



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, MND, SS and FF
Tenant: CNC and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application dated April 10, 2012 and amended on or about April 24, 2012, the landlord sought an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served on April 24, 2012. The landlord also sought a Monetary Order for damage to the rental unit and recovery of the filing fee for this proceeding and an order for substitute service.

By application of May 1, 2012, the tenants sought to have the Notice to End Tenancy set aside and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the parties advised that the tenants had given the landlord written notice that they would be vacating the rental unit on June 4, 2012 and the question of the Notice to End Tenancy became moot.

In addition, while the landlord had selected an order for substitute service on his application, he apparently did so in error and withdrew that request.

Issue(s) to be Decided

This matter now requires a decision on whether the landlord is entitled to a monetary award for damage to the rental unit.

Background and Evidence

This tenancy, in a condominium building, began on or about June 1, 2008. Rent is \$1,500 per month and the landlord holds a security deposit of \$775 paid at the beginning of the tenancy.

The present dispute is the remnant of an incident that occurred on February 3, 2012 in which the tenant concurs that he accidentally left a bathroom tap running during the night. The sink, which had been draining more slowly than a similar sink in the rental unit, overflowed causing water intrusion onto the floor of the rental unit and into two other units.

The restoration company engaged by the strata corporation to remediate the damage billed the strata corporation \$5,000 which was subsequently reimbursed by the landlord's insurance company.

However, the landlord was also billed an additional \$309.12 for an after-hours plumbing call to unplug the sink in question. The tenant hesitated to pay this claim because he was of the belief that the charge was included in the original \$5,000.

During the hearing, the landlord submitted a separate invoice for unplugging the drain and stated that he had paid the amount to the strata corporation in addition to the \$5,000 billed by the restoration company.

Analysis

Section 32(3) of the *Act* provides that, "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 or a person permitted on the residential property by the tenant."

In the present matter, I accept the evidence of the landlord that cost to check and unplug the drain was not included in the restoration company's billing, but was a separate charge. While he had not provided a copy of a cheque paid for the charge, he has provided copies of separate invoices sent to the strata corporation's property management company and forwarded to him for reimbursement.

While I find that the damage resulted from an accidental error of leaving a tap running, it was the tenant's mistake and I must find that the tenant knew, and gave evidence, that the drain in question was running slower than normal. Having failed to take preventive action or to advise the landlord of the potential problem, I find that he is responsible for the cost of freeing it.

Accordingly, pursuant to section 72(2)(b) of the *Act*, I hereby authorize and order that the landlord may retain \$309.12 from the tenants' security deposit to recover the cost.

I decline to award the landlord's filing fee. The application was initially made for \$5,309.12 after the landlord was well aware that the \$5,000 had already been satisfied. In addition, I must question the good faith of the request for an Order of Possession on a Notice to End Tenancy served approximately 12 weeks after the event giving rise to it, and coincident to an unresolved claim over the plumbing bill.

As the tenants have given written notice that they will be vacating the rent unit on June 4, 2012, their application to set aside the landlord's notice to end tenancy is dismissed as moot.

Conclusion

The landlord is authorized to retain \$309.12 from the tenant's security deposit at the end of the tenancy and the balance remains to be disposed of under section 38 of the *Act*.

The tenants' application is dismissed as moot.

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 23, 2012.

Residential Tenancy Branch