



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for other damages or losses resulting from the tenancy and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on July 1, 2007 as a 1 year fixed term tenancy that converted to a month to month tenancy on July 1, 2008 for the monthly rent of \$800.00 due on the 1st of each month. The parties agree the tenancy ended in January 2012.

The landlord testified that throughout the tenancy he had had to deal with repairs to the rental unit that had resulted from the tenants' use of the property. Over time the landlord states that the unit began to smell bad and there were marks on walls. The landlord submits the bedrooms had to be completely re-drywalled during the tenancy. The tenants confirmed the landlord did renovate the bedrooms during the hearing.

The landlord submits that during the tenancy the tenants obtained two cats and a dog – none of which were allowed under the tenancy agreement. The landlord acknowledges the tenants did get rid of the dog shortly afterwards.

The landlord submits there was a need to replace laminate flooring that was buckling during the tenancy and that the tenants had cut the doors to the children's bedrooms.

The tenants acknowledge they did this but stated they replaced the doors before the end of the tenancy but they had no receipts to confirm this.

The landlord submits that the tenants had approached him early in the tenancy to state the carpet in the living room was contaminated with mould and the children were getting sick from it. The landlord stated he lifted the corner of the carpet to inspect and agreed to have someone come back and test the carpets. The landlord states when he returned the following day the tenants had removed the carpet completely. The tenants submit the landlord had given his approval for them to remove the carpets.

The landlord testified that on January 17, 2012 he received a call from the tenants stating that the manufactured home had flooded. The tenant submits that when they were at the rental unit on January 13, 2012 to complete the inspection for the end of the tenancy and they told the landlord that the water line was frozen, which was not the first time.

The tenants submit that after the landlord left they left the tap on to prevent the lines from bursting as a result of freezing. The tenants testified that they returned on January 17, 2012 and found the manufactured home flooded.

The tenants submit they contacted the landlord and informed him that the place was flooded and they offered to pay any insurance deductible, but were told by the landlord that he did not have insurance.

The landlord asserts the tenants had also removed the skirting covering the area of the manufactured home where the sewage pipes were and as a result it was the sewage lines that froze because the tenant had left the water lines running and eventually there was no place for the water to go.

As a result of the flooding the landlord was required to complete extensive repairs to the interior and exterior of the rental unit including the undercarriage and wall insulation; the interior walls; floors, cabinetry. The landlord has provided receipts totalling over \$31,000.00 worth of work and supplies including 720 hours of labour on the part of the landlord for which he is seeking \$20.00 per hour.

The landlord also submits that the female tenant had been his employee at a retail outlet he owns and that she had been let go in early January 2012 and that he usually deducted the rent from her pay cheque but that he had not done so for January. The landlord seeks compensation for unpaid rent. The tenants submit that the female tenant had already "worked off" the rent and everything was paid up but provided no evidence to support the rent was paid.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the landlord's claim for unpaid rent, I find the landlord has failed to provide any evidence, such as a ledger or other records to confirm how he determined rent was unpaid and as the tenant's dispute the rent was unpaid for January 2012. Therefore, I dismiss this portion of the landlord's claim.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the claim for the cost of repairs to the rental property, I accept the rental property was damaged substantially as a result of the flooding that occurred between January 13 and January 17, 2012. I also accept that some of the damage may be the result of the tenants' misuse of the property as well, such as the burn on the countertop that the tenants agreed they caused.

In the case of testimony, I find that where the versions of events are clear and both the landlord and tenant agree on what occurred, there is no reason why such testimony cannot be relied upon. However when the parties disagree with what has occurred, the versions, by their nature, are difficult for a third party to interpret when trying to resolve disputes.

In relation to who is responsible for the payment of repairs required due to the flooding I find the tenants were negligent in their actions and as a result the landlord has suffered loss. I prefer the landlord's position that the tenants be held responsible for the following reasons:

1. While both parties provided photographic evidence the tenants' photographs are dated January 31, 2012, with some specific exceptions, and include photographs of a carpet cleaning machine and empty rooms. However from the testimony of the tenants, the flood occurred between January 13 and January 17 and this was after the condition inspection was completed. It is not clear how or why the tenants would have been carpet cleaning after they had completed the move out inspection;
2. From the testimony of the tenants it is not clear to me why the tenants would have completed a move out inspection with the landlord on January 13 and then returned to the property on January 17, 2012. I find it is unlikely that a tenant would return to the property 4 days after the condition inspection for no reason and just happen upon the flooding;

3. I find it unlikely that if the landlord had been informed of frozen pipes and the fact that the tenant had left the water running that the landlord would not have attempted to deal with the frozen pipes immediately or not come back to the unit for 4 days during the continuing cold weather;
4. Based on the testimony of both parties I find the tenants had little or no regard for the condition of the rental unit during the tenancy as indicated by such things as cutting doors in half or causing so much damage to the walls in bedrooms that the landlord had to replace the drywall;
5. Further to this point, I find it unlikely that the landlord would have given the tenants permission early in the tenancy to rip out the existing carpet prior to allowing the landlord any opportunity to investigate whether or not there was a problem with the carpet and the tenants provided no written agreement from the landlord for its removal; and
6. While the tenants deny responsibility for the cost of repairs they state that they had offered to pay the landlord's insurance deductible for the required repairs.

I find the landlord has submitted sufficient evidence to establish the value of the work required as a result of the flooding in the rental unit was well in excess of \$25,000.00 and that he took reasonable steps to mitigate the cost of repairs by completing a substantial volume of the work himself.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$25,100.00** comprised of \$25,000.00 for repairs and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 06, 2013

Residential Tenancy Branch

