



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the female Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated a copy of the Application for Dispute Resolution and Notice of Hearing were personally served to the female Tenant. The female Tenant stated that she gave the documents to the male Tenant and that she is representing him at this hearing. In the absence of evidence to the contrary, I find that these documents have been personally served to the male Tenant by the female Tenant.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for repairing plumbing in the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2012; that the tenancy ended on May 01, 2013; that the Tenant paid a security deposit of \$680.00; and that a condition inspection report was completed at the beginning and the end of this tenancy.

The Landlord and the Tenant agree that on December 22, 2012 the toilet in the lower portion of the rental unit was not flushing properly; that the water was backing up into the shower in that bathroom; and that the problem was reported to the Landlord. The Landlord stated that he snaked the drain in December; that he was able to clear the line; that he did not determine why the line had been blocked; and that he believes he pushed the blockage through the pipe. He stated that he did not check the impellor on the sump pump in December because the toilet was functioning properly after his repair.

The Tenant stated that they did not use the toilet in the lower portion of the rental unit after December 22, 2012 because there was an odour emanating from the toilet and they did not trust it had been properly cleared.

The Landlord and the Tenant agree that on March 21, 2013 the Tenant reported that the breaker for the sump pump for the lower toilet had tripped and that the toilet in the upstairs of the rental unit was not flushing properly. The Landlord stated that there is a sump pump that pumps the effluent up from the lower toilet as that toilet is below grade. The Landlord stated that the sump pump trips the electrical breaker if the pump malfunctions.

The Landlord stated that he inspected the toilet in the lower portion of the rental unit; that he removed a rag from the impellor of the sump pump, which remedied the problem with the lower toilet; that he inspected the toilet in the upper portion of the unit; that he found a large amount of toilet tissue clogging the toilet; that he removed the blockage; and that the toilet functioned properly after he removed the blockage.

The Landlord stated that on March 22, 2013 he replaced the sump pump as he was concerned it may have been compromised as a result of the blocked impellor. He stated that the sump pump was installed in 1996.

The Landlord and the Tenant agree that on March 26, 2013 the Tenant again reported that the toilet in the upstairs of the rental unit was not flushing properly. The Tenant stated that she turned off the water and attempted to plunge the toilet before the incident was reported. The Landlord stated that he vacuumed the toilet with a wet vacuum and determined it was functioning properly.

The Landlord is seeking compensation, in the amount of \$380.00, for the four hours he spent clearing the two toilets on March 21, 2013; \$380.00 for four hours he spent replacing the sump pump on March 22, 2013, and \$212.80 for the 2 hours he spent

inspecting the toilet on March 26, 2013. The Landlord submitted two receipts from for this labour from a company which he owns.

Analysis

Section 32(3) of the *Residential Tenancy Act (Act)* stipulates that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. On the basis of the undisputed evidence, I find that on March 21, 2013 the sump pump that services the toilet in the lower portion of the rental unit was blocked with a rag. As there is no other reasonable explanation for how the rag was introduced into the toilet, I must assume that the Tenant or a guest of the Tenant disposed of the rag in the toilet. As rags are not intended to be discarded in a toilet, I find that the Tenant is obligated to compensate the Landlord for the time he spent for clearing the blockage. I find that the Tenant is obligated to pay for this repair even if the rag was disposed of accidentally or unknowingly.

On the basis of the Landlord's testimony that the lower toilet was working properly after he removed the rag from the sump pump on March 21, 2013, I find that the Landlord is not entitled to compensation for replacing the sump pump. While it may have been prudent for the Landlord to replace the aging pump, I cannot conclude that the Tenant is obligated to pay for the cost of replacing the pump. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's concern the pump may have been compromised.

On the basis of the undisputed evidence I find that on March 21, 2013 the toilet in the upper portion of the unit was blocked by toilet paper. As the blockage was caused by toilet paper, which is intended to be disposed of in a toilet, I cannot conclude that the blockage was the result of neglect or improper use.

Section 32(4) of the *Act* stipulates that a Tenant is not obligated to make repairs for reasonable wear and tear. As there is no evidence that the blockage in the upper toilet was the result of neglect and the toilet appears to have been used for the purposes for which it was intended, I find that the blockage must be considered normal wear and tear. I therefore find that the Landlord is not entitled to compensation for clearing the blockage.

In reaching the conclusion that the blockage in the upper toilet was not caused by neglect or misuse, I placed no weight on the fact that the sump pump was not working properly on that date. As the sump pump is designed to pump effluent from below grade and there is no evidence that the upper toilet would be affected by a malfunctioning sump pump, I cannot conclude that the blockage in the upper toilet was related to the problem with the sump pump.

In reaching the conclusion that the blockage in the upper toilet was not caused by neglect or misuse I was influenced, to some degree, by the fact that there had been a plumbing malfunction in December of 2012 and another reported, but unconfirmed, blockage on March 26, 2013, which may be indicative of a failing system.

On the basis of the undisputed evidence I find that on March 26, 2013 the Tenant again reported that the upper toilet was not functioning properly. Although the Landlord contends it was working properly when he inspected the toilet on March 26, 2013, there is insufficient evidence to conclude that the Tenant made a false report. In reaching this conclusion I find it entirely possible that the blockage was cleared when the Tenant plunged the toilet or the blockage was cleared when the Landlord vacuumed the toilet. Regardless of how the blockage was cleared, I find there is insufficient evidence to show that the report was false and that it was made in bad faith.

A tenant has an obligation to report a concern with a rental unit. There is nothing in the *Act* that entitles a landlord to compensation for inspecting a reported deficiency, unless the reported deficiency is the result of the actions or neglect of the tenant. In these circumstances there is insufficient evidence to show that the reported blockage was caused by actions or neglect and I therefore find that the Landlord is not entitled to compensation for inspecting the toilet on March 26, 2013.

The Landlord stated that he spent 4 hours clearing the upper and lower toilet on March 21, 2013. As I have determined that he is only entitled to compensation for the time he spent clearing the lower toilet, I find it reasonable to conclude that he is entitled to compensation for 2 hours.

A landlord is only entitled to a reasonable amount of compensation for time spent repairing a deficiency in a rental unit. I find the hourly rate of \$95.00 being claimed by the Landlord is unreasonable. I find an hourly rate of \$40.00 to be more reasonable for time a landlord spends repairing plumbing at his/her own property and I therefore find that the Landlord is entitled to \$80.00 for clearing the lower toilet on March 21, 2013.

I find that the Landlord's application has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$130.00, and I authorize the Landlord to retain this amount from the Tenant's security deposit. The Landlord must return the remaining \$550.00 of the security deposit and I grant the Tenant a monetary Order for \$550.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: July 24, 2013

Residential Tenancy Branch

