



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Glenayre Realty Chilliwack Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing was originally scheduled for August 13, 2013. Prior to that scheduled hearing, the tenants advised that they would be unable to attend and with the agreement of the landlord the landlord's application was adjourned to a date to be scheduled later. This hearing was subsequently assigned for my consideration. The landlord applied for the following pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) testified that he was representing both tenants' interests at this hearing. The tenant confirmed that both he and the female tenant received copies of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 11, 2013. I am satisfied that the landlord served the hearing package and the landlord's written evidence package, the only written evidence submitted by the parties, in accordance with the *Act*.

At the commencement of the hearing, I checked the spelling of the tenant's first name which was corrected to that which appears above.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy started as a one-year fixed term tenancy on October 1, 2011. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent is set at \$1,600.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenants' \$800.00 security deposit paid on September 22, 2011 and \$800.00 pet damage deposit paid in instalments by September 30, 2012.

The landlord's application for a monetary award of \$1,575.84 was for damage that had to be repaired on October 30, 2012 when a sump pump required repair and flooding occurred. The landlord entered into written evidence a copy of an invoice and receipt for a "Night call out flooded basement with pump system." The landlord maintained that this damage resulted from the tenants' failure to abide by instructions provided to them by the worker who inspected the sump pump and septic system shortly after their tenancy began. The landlord and the landlord's witness (the witness), the worker who attended the premises at the initial inspection and who conducted the repair work on October 30, 2012, testified that the damage resulted from feminine products flushed down the toilet.

The witness provided sworn testimony that he attended the rental home shortly after the tenants commenced their tenancy. The landlord said that his initial inspection resulted from the tenants' concerns about a gas smell they noticed in the basement. The witness testified that he reviewed with the female tenant, likely in a phone call after his inspection, the items that could and could not be flushed down the toilet with this type of septic system. He said that he always lists the same items as those that cannot be flushed down the toilet (e.g., sanitary napkins, tampons, Q-tips, paper towels and prophylactics). He testified that he ran the sump pump for sufficient time during his initial inspection to be able to confirm that the sump pump was not plugged. He also provided undisputed sworn testimony that the lengthy period between his initial inspection and the subsequent call to repair the pump and the flooding damage indicated that there was no problem with the operation of the sump pump caused by the previous tenants in this rental unit.

The witness testified that when he attended on October 30, 2012, he found the strings surrounding feminine products wrapped around the sump pump causing it to burn out. He confirmed that he had to clean up carpet and carpet underlay damaged by the flooding.

The tenant did not dispute that the repairs were required on October 30, 2012. He said that neither he nor his wife could remember specific advice being provided to the tenants by the witness as to which products could and could not be flushed down the toilet with this type of plumbing system. He questioned whether perhaps the witness conveyed this information to one of his children. The witness said that he doubted he would have discussed such sensitive issues with children and believed he called the tenant's wife following his initial inspection of the premises to check the gas smell reported in the basement. The tenant said that the tenants complained two or three times during this tenancy about the septic system always running. He maintained that the only product he saw in the sump pump when the repair was conducted was a single

tampon. The landlord said that he understood that there were a number of tampons and strings wrapped around the sump pump, but he was not certain as he was not present when the repairs were undertaken. The tenant said that he believed that these circumstances should not lead to a finding that the tenants were totally responsible for the damage that required repair on October 30, 2012.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I heard conflicting evidence as to the number of tampons that caused the damage to the sump pump and whether or not the tenants were adequately advised to refrain from placing such products in the toilets in this rental unit. While the witness was adamant that he spoke with someone, likely the female tenant, about the types of products that could and could not be flushed down the toilets with this type of septic system, the tenant said that both he and his wife would have had strong recollections of any such a conversation. When questioned by the tenant, the witness was significantly less certain about the details of this conversation with one of the tenants near the beginning of this tenancy. He was not certain that his conversation was in person or by telephone, he had no specific details as to when this occurred, and was not completely certain who he spoke with about this matter. In addition, there is conflicting evidence as to how many tampons caused the breakage of the sump pump. The tenant provided direct testimony that he saw only a single tampon in the broken pump, while the landlord said that he understood there were multiple tampons, evidence which appears to have been reflected in the invoice prepared by the witness.

Under such circumstances, I accept that the tenants are partially responsible for the landlord's costs in repairing the damage to the sump pump and the associated flooding repairs. However, I find that the landlord has not adequately demonstrated that the tenants are fully responsible for these repairs as there is an element of reasonable wear and tear that could be expected with this type of plumbing system. I also find that there is no certainty as to whether the tenants were adequately alerted to the specific

requirements in disposing of items in the toilet for this type of plumbing system. I also find insufficient evidence to demonstrate that the tenants have been negligent to the extent that they are fully responsible for the landlord's costs in repairing the damage in dispute. For these reasons, I find that the landlord is entitled to a monetary award in the amount of one-half of the \$1,575.84 expenditure incurred by the landlord for this damage. This results in a monetary award of \$787.92.

As the landlord has been partially successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$837.92, which includes \$787.92 for damage arising out of this tenancy and \$50.00 for recovery of the landlord's filing fee.

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 01, 2013

Residential Tenancy Branch

