



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MND, MNR, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of restoration of the unit after a flood, for loss of income and for filing fee. The landlord also applied to retain the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This application was initially heard on October 12, 2012 and adjourned to November 20, 2012. The matter was adjourned one more time to December 12, 2012.

In his application, the landlord named parties IJ and ZJ as tenants. IJ and ZJ stated that they represented a limited company (CS) that managed rental units.

At the start of the hearing, the lawyer representing CS raised the issue of the relationship between the applicant and the respondent. He stated that CS has entered into arrangement with the landlord to act as their property manager and is therefore not the tenant. However CS has also entered into tenancy agreement with the landlord to rent the dispute rental unit and therefore for the purpose of this hearing, I find that the contractual relationship between the landlord and CS is one of landlord and tenant. Even though IJ and ZJ own and operate CS, at their request, the limited company CS is named as the tenant.

Issues to be decided

Was the flood caused by negligence on the part of the tenant? Did the landlord act in a timely manner to mitigate damage? Has the landlord established a claim for costs incurred to restore the rental unit to a condition in which it could be re rented? Did the landlord suffer a loss of income? If so, is the tenant responsible for this loss? Is the landlord entitled to the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties entered into a tenancy agreement on September 15, 2011 for a fixed term of one year ending September 30, 2012. Rent was \$1,350.00 per month due on the first of the month. A term of the tenancy agreement permitted the tenant CS to sub lease or sub let the rental unit. The tenant paid a security deposit of \$675.00.

The parties also entered into a separate contract on September 15, 2011. By signing the agreement, the landlord permitted the agents (IJ and ZJ) of the tenant (CS) to actively advertise, market and lease the rental unit. A provision in this contract requires the landlord to obtain his own insurance to cover any losses associated with the unit, including liability insurance.

The tenant CS sublet the unit to a third party on January 06, 2012 for a monthly rent of \$1,695.00. This tenancy ended on March 30, 2012. The agent (IJ) for the tenant (CS) visited the unit on March 31 at approximately 10:00 am to ready it for the next occupant. IJ stated that all was well and he spent a short time of approximately five minutes inside the unit.

The resident manager testified that around 1:00pm he received a call from an occupant of the unit located across from the rental unit. She informed him that water was flowing out of the rental unit into the hallway. The manager rushed to his apartment and retrieved a key for the rental unit. He entered the unit and located the source of the water. He stated that water was spraying out of the back of the toilet tank. He proceeded to shut off the water supply to the tank. Upon removing the lid of the toilet tank, he found a plastic grocery bag wrapped around the flushing mechanism.

The manager contacted occupants of other suites to determine the damage caused by the leak and found that six other suites, located directly under the rental unit, had sustained water damage. In addition, water was flowing through the walls and exiting on the ground floor, seven storeys below. The manager returned to the rental unit, with a camera and took photographs of the inside of the toilet tank. The photograph shows the tank filled with water. The arm of the floating ball is in an engaged position with the ball floating on the water surface, at the top of the tank. Wrapped around the flushing mechanism is a plastic bag.

The manager contacted IJ who returned to the apartment some time that afternoon. The manager and IJ provided different versions of the conversation that took place inside the rental unit.

The manager stated that IJ informed him that a plumber was working on the toilet and had left to get some parts. IJ denied having told the manager that a plumber was working on the toilet. He stated that there might have been some confusion because he manages a few units in the building and may have had a plumber attending to another unit.

The manager stated that on the next day, he contacted IJ by text message and requested contact information for the plumber. IJ did not provide the landlord with the requested information.

The landlord filed a letter written by the claims adjuster of the strata's insurer. This letter confirms that the toilet tank was the source of the water damage caused to six units directly under the rental unit.

The tenant filed a letter from a plumber that states that based on the photographs; he did not believe that the plastic bag would be the cause of the leak. He states that "*there are many reasons a toilet would leak – a crack in the toilet tank would also create a leak*". The letter also goes on to say that the cause of the problem would only be determined by a plumber inspecting the site after the incident.

The tenant did not file any evidence to support his testimony that his plumber had not worked on the toilet in the dispute rental unit but may have been attending to a problem at a different unit at the time of the incident. The tenant could have presented invoices or documents to confirm that his plumber was attending to a different unit that he managed at the time of this water leak.

The landlord testified that the toilet had not had any problems prior to this one. He purchased this unit approximately 11 years ago and had it fully renovated. Therefore the approximate age of the toilet at the time of the incident was 11 years old.

