



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications. The landlord applied for authorization to deduct amounts from the security deposit for damage and cleaning. The tenant applied for return of the security deposit and compensation for loss of her personal property and her cleaning efforts with respect to a flood. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation and authorization to make deductions from the security deposit for damage to a sump pump and cleaning costs?
2. Has the tenant established an entitlement to compensation for loss of her personal property and cleaning as a result of a flood?

Background and Evidence

The tenancy commenced May 15, 2011 and ended October 15, 2012. The landlord collected a security deposit of \$637.50. Both parties participated in a move-in and move-out inspection. The landlord prepared condition inspection reports. The tenant did not agree with the landlord's assessment of the condition of the property at the end of the tenancy.

Both parties made claims for compensation that relate to the blockage of the sump pump. Below, I have summarized the respective positions of the parties:

Sump pump

The plumbing fixtures in the rental unit and a 2 piece bathroom in the landlord's portion of the building are serviced by a sump pump. Starting August 21, 2012 the landlord's home was occupied by two people involved in a house exchange with the landlord. On

September 2, 2012 a plumber was called to the property by the tenant because her toilet would not flush and the landlord was out of town at the time. The tenant was able to get a contact number for the landlord's grandson from the landlord's house exchange guests and she left a message for him.

The plumber, the landlord's son and the tenant dealt with the blocked sump pump and overflow of water on September 2, 2012. Water was overflowing from the toilet in the landlord's 2 piece bathroom as it is the plumbing fixture nearest the sump pump. The plumber, the landlord's grandson, and the tenant used a combination of the tenant's towels and the landlord's towels to deal with the flow of sewage contaminated water. At the time the landlord's grandson informed the tenant that his grandmother would reimburse her for her towels. The carpeting was saved from water damage but the baseboard in the landlord's portion of the house was damaged by water.

The plumber located a cloth lodged in the sump pump and removed it at a cost of \$201.60, which was paid by the landlord's grandson in cash at the time.

The plumber opined, in writing, that the cloth was flushed into the system on September 2, 2012 or 1 to 3 days prior to the flood. Both the tenant and the landlord claim to have viewed the piece of cloth that was dislodged from the sump pump and denied that it belonged to them.

The landlord is seeking to recover the cost of \$201.60 from the tenant. The landlord is of the position the cloth was flushed into the system from the tenant's unit. She takes this position because the house exchange guests denied flushing a cloth in the 2 piece bathroom toilet and claim to have not used the 2 piece bathroom at all. In contrast, the system was constantly used by the tenant.

The landlord also enquired with the house cleaners who cleaned the landlord's home in August 2012 in preparation for the house exchange guests. The house cleaners denied using such a cloth in their cleaning efforts. Further, the cleaners had been there approximately two weeks before the flood which is well beyond the plumber's estimate that the cloth was flushed 1 to 3 days prior.

The tenant denied flushing a cloth into her toilet and denied owning such a cloth. The tenant submitted that the house exchange guests did use the rec room in the lower portion of the landlord's home which is the same level where the 2 piece bathroom is located.

The tenant questioned the veracity of the plumber's invoice as the plumber was paid in cash and when the tenant called the plumbing company initially they indicated there was no invoice for the job. The landlord responded that she could not speak to the bookkeeping of the plumbing company but that the invoice was provided to her when she returned from being out of the country.

The tenant is seeking recovery of the cost of \$157.32 for the replacement of the towels that she used to mop up the sewage contaminated water, as promised to her by the landlord's grandson. In addition, the tenant is seeking compensation of \$50.00 for the time she spent cleaning up the mess that resulted from the flood.

The landlord responded that her grandson erroneously believed at the time of the flood that the cloth could have been flushed by landlord's cleaners. The landlord also pointed out that she is not seeking to recover the other losses she suffered, such as the loss of her towels and the damaged baseboards, in appreciation of the tenant's clean-up efforts.

Cleaning

The landlord is also seeking compensation of \$64.00 for two hours of cleaning performed after the tenancy ended. The landlord submitted that additional cleaning was required for: the walls; the fronts of the cupboards, the stove hood fan; and in the bathroom.

The landlord explained that the incoming tenants had noted the above items during their viewing of the unit on October 14, 2012. The parties were in disputed as to whether the landlord had gained the tenant's consent for the viewing.

The landlord provided an invoice from the cleaner in support of her position as to the condition of the property.

The tenant submitted that the entire unit was cleaned except the walls were spot cleaned. Any scuffs apparent on the walls amounted to reasonable wear and tear. The stove hood fan cover was put in the dishwasher and was not greasy. The move-out inspection report does not indicate additional cleaning was required behind the toilet or on the bathtub as suggested by the landlord's cleaner.

