



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for 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 tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing however the tenant's evidence was sent to the landlord late and has not been considered at this hearing. The parties confirmed receipt of evidence. All admissible evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary issues

The parties informed me that a previous hearing had been held for an application brought by the tenant to recover double the security and pet deposit along with a deposit for utilities. At that hearing the tenant was successful and the tenant received a Monetary Order for double the deposits to an amount of \$1,960.00. The landlord has applied to keep those deposits at this hearing. I refer the landlord to *Section 77* of the

Act which states that, except as otherwise provided in the Act, a decision or an order is final and binding on the parties. Therefore any findings made by the Arbitrator that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings concerning the security deposits. Therefore the landlord is now barred by the common law principle, *res judicata*, from filing a claim for the security deposits and this section of the landlords claim is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- 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 November 01, 2012 for a fixed term tenancy of six months. Rent for this unit was \$890.00 per month and was due on the 1st day of each month. The tenant moved from the rental unit on December 01, 2012.

The landlord testifies that the tenant failed to pay the utility bill from the City for November, 2012 of \$160.55. The landlord testifies that they had an agreement with the tenant made via e-mail that if the tenant paid rent and the utility bill on time each month the landlords would pay the first \$100.00 of the utility bill. The landlord testifies that the tenant did pay November's rent on time but did not pay the utility bill even though it was provided to the tenant in the landlords evidence package in April, 2013. The landlord testifies that therefore the landlord seeks to recover the entire utility bill from the tenant as agreed.

The landlord testifies that the tenant caused damage to the toilet in the rental unit. The landlord testifies that the toilet became blocked with women's sanitary products and the tenant informed the landlord of this blockage on November 06, 2012. The tenant had tried to unblock the toilet herself by applying a snake down the toilet. The landlord testifies that the second plumber who came to the unit notified the landlord that by the tenant using a snake to try to unblock the toilet, without first removing the toilet bowl, has caused damage to the surface of the toilet bowl which will prevent items flushing away properly. The landlord agrees he could not see any damage to the bowl but took the plumbers advice and had the toilet bowl replaced. The landlord seeks to recover the sum of \$81.40 for this replacement bowl. The landlord has not provided a receipt in evidence.

The landlord testifies that as soon as the tenant informed the landlord that the toilet was blocked the landlord obtained the services of a plumber who went to the unit the next day. The landlord seeks the charges for this plumber to diagnose the problem and snake the sewer line. The landlord testifies that the plumber had stated he found some cotton like substance in the toilet such as tampons. The landlord testifies that the tenant was present at the time and the plumber told the tenant that the tenant must not flush tampons down the toilet. The landlord seeks to recover the cost for this plumber's bill of \$463.60. The landlord has provided a copy of his credit card statement showing this amount in evidence.

The landlord testifies that that plumber informed the landlord that the sewer pipe had also been damaged and quoted the landlord an amount of \$8,000.00 to replace the sewer line. The landlord testifies that he thought this price was very high so he sought an alternative quote from another plumber. The second plumber put in a new sewer line and connected this to the toilet and bath. They did not remove the old line to keep the costs down. The landlord seeks to recover the sum of \$1,747.20 for this work. An invoice has been provided in evidence.

The landlord testifies that while they waited for the work to be completed on the sewer line the landlord decided to provide a portable toilet for the tenant and the tenant's daughter to use as the landlord was worried about the damage to the sewer line and did not want the tenant to put toilet paper down the toilet. The landlord agrees that the plumber had said it would be alright to use the toilet but the landlord provided the portable toilet and a heater for the tenants comfort. This toilet was in place until the sewer line repair was completed on November 20, 2013. The landlord seeks to recover the cost for the portable toilet of \$179.00 and the heater of \$19.00. The landlord has not provided an invoice for these items in evidence.

The landlord testifies that the tenant moved out and failed to remove a couch from the unit. The landlord seeks to recover the sum of \$200.00 from the tenant to remove and dispose of this couch. The landlord has not provided a receipt for the removal or disposal of this couch in evidence.

The landlord testifies that as the tenant broke the lease and moved from the unit the landlord was not able to re-rent the unit until January 01, 2012. The landlord testifies that he started to advertise the unit on various internet sites on November 21, 2012 and has provided one of these advertisements in documentary evidence. The landlord therefore seeks to recover a loss of rental income for December of \$890.00.

The tenant disputes the landlords claim for the entire utility bill. The tenant testifies that the landlord did not provide a copy of the bill until April, 2013 so the tenant could not pay the bill at the end of the tenancy. The tenant testifies that she is happy to pay \$60.55 of the bill but the landlord s responsible for the first \$100.00 as agreed.

The tenant disputes the landlords claim for the costs to repair the toilet and sewer line. The tenant testifies that the tenant and the tenant's four year old daughter moved into the rental unit and six days later the tenant noticed that the toilet was not working properly. The tenant testifies that she called the landlord and tried to snake the toilet

herself. The tenant disputes that by snaking the toilet any damage was caused to the toilet bowl as the tenant claims the snake was put straight down the bowl into the water. The tenant testifies that the plumber came the next day and said the tenant had blocked the toilet with tampons. The tenant testifies that she explained to the plumber that tampons are flushable items. The tenant testifies that on November 08 the landlord said they could not use toilet paper and on November 11 the landlord rented a portable toilet. The tenant disputes the landlords claim that the tenant is responsible for the blockage in the toilet or damage to the sewer line. The tenant also disputes the landlords claim for the cost of renting the portable toilet and heater.