The restoration work started and the unit was uninhabitable for the duration of the work. The tenant advised the landlord that he would not be renting the unit due to its condition. The tenant cancelled his rent cheque for April. The landlord found a tenant for May 20, 2012.

The water damage to the dispute rental unit and six other units was covered by the insurance of the Strata. The insurance company determined that the toilet in the rental unit was the cause of the flood. In a letter dated May 08, 2012, the strata requested the landlord to cover the deductible of \$5,000.00. The landlord did so on May 30, 2012.

The letter from the strata council refers to a settlement received by the landlord directly from the strata insurers. The landlord has not provided any information on this settlement.

The landlord stated that the restoration as provided by the strata's insurer did not cover all damage and he incurred additional costs. The landlord has filed an invoice for repair and supplies in the amount of \$6,000.00. He has also filed receipts from a hardware store for purchase of supplies. Upon review of these receipts, I note that some purchases consisted of tools, faucets, paint, shower head etc.

The landlord stated that the unit was uninhabitable after the flood for the period of restoration thereby causing the landlord to suffer a loss of income for two months. The landlord found a new tenant for May 20, 2012. The tenant argued that the landlord could have mitigated his losses by completing the work within two to three weeks.

The landlord is claiming a total of \$13,800.00. The claim consists of \$5,000.00 paid by the landlord to the strata council for the deductible, \$2,700.00 for loss of income, \$6,000.00 for repairs and \$100.00 for the filing fee.

Analysis

Based on the documentary evidence and verbal testimony of both parties, I find that the leak stemmed from the toilet in the rental unit. I now have to determine whether this was a result of negligence on the part of the tenant, or due to wear and tear or due to the actions of the landlord. The tenant had possession of the unit on the day of the leak. The presence of the plastic bag implies that an attempt had been made to contain a leak.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the toilet. As per this policy, the useful life of a toilet is twenty years. The landlord renovated the rental unit eleven years prior to the incident and therefore at the time of the incident the toilet still had approximately nine years of useful life left. Based on the testimony of the landlord that he had had no prior problem with the toilet and based on the useful life policy, I find that on a balance of probabilities, the leak was not due to wear and tear.

Also, on a balance of probabilities, it is more likely than not that a landlord who is also the owner of the rental unit would hire a plumber to fix a problem instead of using a plastic bag as a temporary fix. It is also more likely than not that the bag was placed inside the tank by the occupant of the unit and not by the landlord.

Based on the above, I find that the tenant is responsible for the leak and must cover costs incurred by the landlord to restore the unit to a condition in which it could be re-rented. Accordingly, I find that the tenant must pay the deductible levied on the landlord by the strata, for insurance coverage that he contributes to.

Residential Tenancy Policy Guideline #3 speaks to claims by the landlord for loss of income. This guideline states that at the end of a tenancy if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Based on the testimony of both parties, I find that as a result of the leak, the unit was uninhabitable for at least two weeks, thereby causing the landlord to suffer a loss of income for April. Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

The landlord did not file any evidence to support his efforts to complete the restoration in a timely manner and to find a tenant for May 01. Therefore I find that the landlord is not entitled to the loss of income he suffered in May. However, I find that the tenant must pay the landlord for the loss he suffered in April, in the amount of \$1,350.00.

The Landlord has made a claim in the amount of \$6,000.00 for repairs not covered by the strata. The landlord did not file any evidence to indicate what repairs were covered by the strata. It is not clear whether the landlord made improvements or only replaced water damaged items. The landlord also received a settlement from the strata's insurer but did not provide details of that settlement.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. The landlord stated that most of the items in the unit were at least eleven years old if not more. Since the landlord did not provide any detail on the extent of the damage and the age of the item replaced, I am unable to assess the remainder of the useful life of the items that he replaced. In addition, the invoices contain items like tools, faucets, and shower heads etc which are items that were likely not damaged as a result of the leak from the toilet tank.

In any event, even if the landlord had provided the necessary details, I find that he would not be entitled to compensation as he was not in compliance with a term of the agreement between the two parties that required him to have his own insurance policy.

The landlord has proven most of his claim and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established a claim of \$5,000.00 for the deductible, \$1,350.00 for loss of income and \$100.00 for the filing fee for a total of \$6,450.00.

I order that the landlord retain the security deposit of \$675.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$5,775.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for the amount of **\$5,775.00**.

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: December 27, 2012.

Residential Tenancy Branch