



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application by the tenant for a monetary order comprised of double the security deposit and the cost of emergency repairs. The tenant also requested recovery of the filing fee from the landlord. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on June 15, 2012 and ended on August 1, 2013. The tenant paid a security deposit of \$850 at the start of the tenancy. The tenant provided the landlord with his forwarding address in writing on August 1, 2013. On August 23, 2013, the landlord sent the tenant a cheque in the amount of \$544. The tenant did not cash this cheque. Later, on September 7, 2013 when the landlord realized that the tenant had not cashed the cheque, she cancelled the first cheque and sent the tenant another one for the same amount. The tenant did not cash this cheque either. The landlord then stopped payment on the second cheque.

The tenant testified that he did not cash either of the cheques because they were not for the full amount of his security deposit. The tenant testified that he had never authorized the landlord to deduct any amount from his security deposit.

For her part, the landlord testified that the reason she deducted an amount from the security deposit is because she believes the tenant damaged her garage door. The tenant denies he damaged the door and claims that the reason it broke is because it had not been maintained.

Another aspect of this case is that the tenant testified that he had to have the plumbing system cleared back in May because he could tell that the system was backing up. The tenant testified that he arranged for King Rooter to come and clear the system and paid \$341.80 for that service. The tenant testified that he did not call the landlord to arrange for the pipes to be cleared because his experience with the landlord led him to believe that the landlord would not attend to the matter in a timely way or at all.

Analysis

There are two parts to the tenant's monetary claim. The first part relates to return of the security deposit and the second relates to a claim for emergency repairs. I shall deal with each in turn.

Security Deposit (\$1700)

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the entire security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has done neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord may not make a claim against the deposit and must pay the tenant double the amount of the security deposit.

As a result, the tenant is entitled to payment from the landlord in the amount of \$1700.

Emergency Repairs (\$341.80)

Section 33 of the Act sets forth the steps that must be followed by a tenant when a claim for reimbursement for the cost of emergency repairs is made. This section says as follows:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,

- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

At the hearing, the tenant testified that he phoned King Rooter instead of contacting the landlord because he did not think the landlord would act quickly enough. The tenant testified that it was obvious to him that the plumbing system of the house was on the verge of a back up and that he acted quickly so as to avert disaster. While I believe the tenant acted in a prudent manner in calling the plumbing company, the tenant did not act in accordance with Section 33 as set forth above. Section 33 requires that the tenant first try at least twice to contact the landlord and then give the landlord a reasonable time to make the repairs. In the present case, the tenant did not notify the landlord at all about the impending flood or about the fact that he had hired King Rooter to come and clear the system.

As a result of the tenant's non-compliance with Section 33, I am unable to award the tenant the amount claimed for emergency repairs.

Conclusion

I order that the landlord pay to the tenant the sum of \$1700 which represents double the amount of the original security deposit.

I dismiss the tenant's claim for the cost of the emergency repairs.

I order that the landlord reimburse the tenant for the cost of this application in the amount of \$50.

The enclosed order may be filed in the 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: December 02, 2013

Residential Tenancy Branch

