



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD, MNDC

Introduction

This hearing dealt with an application by the landlord seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order and an order to retain the security deposit?

Background and Evidence

The tenancy began on or about October 1, 2003. Rent in the amount of \$720.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$320.00.

The landlord gave the following testimony; is seeking the maximum monetary amount as prescribed by the Act; \$25000.00, the subject unit is one of twenty units at this location, on December 14, 2011 the fire alarm began to ring in the late evening hours and into the early morning hours, that morning the resident manager and the fire prevention officer traced the cause of the alarm to the smoke detector in unit #205, upon inspecting the unit they observed the shower head in the bathroom leaking hot water, the water was running at an almost steady stream that made the suite feel like a

“steam room”, after a thorough inspection it became apparent the hot water running from the shower head for hours had set off the in suite detector which triggered the general alarm throughout the building, during the inspection the landlord was appalled to discover the amount of mould on the ceilings throughout the unit and in some areas creeping down the walls, the tenant never informed the landlord or manager of the leaking shower, this was the first time they had become aware of the situation, the landlord contacted a restoration company immediately to assist in remediating the issue, the landlord had the company test the mould and the results showed that three types of mould was present in the suite, the landlord has building insurance however the insurance company did not cover this problem as they had deemed it a long standing issue that developed through negligence and not an accident or act of nature, the tenant vacated the unit about a week later but left some items behind, the landlord made attempts to have the tenant pick up her items but she continually rescheduled or did not respond to calls, the landlord requested the tenant’s forwarding address on numerous occasions but the tenant refused, the landlord hired a “skip tracer” to find out where the tenant was living, it took the landlord over six months to “track down” the tenant, the final bill to conduct the repairs was \$34918.00 and took four months to complete.

The tenant gave the following testimony; adamantly disputes responsibility for this matter, the tenant stated that she left for work around 10:00pm and returned the following morning at 8:00a.m., when she entered the unit she was “hit in the face with steam”, the shower head “was pouring down” and she was unable to turn it off due to a wrist injury she had previously suffered, the tenant is “pretty sure” the ceilings didn’t have mould on them when she left for work and “thinks” it’s to do with poor building maintenance and that the landlords never wanted to fix anything, she’s “pretty sure the alarms person came by to turn off the alarm” shortly after coming home, was angry that the landlord was complaining that her suite was messy and that he wanted to remove a large cabinet that he felt was impeding access to the unit, was not provided hot water for 2-3 days after this occurred, found out that mould was touching asbestos and the landlord would have to conduct a full renovation that would require her to move,

believes the problem was the plumbing in the walls, leaks had been a problem in the parking lot before and “figured” this is the same thing, many of her fine antique furniture items were destroyed because of the shower leak and the mould that became present, always tried to keep the unit as clean as possible but was having some physical difficulties after a recent assault, is furious that the landlord threw away most of personal possessions without ever letting her know about it or without her authorization, disputes that she was purposely evading the landlord by not providing her new address, the tenant was staying with friends “here and there” so she didn’t have an address to provide until late spring, doesn’t think that she should be financially responsible for this, didn’t think it would be that costly to repair the suite but blames it on the fact there was asbestos between the walls, and is adamant that all of the mould and damage occurred in the ten hours that she was away working.

Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing.

The landlord provided extensive documentary evidence. All parties’ testimonies and evidence have been considered in making a decision. As this matter was conducted over two separate days and almost 2 hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in the application before me. Both parties were given full and ample opportunity to present their evidence and give testimony.

As the landlord is the sole applicant in this matter I will address their application as follows.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord has provided extensive amounts of documentation to meet the requirements of items 1-3 to satisfy me. In providing evidence to support item 4 as above, I refer to the tenant's testimony. The tenant was often contradictory and aloof when questioned about specifics, she would refer to issues that occurred several years ago or that weren't relevant to the issue at hand. I made multiple attempts to assist the tenant in trying to keep her focused and on point, however each time an attempt was made the tenant would revert to anecdotal comments that were not helpful or relevant. The tenant had a witness give evidence on behalf of the tenant however the witness was not present on the date of the leak or several months prior to it occurring. The witness did not provide any relevant or helpful testimony. In meeting the fourth requirement the landlord must show the tenant acted negligent. The landlord feels the tenant has seriously violated Section 32(2) of the Act which is:

32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The tenant gave testimony that was often disjointed, irrelevant and implausible. I do not accept the tenant's submission that all of the damage and mould formation occurred in a ten hour span, that assertion is unreasonable and improbable. I do not find the tenants testimony compelling. The landlord provided clear concise evidence and testimony throughout the hearing and provided ample documentation to display the scope and severity of the mould and damage in the tenant's suite. During the hearing the tenant stated several times that the cost to repair this unit was so high due to asbestos being between the walls. I have considered the tenants' comments however the asbestos was not an issue prior to this event. The landlord would not have incurred that cost for an indeterminate amount of time. I find that the tenants' actions and neglect

were the cause of the landlord having to conduct the work and incur those costs. Based on all of the above and on the balance of probabilities I am satisfied that the landlord has proven their claim as stated. The landlord provided bills and receipts that exceed the \$25000.00 allowable limit under the Residential Tenancy Act.

As for the monetary order, I find that the landlord has established a claim for \$25,000.00 the maximum allowable under the Act. That amount takes into account the \$100.00 filing fee paid by the landlord. I order that the landlord retain the \$320.00 deposit and the \$11.32 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$24668.68. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$24668.68. The landlord may retain the security deposit.

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: May 28, 2013

Residential Tenancy Branch