



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants along with an agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of the landlord's evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on July 01, 2006. The rent is now \$800.00 per month and is due on the first day of each month.

The landlord testifies that the tenants unit is located in a fourplex. The tenants live above other tenants and there have been problems with the tenants blocking the pipes with food items such as noodles. The landlord testifies the tenants own a Chinese restaurant and are doing food preparation at home and depositing food items in the sink. The landlord testifies that the other tenants have complained about chopping noise coming from the tenants unit late at night after the tenants' return from the restaurant.

The landlord testifies that when the pipes have backed up in the past the landlord has sent in a plumber to unblock the lines at the landlords own expense. The landlord was advised that the lines were blocked with food items and the tenants were warned not to put food items down their sink.

The landlord testifies that on this occasion the tenants downstairs complained about a pipe blockage so the landlord sent a plumber out to rectify the problem. The plumber had to send for some larger equipment to blow the lines out and it was reported to the landlord that the plumber observed noodles and other food items falling from the tenants stack.

The landlord has provided written documentation from the plumber who attended the property to make these repairs. In this letter the plumber writes to say that during the work at the basement unit they found massive amounts of noodles lodged in the piping. It goes on to say that this shows that the upper tenants have been draining their waste into the main building drains and a large machine had to be used to unclog the issue. The plumber goes on to mention that after the drain was opened the same noodles fell from the upper stack that comes from the above unit.

The landlord has also provided a letter from the person who has attended to this problem in the past which says that the tenants, in the past, have been responsible for blocking the drain of the apartment below them by flushing noodles and other food stuffs down their sink. This person says that he has had to attend the unit in an attempt

to resolve the problem in the past and organised the appropriate trades. This person is a contractor and proprietor of a renovation company.

The landlord seeks to recover the plumber's costs associated with unblocking the pipes from the tenants. The landlord has provided a copy of the invoice for this work and seeks a Monetary Order for \$504.00 plus the \$50.00 filing fee.

The tenants dispute that they are responsible for putting noodles or other food stuffs down their sink. The tenant LL testifies that everyone eats noodles at home and the downstairs tenants were also people who cooked at home. The tenant testifies that as they own and work in a restaurant they do not cook at home and they work six days a week so only cook rarely at home. The tenant testifies that they do not prepare food for their restaurant at home and the tenant disputes that they chop food at home after work.

The tenant SL testifies that she only chops and cooks one day a week as she works in the restaurant the other six days. The tenant SL testifies that she takes care of their home and does not cook noodles at home.

The tenants' agent testifies that the tenants had informed the agent that when the pipes were blown out the food stuff was forced up the tenants pipes into their sink and over their floor. The tenants are restaurant people and know not to put food down the sink. The agent testifies that when the pipes were blown through this would have forced the food items back into the tenants stack.

The tenants agent questions the landlord and asks if the tenants pea trap under their sink would get clogged if the tenants were putting food items down their sink and asks how food would get beyond this trap. The landlord responds that he does not know as he is not a plumber. The landlord states that he does know this has happened before and he has had to speak to the tenants about it. The food items cannot be coming from anywhere else as there is no one living above these tenants. The tenants' agent asks

the landlord if the plumber inspected the tenants' pea trap. The landlord responds that he does not know but a blockage would only go down and not up.

Analysis

The landlord argues that the tenants are responsible for blocking the pipes with food stuffs which the tenants have put down their sink. The landlord has provided documentary evidence from the plumber that states that the stack from the tenants unit was full of noodles and food items which caused the blockage. The tenants argue that they do not cook at home and do not put food down their sink. The tenants' argue that when the pipes were blown through this forced the noodles and food items into their stack.

I have considered the evidence and testimony before me, and find the landlords evidence more compelling particular the statements from the landlord's plumber. Due to the nature of the tenants business, the type of food items and the quantity of food items blocking the pipes from the tenants unit and the pipes of the unit below I find, based on a balance of probabilities, that it is highly likely that the tenants were depositing food items in their sink which got washed through the pea trap and caused the blockage further down the pipes. Consequently, I must find in favor of the landlords monetary claim and I therefore issue a Monetary Order to the landlord for the cost of the plumber of \$504.00 pursuant to s. 67 of the *Act* and for the filing fee of \$50.00 pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$554.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 03, 2013

Residential Tenancy Branch

