



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and a cross-application by the tenants for a monetary order. Both parties seek to be awarded the security deposit. Both parties participated in the conference call hearing, the tenants represented by the female tenant, N.Z. In this decision where I refer to the “tenant” in the singular, I am referring to N.Z. who testified at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in March 2012 and ended when the parties vacated the rental unit on January 26, 2013. They further agreed that the tenants paid a \$500.00 security deposit and that they gave the landlord their forwarding address on the day they vacated the unit.

The parties agreed that the tenants were responsible to pay for water usage and that they failed to pay the \$142.34 owing for the months of November and December 2012 and further failed to make a payment in January. The landlord had originally applied for \$50.00 for the month of January and testified at the hearing that he had very recently paid \$119.00 for January and February.

The tenant claimed that she should not have to pay for the water usage despite the terms of the tenancy agreement because it was unusually high due to problems with the plumbing.

The parties agreed that shortly after the tenancy began, the tenant contacted the landlord and advised that one of the 3 toilets in the rental unit was clogging. The problem toilet was in the main bathroom. The landlord came to look at the toilet and discovered that there were wet wipes on the bathroom counter. The parties agreed that at that time, the landlord asked the tenant not to flush the wipes and that the tenant agreed.

For some time, there were no further complaints. Then the tenant contacted the landlord again complaining about the same toilet. The landlord returned to the unit and the tenant advised that she had managed to unplug the toilet. The landlord asked her whether she was continuing to flush wet wipes and she said that she was, but that they were marked "flushable". The landlord again asked the tenant not to flush the wipes.

The tenant claimed that all three toilets were plugged continually throughout the tenancy and that they had to be flushed repeatedly, causing abnormally high water use. The landlord testified that he was unaware of any problems whatsoever with the other two toilets and stated that the problems only arose because the tenant continued to flush paper products other than toilet paper. The tenant testified that her children may have flushed the wipes, but usually they were placed in the garbage. The tenant acknowledged that she did not report to the landlord every time she encountered a problem with the toilets.

The parties agreed that in October 2012, a room in the basement of the home was at least partially flooded. The tenant claimed that she contacted the landlord immediately but did not hear back from him until 3-4 days later. The tenant claimed that the entire room was affected and was not available for use for 2 full weeks. The landlord testified that he was away when the tenant first telephoned on a Saturday and that she did not leave a message, so he was unaware of the problem until the second time she phoned on a Monday, at which time he immediately came to the unit to address the problem.

The landlord testified that he extracted water, pulled up the carpet and brought in industrial fans to dry the carpet. He stated that he also opened the window for more air flow. The landlord stated that the carpet was back in place on Thursday and that from the time he learned of the problem, there were just 4 days in which the room could not be used. He further testified that the affected area was approximately 6' x 10'.

The tenant testified that the affected room was the most important room in the house and that the area affected was not just the 60 square feet claimed by the landlord, but was a much larger area. The tenant further testified that she purchased a heater because she found the room too cold with the window open. She testified that she could not use the room at all for 2 weeks.

The parties agreed that a less serious flood occurred some time later and agreed that the room was affected for 3-4 days during that period. The landlord testified that he set up fans and when he arrived to remove the fans and lay the carpet down again, he found that the carpet had already been placed and the children were playing in the room. The tenant denied that the children played in the room prior to the time the landlord removed the fans.

The landlord seeks to recover unpaid utilities and the tenants seek double their security deposit, compensation for the cost of a heater and recovery of 3 weeks rent for loss of use of one room of the basement.

Analysis

I find that the tenants are contractually obligated to pay for the cost of water usage. I find that the tenants only contacted the landlord twice about problems with one toilet and that the landlord responded quickly to each complaint. While there may have been problems with other toilets or ongoing problems with the toilet in the main bathroom, I find that because the tenants did not bring these issues to the attention of the landlord, they deprived the landlord of the opportunity to address those issues and therefore cannot hold the landlord responsible for any additional water usage that occurred as a result. I find that the tenants are obligated to pay \$142.34 for water usage for the months of November and December and I award the landlord that sum. I accept that the landlord paid \$119.00 for 2 months of water usage (January and February) and I find that the tenants are responsible to pay for one of those months. As the landlord claimed just \$50.00 for that period, I find that he is limited to recovering that amount and I award him \$50.00 for a total award of \$192.34.

I find that the landlord filed his claim on February 8, 2013, 13 days after the end of the tenancy. I find that he acted within the 15 days required by section 38 of the Act and I find that the tenants are not entitled to an award of double their security deposit, so I dismiss that claim.

The tenants claim that they were unable to use the basement room for a total of 3 weeks while the landlord claims that on each occasion, it took no more than 4 days to completely dry the basement. I prefer the evidence of the landlord over that of the tenants for a number of reasons. The tenant N.Z. appeared to be given to exaggeration, claiming that none of the 3 toilets in the unit ever worked properly but I find it unlikely that if this were the case she would have remained silent. N.Z.'s testimony was also somewhat inconsistent as she claimed that she and her family did not enter the affected room while the fans were present, but later acknowledged that

after the second flood, they had re-laid the carpet before the landlord came to collect the fans.

I find that when the first flood occurred, the room was affected for 4 days from the time the landlord was advised of the flood until the time the carpet was put back into place. While the room was unusable for several days prior to that, I find that the tenants did not leave a message for the landlord advising him of the flood and I find that he could not reasonably have known about the flood until the tenants chose to phone him a second time 2 days later. I find that on the second occasion, the room was affected for 4 days.

Regardless of whether it was within the landlord's control to prevent the flooding, from a purely contractual perspective, I find that for a period of 8 days the tenants did not have full use of the rental unit through no fault of their own. I find that this was more than a minor inconvenience and that compensation is warranted.

The tenants paid \$1,100.00 a month in rent, which works out to \$35.48 per day. I find that they were able to use 85% of their home for the 8 days in question and I find that they are entitled to recover 15% of the rent paid for those 8 days because they were not able to fully utilize the home. They paid a total of \$283.84 in rent for this period and I find that they are entitled to recover \$42.58, which represents 15% of the rent paid. I award the tenants \$42.58.

I dismiss the claim for recovery of the cost of a heater. The tenants purchased the heater without the landlord's knowledge or consent and took the heater with them when they vacated the rental unit and I find that as it was a very short period of time in which they were affected, they should bear the full cost of the heater, particularly as they will continue to benefit from it.

As the parties have both enjoyed some success in their claims, I find that they should each bear the cost of their own filing fee.

Conclusion

The tenants have been awarded \$42.58 and the landlord holds the \$500.00 security deposit to their credit for a total of \$542.58. The landlord has been awarded \$192.34. Setting off these awards as against each other leaves a balance of \$350.24 payable by the landlord to the tenants. I grant the tenants a monetary order under section 67 for \$350.24. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 03, 2013

Residential Tenancy Branch