The tenant questioned the veracity of the cleaner's invoice as during a phone call to the cleaner the cleaner stated their rate was \$25.00 per hour, not the \$32.00 per hour indicated on the invoice provided as evidence.

Analysis

The Act requires that a tenant must repair any damage they, or persons they permit on the property, cause by way of their actions or neglect. Costs incurred by a landlord to repair damage for which the tenant is responsible may be recovered from the tenant.

While it is undisputed that a cloth was found lodged in the sump pump and was the cause of a flood, all of the persons who had access to toilets on the lower level have denied responsibility for flushing a cloth. Although, I find this to be an unfortunate situation for the landlord, I find the landlord has insufficient evidence to demonstrate, on the balance of probabilities, that the tenant is responsible for causing the blockage.

I find the tenant cannot be held responsible by default just because the landlord's house guests and cleaners denied responsibility. I found no basis to find the tenant less credible than those who provided written statements to the landlord. Rather, the tenant's verbal testimony holds more weight than a written statement of a person not subject to further questioning or cross examination.

Since all those questioned by the landlord denied responsibility for causing the blockage, I have considered what other factors support the landlord's position that the tenant is responsible. The landlord submitted that it is more likely than not that the cloth was flushed in the tenant's unit because the tenant's toilet received much more use than the 2 piece bathroom toilet; however, I find I was provided nothing to suggest that the cloth needed frequent or constant use to enter the system as opposed to a single flush. Therefore, I find I am unsatisfied that the greater frequency and amount of use is a sufficient basis to hold the tenant responsible for flushing the cloth.

In light of the above, I find the landlord has failed to meet her burden of proof and I dismiss the landlord's claims against the tenant for the sump pump repair cost.

Considering the undisputed testimony that the landlord did not leave an emergency contact number with the tenant and the landlord's grandson responded to the emergency situation on September 2, 2012 I find the landlord's grandson was acting as the landlord's agent at that time. I accept the undisputed evidence of the tenant that the landlord's grandson asked the tenant for more towels to mop up the overflow of water and that the tenant provided him with towels in exchange for assurances by the landlord's agent that the tenant would be compensated for such.

Although the landlord's grandson may have later heard from the landlord that she did not believe the cleaner's were responsible for causing the flood, I find the tenant gave

the landlord's son towels pursuant to the landlord's grandson's assurances of compensation at the time.

In light of the above, I accept that the tenant suffered a loss of her towels due, at least in part, to the actions of the landlord's agent. I find the tenant has established the replacement cost of the towels by way of her documentary evidence. However, awards for compensation are intended to be restorative and where an item has a limited useful life it is appropriate to reduce the award by depreciation of the original item. I was not provided evidence as to the age or condition of the towels used, thus, I find it reasonable to award the tenant 50% of the amount claimed, or \$78.66.

I make no award for the time the tenant spent cleaning as I find this was done voluntarily by the tenant at the time with no agreement or assurances that she be compensated.

With respect to cleaning requirements at the end of a tenancy, the Act requires that a tenant leave a rental unit "reasonably clean". This standard is not as great as perfectly clean or impeccably clean. Further, it is not uncommon for landlords to perform additional cleaning to bring the rental unit from a reasonably clean condition to a higher standard to satisfy an incoming tenant; however, such efforts are not the responsibility of the outgoing tenant.

Upon review of the photographs, the condition inspection report, and the cleaner's invoice that were submitted into evidence, and the disputed testimony provided during the hearing, I find the rental unit required minor cleaning at most and that the tenant met her obligation to leave the rental unit reasonably clean. Therefore, I make no award to the landlord for cleaning costs.

With respect to the filing fees, I make no award to the landlord as the landlord was unsuccessful in her claims against the tenant. The tenant's request for return of her security deposit was largely unnecessary and the tenant was only partially successful with her claims against the landlord. Therefore, I provide the tenant with a partial award of \$33.84 to bring the tenant's total award to \$750.00, broken down as follows:

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|------------------|--------------|
| Security deposit | \$ 637.50 |
| Loss of towels | 78.66 |
| Filing fee | <u>33.84</u> |
| Monetary Order | \$ 750.00 |

The tenant is provided a Monetary order in the total amount of \$750.00 to serve upon the landlord and enforce as necessary.

Conclusion

The landlord's application has been dismissed. The tenant has been provided a Monetary Order in the amount of \$750.00 to serve and enforce as necessary.

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: January 25, 2013

Residential Tenancy Branch

