



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF, O

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an order of possession, a request for a monetary order for \$2371.60, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit a \$487.50 towards this claim.

Background and Evidence

The applicants testified that:

- Shortly after moving in the tenant stated that the toilet was plugged, and therefore a plumber was called who found that a toothbrush was lodged in the toilet. At the time the tenant stated that it was her toothbrush.
- The tenant also broke the glass shower door in the rental unit.
- The tenant also reported a noxious smell coming from the rental unit, and although they spent a large amount of money investigating this alleged smell, they were never able to detect any smell.
- The tenant had also failed in her bid to have a Notice to End Tenancy canceled, and the dispute resolution officer ordered that the tenancy would end on August 27, 2012. The tenant however failed to vacate the rental unit on August 27, 2012 and in fact did not vacate the unit until September 29, 2012. The landlord is

therefore requesting compensation of \$65.00 per day for the overholding period, which is double the daily amount of a monthly rent.

- They believe \$65.00 per day is justified, to deter the tenant from repeating her actions overholding.
- Further, their son who was going to move into the rental unit would have paid \$1200.00 in rent, and also have extra expenses as a result of not being able to move into the rental unit.

The applicants are therefore requesting an order as follows:

Repairs to toilet	\$25.00
Investigating odours	\$924.00
Compensation for overholding	\$2145.00
Filing fee	\$50.00
Total	\$3411.60

The applicants further stated that they have received a cheque from B.C. Housing which will be deducted from the above amount if that cheque is still negotiable.

The respondent testified that:

- The toilet plugged very shortly after she moved into the rental unit, and was not the result of anything that she did. She did not drop a toothbrush in the toilet, and she did not state that the toothbrush found in the toilet was hers or her children's.
- The glass shower door did not break as a result of any negligence on her part, it fell off the track while she was using it in a normal manner, and she fails to see how she can be held liable for this damage.
- The landlords may not have found any odor in the rental unit, but it was definitely there. Further she fails to see how she can be held responsible for the landlord's bills when they appear to be related to plumbing issues, and have nothing to do with the smell. Just because the technician from a plumbing company could not detect the smell in the closet, does not mean it did not exist.
- She did not purposely overhold, she fully intended to vacate by August 27, 2012, however she was unable to do so as she was unable to secure a new rental unit.
- Further she believes the amount claimed by the landlords for overholding is excessive and does not believe that their son had any extra expenses resulting from her failure to vacate on August 27, 2012.
- The tenant further testified that she has personally paid \$372.00 for the month of September 2012, and B.C. Housing has paid a further \$603.00 for a total of \$975.00 and although B.C. Housings cheque has not been cashed, B.C. Housing is willing to re-issue that cheque.

Analysis

Toilet

It is my finding that the landlord has not met the burden of proving that the toilet was plugged as a result of any negligence on the part of the tenant. The landlord claims that the tenant stated that the toothbrush removed from the toilet was hers, however the tenant denies that claim and therefore it's basically the landlords word against that of the tenant. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

I therefore deny the landlords claim for unplugging the toilet.

Glass shower door

It is also my finding that the landlord has not met the burden of proving that the shower door was broken as a result of any negligence or willful actions on the part of the tenant. The tenant testified that the door fell off the track under normal use and the absence of any evidence to the contrary I also deny this portion of the landlords claim.

Investigating an odor

I also deny the landlord's claims for money spent attempting to alleviate the tenants concerns about an odor she claims to have detected in the rental unit.

In this case I believe the tenant honestly believed she could detect a noxious odor in the rental unit and therefore it was reasonable for her to report those beliefs to the landlord.

The fact that the landlord's investigations were unable to corroborate the tenants claim of the noxious odor, does not mean that she should be held liable for having acted on her honestly held belief.

Overholding

I am only willing to allow a portion of the landlords claim for overholding.

The landlord has requested an order of \$65.00 per day to deter the tenant from repeating her overholding actions, however claims for damages are meant to be compensatory and not punitive and therefore I will not allow the landlords claim of \$65.00 per day.

I am however willing to allow the difference between the \$1200.00 amount the landlord would have collected from her son, less any amount already paid by the tenant.

In this case the tenant testified that she has paid \$372.00, and therefore I will allow a claim of \$828.00. I will not deduct the amount that may be re-issued by B.C. Housing, because at this point there is no proof that that amount will be re-issued.

I also order recovery of the \$50.00 filing fee.

Conclusion

I have allowed \$878.00 of the landlords claim and I therefore order that the landlords may retain the full security deposit a \$487.50, and have issued a monetary order in the amount of \$390.50.

The remainder of the landlords order is dismissed without leave to reapply.

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 04, 2012.

Residential Tenancy Branch