The tenant suggests that the blockage may have been caused by something or someone else prior to their tenancy and only became noticeable during the first six days of the tenancy. The tenant testifies that it states on the tampon box that these are flushable items. The tenant testifies the landlord has provided no proof that there was nothing else blocking the sewer line or what the plumber said to the landlord. The tenant testifies that due to her daughters age the tenant still accompanies her daughter to the washroom and states her daughter did not flush anything down the toilet that should not have been flushed.

The tenant testifies that there was a misunderstanding about the removal of the couch. The tenant testifies that she no longer wanted the couch and had told her movers that she was going to get rid of the couch. However the movers then did not remove the couch from the unit. The tenant testifies that she arranged to meet the landlord at the unit the next day to remove the couch; however, the landlord did not show up and the tenant could not enter the unit. The tenant testifies she contacted the landlord and made another arrangement for the next few days however the landlord did not show up at that time either. The tenant testifies that after that time she no longer had a truck to remove the couch. The tenant disputes the landlord's claim of \$200.00 to remove the couch and states the landlord has provided no evidence to show this cost.

The tenant testifies that the landlord never provided a lease agreement for the tenant to sign so the tenant assumed this was a month to month tenancy. The tenant testifies that she informed the landlord on either November 15 or November 20 that she was going to move out and agrees that she did not provide written notice.

The landlord testifies that the house was 30, 40 or 50 years old. The landlord when asked at the hearing did not know if the sewer line was the original sewer line when the house was built.

The landlord agrees that he did forget to meet the tenant the first time they arranged to meet so the tenant could remove the couch. The landlord disputes that the tenant made another arrangement but informed the landlord that she could not come back again until the end of December to get the couch as she did not have access to a truck before then.

The landlord testifies that at the start of the tenancy the tenant had asked the landlord who was responsible for the costs if the toilet became blocked. The landlord suggests that this was a strange thing to ask a landlord in light of the following events with the toilet.

The tenant testifies that this was a question she asked the landlord as the tenant explains that she has a young child and wanted to make sure the plumbing was alright.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid utilities of \$160.55; I find the tenant did not receive the utility bill from the landlord until the landlord filed his claim and included a copy of the bill in evidence. I am uncertain how the landlord expected the tenant to pay the bill in December, 2012 on time in accordance with their agreement if the tenant was not sent the bill until April, 2013. A landlord is required to send a tenant a

copy of a bill with a written demand for payment within 30 days. If there is another agreement made between the parties then the landlord should have provided the utility bill to the tenant in December, 2012. The tenant has agreed to pay \$60.55 of this bill, I therefore find the landlord must pay the first \$100.00 as agreed and a monetary award will be issued to the landlord for the sum of **\$60.55**.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in the matter of damage to the toilet and sewer line:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With regard to the above test I find the landlord agreed at the hearing that he acted on the advice of his plumber to replace the toilet bowl even though the landlord could not see any damage to the bowl. The landlord has provided no evidence that the toilet bowl was damaged by the tenant's actions or neglect, the landlord has provided no evidence to show the actual costs incurred to replace the toilet bowl. Therefore the landlords claim for \$81.40 cannot succeed and is denied.

The landlord makes a further claim for the costs for the plumber to come and diagnose the problem, clear the line and replace the sewer line. Again the burden of proof falls to the landlord to show that the tenant's actions or neglect resulted in the toilet and sewer line becoming blocked and damaged six days into the tenancy. Tampons are known to be flushable objects and the landlord has provided no other proof to show that any other objects were put down the toilet by the tenant or a guest of the tenants. The landlord did not notify the tenant at the start of the tenancy that tampons could not be flushed down the toilet. The landlord has provided no documentation from the plumber as to the cause of the blockage and I am not satisfied that the tenant can be held responsible for the replacement sewer line in a property of this age when the landlord has not shown that the tenants actions caused damage to the sewer line. The landlord has provided no evidence to show the sewer line was replaced when the renovations were completed to the house or any time since the house was built. Consequently the landlords claim does not meet the burden of proof and cannot succeed. These sections of the landlords claim are therefore denied.

I further find that the landlords claim for the portable toilet and heater must also be denied as there is no evidence that these were required and as I have found there is no evidence to show the tenant caused this blockage these sections of the landlords claim for \$179.00 and \$19.00 are also denied.

With regard to the landlords claim for \$200.00 to remove a couch from the rental unit; In this instance I find the landlord had arranged to meet the tenant to allow the tenant to remove the couch. If the landlord then forgot to turn up for that prearranged meeting then the tenant cannot be held responsible for the costs incurred to remove the couch. I further find the landlord has not met the burden of proof in showing the actual costs incurred to remove and dispose of this couch and on these two grounds the landlords claim cannot succeed. The landlord claim in this matter is therefore denied.

With regard to the landlords claim for unpaid rent; the landlord did not provide a written lease agreement to the tenant for a six month term. I therefore deem this tenancy to be

a month to month tenancy. In that case I refer the parties to s. 45(1) of the *Residential Tenancy Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently I find the tenant did not provide sufficient notice to end the tenancy. The earliest the tenant could have vacated the unit after written notice to the landlord would be December 31, 2012. I find the landlord has shown that attempts were made to re-rent the unit when an advertisement was placed on November 21, 2012 therefore the landlord did attempt to mitigate the loss; however, the unit was not re-rented until January 01, 2013. The landlord did make repairs to the toilet and sewer line in a timely manner therefore the tenant had no cause to vacate the rental unit without notice. I therefore uphold the landlords claim for a loss of rental income for December, 2012 of **\$890.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover half the \$50.00 filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$975.55**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply

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 18, 2013

Residential Tenancy Branch

