



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN FOOD TECHNOLOGY & SUPPLY INC.
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The landlord claims as follows:

a.	April 2012 clogged toilet	\$ 1,135.04
b.	July 10, 2012, clogged toilet	\$ 1,442.56
c.	Filing fee	\$ 50.00
	Total claimed	\$ 2,627.60

The landlord testified as a result of the tenant's toilet being clogged it caused water damage to the lower unit on two separate occasions. The first incident was April 2012 and the second incident was on July 10, 2012. Filed in evidence are two invoices the first invoice is dated April 16, 2012 and the second invoice is dated July 10, 2012.

The landlord testified that he was not at the rental unit to inspect, however, it was determined by the strata that it was a result of the tenant being neglectful. Filed in evidence is a copy of a letter dated July 20, 2012, from the strata manager.

The tenant testified that in April 2012, the tenant in unit #801 came to her unit as their unit (#801) was experiencing water leaking from their ceiling. The tenant stated together they inspected her unit and there was no evidence of a water leak.

The tenant testified that the strata manger was called and he arranged for someone to come and inspect her unit however, they did not show up for the first appointment. The tenant stated when they did appear, they did moisture reading testing and they found no evidence of a water leak or water damage in her unit.

The tenant disputed that her toilet was clogged or overflowed causing damage to the lower unit. The tenant stated she was told by the restoration company that there was a problem with the pipes between the two floors.

The tenant testified that on the second occasion the tenant in unit #801 came to her unit as they were experiencing a second water leak affecting a different area in their unit. The tenant stated that together they again inspected her unit and found no evidence of a water leak. The tenant stated she was concerned that maybe the washing machine was leaking. However, when the appliance was inspected there was no evidence that a leak occurred. The tenant stated the tenant below stated that when they moved into their unit there was evidence of prior leak in the same area.

The tenant denies that her toilet was clogged or that her toilet over flowed on either of the dates alleged by the landlord. The tenant states they are not responsible for either of the water leaks that that have occurred.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

In this case, the landlord alleged that the tenant was neglectful by having a clogged toilet on two separate occasions, which caused flooding to a lower unit. The landlord did not attend and inspect the tenant's unit.

The landlord has submitted a letter from the strata dated July 20, 2012. The letter in part reads as follows ...“with respect to a water damage incident that occurred on or about April 27, 2012 & July 10, 2012 and which caused water damage requiring emergency and restoration services (name) restoration and which has been deemed your responsibility.”

[Reproduced as written]

The letter further reads in part as follows, “Please find enclosed the invoices from (name) restoration to supply necessary labor to inspect and repair a clogged toilet from suit #801....”

[Reproduced as written]

In this case, the strata sent a letter alleging that the landlord/tenant is responsible for the cost of the repair, however, the letter stated the clogged toilet was from suit #801 and not #901.

Further, there is no evidence submitted by the landlord, from the strata as to how they determined that unit #901 was responsible for the water damage. The evidence of the tenant was when the restoration company attended they found no evidence of water damage or moisture in her unit. The evidence of the tenant was that she was told the leaks were from the pipes between the floors.

The landlord has filed two invoices from the (name) restoration company, neither of these invoices makes any finding as to whom, if anyone acted in a manner that was neglectful which caused the water damage. There is no suggestion in either of these invoices that the damage was caused by a clogged toilet in #901 as alleged by the strata. It is just as likely that these incidents occurred due to leaking pipes between the floors and not due the actions or neglect of the tenant.

Further, the invoice dated July 10, 2012, stated the loss date was March 12, 2012, not July 10, 2012. There was no evidence by either party to a loss that occurred in March.

As a result, I find the landlord has failed to prove that the loss incurred was from action or neglect of the tenant, the landlord has failed to prove a violation of the Act. Therefore, I dismiss the landlord's application without leave to reapply. The landlord is not entitled to recover the cost of filing the application from the tenant.

Conclusion

The landlord's application 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: April 30, 2013

Residential Tenancy Branch