



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for a monetary order for damage to the rental unit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This one year fixed term tenancy started on February 1, 2012, monthly rent is \$1500.00 and the tenants paid a security deposit of \$750.00 at the beginning of the tenancy.

The landlord's claim is \$1500.00, which is the insurance deductible.

The landlord's relevant evidence included photos of the rental unit, a statement from a plumber, strata letters to the owner, a tenancy agreement, and statements from a restoration company.

In support of their application, the landlord's agent testified that the tenants caused a flood and resulting water damage to the rental unit and strata property, due to plugging her toilet with paper and not reporting the emergency situation.

The landlord's agent pointed to the plumber's statement, which stated that the blockage in the toilet "appeared" to be from paper and a malfunctioning valve in the water tank, which caused a slow release of water.

The resulting water damage caused in excess of \$7000.00 in restoration costs, for which the landlord is seeking reimbursement of the insurance deductible.

In response, the tenant FAS stated that on the morning of the incident, she noticed a rise in the water level in the toilet in her washroom, but that the water had subsided before she left for work. The tenant stated that she did not believe there was a problem with the toilet which needed reporting.

Tenant AAS stated that she was home the day in question. Later in the afternoon, according to the tenant, she heard loud, excessive banging on her door, which exacerbated her anxiety disorder. The tenant stated she did not know who the people were, but that they insisted on coming into the rental unit and looking for a water leak.

The tenant submitted that the unknown persons were quite rude, aggressive and accusatory.

The tenants submitted that they used the toilet for its intended use and did know why there was a problem.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by

taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I find that the landlord submitted insufficient evidence that the tenants were negligent or that their actions caused the flood and water damage. The plumber's statement was unclear, did not specifically attribute any blockage to the actions of the tenants and therefore did not prove that the tenants were responsible for the blockage, or in fact, that the blockage was the definite cause of the leak.

I also do not find that the tenants are responsible for a malfunctioning valve in the toilet.

Conclusion

I therefore find that the landlord has not met step 2 of their burden of proof and I dismiss the landlord's application, without leave to re-apply.

As I have dismissed the landlord's application, I decline to award them recovery of the filing fee.

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: June 22, 2012.

Residential Tenancy Branch