



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution. The Monetary Order Worksheet does not indicate a claim for unpaid rent.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask questions, and to make submissions to me.

The Landlord and the Tenant agree that the Landlord served four receipts to the Tenant when she served them with the Application for Dispute Resolution. The Landlord stated that she submitted this evidence to the Residential Tenancy Branch when she filed her Application for Dispute Resolution, although I did not have the receipts before me at the time of the hearing. The parties agreed that the hearing would proceed and that an adjournment would be considered if there was a dispute regarding the content of the receipts.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2012 and ended on April 30, 2012.

The Landlord is seeking compensation, in the amount of \$912.80, for the cost of clearing a blocked toilet. The Landlord and the Tenant agree that in March of 2012 the Tenant reported a blocked toilet to the Landlord and the Landlord arranged to have a plumber clear the blockage. The Landlord stated that the plumber told her that the toilet/sewer line was blocked by paper towel and that the lines in the yard may have

settled. The Tenant with the initials "K.A." stated that the plumber told him the toilet/sewer line was blocked by paper; that the paper could be paper towel or the Charmin brand of toilet paper used by the Tenant; and that there were roots in the sewer line. The parties agree that the receipt indicates that there was a "paper blockage". The Tenant with the initials "K.A." stated that they did not dispose of paper towel in the toilet.

The Landlord is seeking compensation, in the amount of \$153.55, for cleaning the carpet. The Landlord stated that the carpet was stained and required cleaning. The Tenant with the initials "K.A." stated that they "spot cleaned" the carpet at the end of the tenancy and that it was not stained. The parties agree that the Landlord has a receipt for the carpet cleaning. The Landlord stated that she has no evidence that supports her claim that the carpet required cleaning.

The Landlord is seeking compensation, in the amount of \$2,454.27, to replace the carpet. The Landlord stated that the carpet smelled of cigarette smoke and needed to be replaced. The Tenant with the initials "R.H." stated that they did not smoke in the rental unit and the carpet did not smell of smoke. The parties agree that the Landlord has a receipt for replacing the carpet. The Landlord stated that she has no evidence that supports her claim that the carpet smelled of smoke.

The Landlord is seeking compensation, in the amount of \$1,344.00, to repaint. The Landlord stated that the walls smelled of cigarette smoke and needed to be repainted. The Tenant with the initials "R.H." stated that they did not smoke in the rental unit and the walls did not smell of smoke. The parties agree that the Landlord has a receipt for repainting. The Landlord stated that she has no evidence that supports her claim that the walls smelled of smoke.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Act* requires a tenant to repair damage to a rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. Section 32(4) of the *Act* stipulates that a tenant is not required to make repairs for reasonable wear and tear.

I find that the Landlord submitted insufficient evidence to establish that the Tenant plugged the toilet by using it inappropriately. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the plumber told her the lines were blocked by paper towel or that refutes the Tenant's

testimony that the paper blockage could have been the type of toilet paper used by the Tenant. In determining this matter I note that the receipt does not specify the nature of the paper blockage.

As the Landlord has failed to establish that the Tenant flushed a product down the toilet that is not designed to be placed in a toilet, I find it is entirely possible that the blockage was a result of an aging sewer system. As this blockage may be the result of normal wear and tear, which the Tenant is not obligated to repair, I dismiss the Landlord's claim for compensation for the cost of repairing the blocked toilet.

I find that the Landlord submitted insufficient evidence to establish that the carpet in the rental unit was stained. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph or a statement from an unbiased party, which corroborates the Landlord's testimony that the carpet was stained or that refutes the Tenant's testimony that the carpet was not stained. As the Landlord has failed to establish that the carpet required cleaning, I dismiss the Landlord's claim for compensation for the cost of cleaning.

I find that the Landlord submitted insufficient evidence to establish that the carpet and the walls smelled of smoke. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a statement from an unbiased party, which corroborates the Landlord's testimony that the carpet and walls smelled of smoke or that refutes the Tenant's testimony that they did not smell of smoke. As the Landlord has failed to establish that the carpet and walls smelled of smoke, I dismiss the Landlord's claim for compensation for replacing the carpet and repainting.

Conclusion

I find that the Landlord has failed to establish a monetary claim. As the Landlord's application has been without merit, I dismiss the Landlord's application to recover the fee for filing the Application for Dispute Resolution.

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 29, 2012.

Residential Tenancy Branch