Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF / MNSD

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenants for return of all or part of the security deposit and pet damage deposit. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the initial fixed term of tenancy was from March 21, 2010 to September 30, 2011. Monthly rent of $1,950.00 was due and payable in advance on the first day of each month. A security deposit of $975.00 and a pet damage deposit of $325.00 were both collected.

Subsequently, the parties entered into a new written tenancy agreement for the term from October 1, 2011 to March 31, 2012. Monthly rent was $1,900.00.

Thereafter, the parties agreed to a 3 month extension of tenancy for the period from April 1 to June 30, 2012. Monthly rent remained unchanged at $1,900.00.

During the early afternoon of June 23, 2012, the tenant left the unit. Later that afternoon / early evening it is understood that building security determined that there was flooding in the unit. The building concierge was contacted and as the tenants had changed the locks to the unit, the services of a locksmith were required to gain entry. Thereafter, restoration services personnel attended the unit and were followed shortly

thereafter by a plumber. Later, the tenant along with others accompanying her returned to the unit, at which time they became aware of the flooding.

The plumber provided witness testimony during the hearing. He stated that by the time he arrived at the unit the water had been shut off. As a result of his investigation he determined that the source of flooding was the toilet in the en suite bathroom. His view is that the overflow was caused by a combination of blockage in the toilet and a failed flapper assembly in the toilet's water tank. He found that a tampon (sanitary napkin) was in part responsible for the blockage. Further, he speculated that kitty litter may also have contributed to the blockage. In any event, the plumber testified that in his experience one tampon alone in combination with toilet paper and waste could result in a blocked toilet. While the tenant denied ever depositing kitty litter into the toilet, she acknowledged that she routinely flushed tampons down the toilet.

Restoration and repairs are yet incomplete, and new tenants have been found for the unit effective October 1, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of first, the landlords' claim and finally, the tenants' claim, and my findings are set out below.

$268.80*: *locksmith*. Section 31 of the Act speaks to **Prohibitions on changes to locks and other access**, and provides in part as follows:

> 31(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.
>
> (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

During the hearing the tenants testified that they do not dispute this aspect of the landlords' claim. In the result, I find that the landlords have established entitlement to the full amount claimed.

$422.84: *plumbing repairs*. Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

> 32(3) 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.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

I find on a balance of probabilities that one tampon, toilet paper and waste, in combination with a faulty flapper mechanism, led to the blockage and overflow of the toilet. This finding is made, in part, on the basis of the witness testimony and on the report provided by the witness which reads in part:

> Accessed en suite washroom and found toilet bowl full. Signs of dirt ring (kitty litter) present and sanitary napkin, paper etc...
>
> Snaked toilet bowl and cleared. Flushed toilet and found flapper getting hung-up / stuck. When this happens and the bowl is clogged, toilet will overflow until flapper is reset and / or clog is cleared. I removed toilet tank and rebuilt with new flapper, trip lever etc...re assembled and paper tested 10 times without any more problems. No other signs of leak in unit.

In the result, I find that the tenants cannot be found fully responsible for the cost of repairs, and the landlords have therefore established entitlement limited to **$211.42***, which is half the amount claimed.

$1,950.00: *loss of rental income*. Evidence submitted by the landlords includes a tenancy agreement entered into with prospective renters whose tenancy was to commence July 1, 2012. However, the agreement was unable to be fulfilled while restoration and repairs were undertaken. The landlords testified that their insurance provider has compensated them for 2 months of lost rental income (July and August), and they seek compensation from the tenants for loss of same for September. In view of my finding that the tenant's actions in combination with a faulty flapper mechanism in the toilet tank contributed to the loss of rental income, I find that the landlords have established entitlement limited to **$975.00***, which is half the amount claimed.

$268.80: *agent's fee*. I find there is insufficient evidence that the landlords' decision to hire an agent to find new renters is directly related to flooding in the unit. In an e-mail from the landlords to the tenants well before the flooding by date of February 6, 2012, in

relation to finding new renters after the tenant's anticipated move on June 30, 2012, the landlords stated in part, "We will probably have to get an agent this time." In the result, this aspect of the application is hereby dismissed.

$34.40: *hydro.* Apparently relevant documentary evidence is limited to a billing statement which reflects two sub-totals due: $22.83 - "balance from your previous bill," and $11.57 - for the period from July 26 to August 24, 2012. The billing statement is in the name of the landlord and the statement date is August 27, 2012. There is no evidence of the "previous bill" and it is therefore not clear what period of time is covered in regard to the previous bill for $22.83. Further, I find that the tenancy agreements are insufficiently specific where it concerns utilities beyond stating that "heat and hot water" are included. In the result, this aspect of the application is hereby dismissed.

$250.00: *replace garburator*. Further to the absence of a receipt in support of the cost claimed, in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

$24,764.02: *restoration services*. The landlords testified that their insurance provider has compensated them for costs incurred as a result of the flooding to a maximum of $25,000.00. Thereafter, the strata's insurance provider covers additional costs. In the result, the landlords have not incurred the bulk of costs associated with restoration and repairs. However, the landlords testified that as a result of this particular claim their insurance provider will no longer offer them insurance coverage unless the tenants reimburse the landlords for the related costs.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, and provides as follows:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenant did not intentionally or recklessly undertake to damage the landlord's property. While I find that blockages which may have previously occurred in the toilet as a result of the tenant's use, were likely remedied without serious incident by

way of a plunger or a plumber's services, the unfortunate set of circumstances in this dispute arose from blockage created by the tenant's actions in combination with the simultaneous failure of the toilet's flapper mechanism. The landlords have acted reasonably to mitigate their loss by making a claim on their insurance policy. I find that the tenant cannot reasonably be held responsible for the position taken by the landlord's insurance provider which is not to provide further coverage as a result of this claim. Accordingly, this aspect of the application is hereby dismissed.

$100.00*: *filing fee*. I find that as the landlords have achieved a measure of success with their application, they have established entitlement to recovery of the full filing fee.

Following from all of the above I find that the landlords have established entitlement in the total amount of $1,555.22. I order that the landlords retain the security deposit of $975.00 and the pet damage deposit of $325.00 (total: $1,300.00) and I grant the landlords a monetary order for the balance owed of $255.22 ($1,555.22 - $1,300.00).

As the landlords' entitlement exceeds the combined total amount of the tenants' security deposit and pet damage deposit, the tenants' application to recover all or part of these deposits is hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **$255.22**. Should it be necessary, this order may be served on the tenants, filed 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: October 5, 2012.

Residential Tenancy Branch