



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary for damage to the unit?

Is the landlord entitled to compensation for damage or loss under the Act?

Background and Evidence

The tenancy began in the year 2000. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant.

The parties agree that the tenant was served with a one month notice to end tenancy with a vacate date of May 31, 2012. The tenant agreed that she has accepted the notice to end tenancy and consents to an order of possession for May 31, 2012.

The landlord's agent testified on March 23, 2012, the sink in the tenant's unit came off the wall and flooded the tenant's bathroom. As a result the electrical room and another occupant's bedroom were flooded.

The landlord's agent testified as a result of the flood they had to pay for plumbing repairs, and replace the fire panel. The landlord's agent stated they replaced the mattress of the other occupant, paid for laundry services for their bedding and repainted the other occupants bedroom.

The landlord's witness testified on March 23, 2012, he attended to an emergency at the tenant's unit to shut off the water. The landlord's witness stated that when he arrived at the rental unit he was told that someone had slipped when getting out of the shower and grabbed onto the sink and the sink fell off the wall.

The landlord's witness testified that there are no shut off valves in the bathroom as this building is old, and the sink is an old type of porcelain which is attached directly to the wall and is supported by brackets. The landlord's witness stated this sink is the original sink that was installed when the building was built.

The landlord's agent testified that the building was built in approximately 1952 and the plumbing was replaced approximately 15 years ago.

The landlord's agent testified the fire panel is maintained yearly and have no knowledge of when the fire panel was originally installed.

The tenant testified that no one grabbed the sink and it just fell off the wall when someone was getting out of the shower. The tenant stated the sink has been pulling away from the wall for some time and only a few months ago the plumbing was leaking due to rust and was patched by the landlord's handyman. The tenant stated she should not be responsible for the repairs or the damage.

Analysis

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

The tenant has accepted the notice to end tenancy with an effective vacate date of May 31, 2012. Therefore, I grant the landlord an order of possession effective **May 31, 2012, at 1:00 p.m.**

To prove a loss and have one party pay for the loss requires the other party to prove 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 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 followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the landlord has the burden of proving his claim.

In this case, the bathroom sink in the tenant's rental unit fell off the wall. This sink was installed in approximately 1952, and was attached to the wall with brackets. The evidence was the buildings plumbing was replaced approximately 15 years ago and there were no shut off valve installed on this fixture.

The evidence of the landlord's agent was the fire panel was damaged in the flood and was replaced. The landlord's agent had no knowledge of when the fire panel was originally installed, except that it has been maintained yearly.

I find that due to the age of the bathroom fixture, plumbing and fire panel. These items were past there useful life span and have been fully depreciated. Therefore, I find the landlord has not incurred a loss.

The evidence of the landlord's agent was they replaced the mattress of the occupant that was impacted by the flood. There was no evidence to indicate the age of the mattress. Therefore, the landlord has provided insufficient evidence to support the claim for compensation of loss, as I am unable to determine if the mattress had been fully depreciated.

I also find that by having no shut off valve installed on the fixture when the plumbing was allegedly replaced 15 years ago the landlord failed to take steps to mitigate the damage should a plumbing emergency occur. Therefore, I find the tenant cannot be held responsible for the damages and I dismiss the landlord's claim for compensation.

As the landlord has not been successful with their application, the landlord is not entitled to recover the cost of filing the application from the tenant.

Conclusion

The landlord's is granted an order of possession. I dismiss the landlord's claim for a monetary order for compensation for damage or loss.

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: May 17, 2012.

Residential Tenancy Branch