



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Preliminary Issues

The Tenant, her mother, and her Advocate signed into this proceeding nine minutes late. At that time the Tenant indicated she wished to have her mother speak on her behalf as she was suffering from P.T.S.D. The mother appeared to be upset and requested an adjournment because she did not have time to submit evidence in response to the Landlord's claim. The mother confirmed she had had regular contact with the Tenant since the Tenant vacated the rental unit in December 2012, and that she had knowledge that the Landlord wanted to keep the security deposit. She stated that she discussed this situation with her daughter and together they decided that they would not peruse the issue with the Landlord.

The Advocate confirmed that the Tenant had made no contact with their office until approximately one week ago.

The Landlord did not agree with the adjournment request and requested to proceed with the scheduled hearing. The Landlord argued that the Tenant had knowledge of this proceeding since December 2012. The Landlord advised that the Tenant had called into their office on numerous occasions since December to discuss this situation so they feel there is no justification to post pone this claim any longer as the Tenant had ample time to prepare a response to their claim and she has ample support here with her.

The *Residential Tenancy Branch Rules of Procedure # 6.4* stipulates that the Arbitrator must consider the following criteria when considering a request for an adjournment:

- the oral or written submissions of the parties;
- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution

- proceeding;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

Upon review of the aforementioned, I found that an adjournment was not warranted in this situation and I proceeded with the hearing. I made this finding in part because the Tenant and her mother confirmed prior knowledge of the Landlord's claim and they made a conscious decision not to take action.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 14, 2012, by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on December 18, 2012; however the package was returned unclaimed. The Tenant continued communications with the Landlord and attended the Landlord's office on February 7, 2013 at 2:25 p.m. and picked up the hearing documents and evidence.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: their written statement; plumbing and cleaning receipts; the tenancy agreement; and a move out condition inspection report form.

The parties confirmed they entered into a month to month tenancy that began on July 15, 2010. Rent was payable on the first of each month in the amount of \$600.00 and on July 15, 2010 the Tenant paid \$300.00 as the security deposit. The move out condition report was completed on December 3, 2012 in the presence of the Tenant. The Tenant ended the tenancy in accordance with the Act by providing proper notice. The Landlord allowed the Tenant to move out over the December 2nd weekend without charge.

The Landlord stated that the Tenant had first called for a plumber in March 2012 to unplug her toilet. The Landlord paid for this service call and was advised by the plumber that the toilet was simply plugged by too much toilet paper being used at one time and they suggested the Tenant get a plunger to manage this issue on her own. A second call came in August 2012 for the same issue which they advised her to use her plunger. Again this second call was something she could have managed herself. A third call came in over the labor day weekend in September 2012 and at that time the Tenant was told a plumber would not be sent. The Tenant's mother called the emergency number and demanded a plumber be sent so the Landlord called the Tenant directly and advised the Tenant that they would send a plumber but she would have to pay for the visit, which she agreed to do.

The Landlord argued that they paid for the first plumbing bill and she had attempted to collect payment from the Tenant for the last two plumbing visits to unplug her toilet in the amounts of \$78.40 and \$123.20 respectively. The Tenant continuously refused to pay the plumbing bills and now that the tenancy ended they are hoping to collect that money.

The Landlord is also seeking to recover \$84.00 for costs incurred in cleaning the unit for defrosting the fridge and cleaning a stain plus \$117.60 for the cost to unclog the tub and sink that were clogged with long hair. The Landlord confirmed they discussed the stain and cleaning and defrosting the fridge with the Tenant at the move out inspection as recorded on the inspection form. There was no mention of the tub and sink drains needing to be unclogged as the Landlord was not aware of any problem until after the tenancy ended and the move out inspection was completed. They made reference to their evidence which included copies of all invoices and the telephone log reports from the emergency call centre.

The Tenant's mother confirmed that there were three service calls to unplug the toilet. She argued that when the service company told her daughter they refused to send a plumber on the Labor Day weekend she called the emergency number and told them they had no choice but to send a plumber because there was only one toilet in the rental unit. She is of the opinion that the clogs were the result of several years of build up in the toilet and not simply an issue with too much toilet paper being used at one time because her daughter had no problems with her toilet during the first two years of her

tenancy. She also stated her daughter did what she was told to and used the plunger on the toilet but that did not resolve the problem; therefore she should not be held responsible for those costs.

In response to the tub and sink drains being clogged she argued that her daughter was not informed of the issue of slow moving drains and was not given the opportunity to mitigate that problem. Therefore, she should not be held responsible for the cost.

The Tenant's mother admits that the fridge required additional defrosting and that the Tenant's ottoman left a small stain on the floor.

The Tenant was given the opportunity to provide testimony during which she stated that she understood what was going on with these proceedings. She confirmed doing the walk through with the Landlord's Agent and signing the form agreeing that the walk through was completed. She noted that she did not sign the form agreeing to any deductions from her deposit just that she agreed that the inspection was being completed. She confirmed providing the Landlord's Agent with her forwarding address. Upon review of her mother's testimony and the information regarding the plugged toilet she stated that she remembers being told that she might have to pay for the plumber if it happened again.

In closing, each party was provided the opportunity to present final remarks. Neither the Tenant nor her mother had anything further to add. The Advocate indicated that she found this process to be a fair and good process and had nothing further.

The Landlords submitted that they wished to clarify that the Tenant was called directly by the Landlord on the Labor Day weekend, after the reports to the emergency number were received, and she agreed she would pay for the plumbing bill. Also, they noted that there have been no plumbing issues in that unit since the Tenant moved out.

Analysis

Section 32 (3) of the Act provides that 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.

In this case I accept the Landlord's evidence, as supported by reports from licensed plumbers, that the on-going plumbing bills were incurred as a direct result of the Tenant's actions of flushing too much toilet paper at once. I further accept the documented reports that the Tenant was informed and accepted responsibility to pay for

the plumbing charges prior to the plumber being dispatched. Accordingly, I award the Landlord compensation for the second and third visits by a plumber to unplug the Tenant's toilet in the amount of **\$201.60** (\$78.40 + \$123.20).

Section 21 of the *Regulation* stipulates that in a dispute resolution proceeding, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection.

The Landlord has sought to recover maintenance costs incurred for cleaning out the tub and sink drains after the tenancy ended; however, there is no indication of any problems with the drains noted on the move out inspection. Therefore, I find there to be insufficient evidence to prove the Tenant is responsible for charges for regular maintenance on the part of the Landlord. Accordingly, I dismiss the Landlord's claim of \$117.60, without leave to reapply.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The evidence confirms the Tenant did not fully clean or defrost the fridge and did not clean the stain left by her furniture. As a result the Landlord suffered a loss of \$84.00 in cleaning charges, as supported by the receipt provided in evidence. Accordingly, I find the Landlord has met the burden of proof and I award them cleaning charges in the amount of **\$84.00**.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Plumbing charges to unplug toilet	\$201.60
Cleaning costs	84.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$335.60
LESS: Security Deposit \$300.00 + Interest 0.00	<u>-300.00</u>
Offset amount due to the Landlord	<u>\$ 35.60</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$35.60**. This Order is legally binding and must be served upon the Tenant.

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: March 12, 2013

Residential Tenancy Branch

