord stated that the Tenants had lived in the rental unit since 2005 and had not mentioned the toilet being an issue until late May or early June 2011, when they phoned him to say they had problems with the main upstairs toilet plugging up and that this was a problem in the winter, the rainy season, and with certain types of toilet paper.

The Landlord stated that the Tenants had indicated several issues that they wanted a plumber to address, so the Landlord hired a plumber from the yellow pages in June 2011 to go to the rental unit and meet with the Tenants to resolve their concerns. The Landlord stated that the Tenants were free to supervise and direct the plumber in the tasks that they wanted him to undertake and prioritize. The Landlord stated that he lived many hours and a ferry ride away from the Tenants at that time so he gave the Tenants permission to deal with the plumber and he would pay for it. The Landlord stated that he paid the plumber \$700.00 for the work. The Landlord stated that the Tenants complained about the plumber, so the Landlord contacted the plumber to discuss the issues, and the plumber told him that the Tenants were verbally abusive to him. The Landlord stated that he had discussions with the Tenants and the plumber to resolve any further concerns and encouraged the Tenants to contact the plumber as he was expecting their call. The Landlord stated that he thought the plumbing issues had been resolved as he did not hear from the Tenants again until August 2011.

The Landlord stated that in August 2011 the Tenants complained about a washing machine and a toilet overflowing and the Tenants agreed to have the plumber go back to the rental unit. The Landlord feels this wouldn't have happened if the Tenants had not delayed resolution of the issue as they did not like the plumber and did not want him to come back to the rental unit. The Landlord stated that he left it with the Tenants to prioritize what access was required, however, the Tenants did not agree on a time with the plumber until September 07, 2011 as they were busy. The Landlord stated that after the toilet overflowed the Tenants led him to believe that the water had been all cleaned up, dried, and left no damage in the rental unit. The Landlord stated that he was not aware of how bad the damage from the toilet overflowing was until the Tenants did a move out inspection with him in person at the end of the tenancy, and then he saw the damage to the ceiling and floor on October 01, 2011, and that the Tenants had tried to undertake repairs on their own without notifying him. The Landlord provided photographic evidence of the damage and the repairs done by the Tenants prior to the hearing, and the Tenants received a copy of this evidence. The Landlord stated that since he moved into the rental unit he has had no problems with the toilet including in the winter.

The Landlord is claiming \$1000.00 for damages and losses which he stated were incurred as a result of the Tenants' damage to the rental unit.

The Tenants disagree with the Landlord's claim as they feel the main upstairs toilet was not working properly for several years during their tenancy and the plumber did not rectify this issue immediately.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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.

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenants) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenants) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find there is no dispute that the Tenants' elderly mother overflowed the toilet. I find that excessive water damage occurred before the Tenants' discovered the issue and attempted to clean it up. The Tenants testified that they knew how to deal with this toilet so it wouldn't overflow and that this is why they had not complained about it in the past, but their elderly mother did not know how to deal with this toilet. The parties testified that the rental unit had a total of three toilets, but only one was allegedly not working properly for some time. I find that the Tenants did not restrict their guest (mother) access to a toilet, that they testified had been not working properly for a long time, and that they knew needed to be snaked or augured.

I find that the Tenants made no complaints to the Landlord about the main upstairs toilet until late May or early June 2011, and that the Landlord reasonably responded to their concerns by hiring and paying for a plumber. I find that the Tenants controlled the plumber's ability to access the rental unit, and could have ensured that they supervised him to make sure the toilet got augured or snaked or resolved at any time prior to the toilet overflowing. The plumber came to their rental unit on at least four occasions in June 2011. The Tenants had also categorized the toilet issue as occurring in the rainy season, winter conditions, or due to types of toilet paper when they notified the Landlord. I find that August 2011 would not be categorized as the rainy season or winter conditions, and the Tenants had control over the type of toilet paper used in the rental unit, so the toilet overflow was due to their elderly mother's use on August 11, 2011.

I find that the Tenants' attempts to repair the damaged floor and ceiling were not sufficient and it is reasonable for the Landlord to utilize his insurer to deal with the damage to the rental unit. The Tenants provided no evidence to support that they made the Landlord aware of the extent of the damage or that he gave them the authority to undertake these repairs to the rental unit. I find that the Tenants repairs were insufficient and the work needed to be redone.

I find that the Tenants' are responsible for any costs associated with the damage that their guest (mother) caused to the rental unit. As the Landlord's insurance deductible is

\$1,000.00 it is reasonable to grant the Landlord a monetary order for this amount. I allow the Landlord's claim of **\$1,000.00** for damages.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding, pursuant to section 72 of the Act. The total amount owing to the Landlord is to **\$1,050.00**.

Conclusion

I grant the Landlord's claim for damages in the amount of \$1,000.00 and the \$50.00 filing fee.

I find that the Landlord is entitled to monetary order pursuant to section 67 of the Act in the amount of **\$1,050.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: January 20, 2012.

Residential Tenancy Branch