Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present; the tenant entered the hearing 8 minutes after it began. At this point I reviewed the application and service of evidence and affirmed the tenant.

I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

The tenant confirmed service of the hearing package in August, 2013 and the landlord's evidence which was personally served on October 22 or 23, 2013.

On November 30, 2013 the tenant submitted a package of evidence to the landlord and the Residential Tenancy Branch (RTB.) RTB Rules of Procedure require evidence submissions at least 5 days prior to the hearing. That evidence was not before me. As this evidence was not given to the landlord or RTB at least 5 days prior to the hearing I determined that the evidence would not be referenced or sought out. The tenant was at liberty to provide oral testimony.

I considered all of the relevant evidence and testimony.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $7,065.63 for damage to the rental unit and as compensation for damage or loss under the Act?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced on January 2, 2013; it is a fixed term to January 1 2014 at which point the tenancy converts to a month-to-month term. Rent is $1,350.00, due on the 1st day of each month. A copy of the signed tenancy agreement and move-in condition inspection report was supplied as evidence.

The tenant rents unit 317, in a strata development.

There was no dispute that on June 20, 2013 the tenant's toilet overflowed. The tenant did not deny that the toilet was plugged; he also said that the flush button had been malfunctioning. The landlord was called to the unit by the strata manager; when they arrived a friend of the tenant's had gone out to purchase a plunger. The toilet was overflowing and a mass of toilet paper could be seen in the toilet.

When the friend arrived with the plunger the landlord's assistant, who was present at this hearing, used the plunger. The toilet was then fully operational.

The landlord supplied a copy of 2 invoices:

- June 27, 2013 restoration for unit 317 & 217 - $4,178.13; and
- August 15, 2013 construction and maintenance for unit 217 - $2,887.50.

The invoices covered work completed to the rental unit and the strata unit directly below, which was damaged by water from the toilet. The August invoice detailed work completed for treating water stains, patching a ceiling, installing new baseboards, door casings, caulking, painting, sanding and washing and deodorizing in unit 217 only.

The landlord did not obtain insurance for the rental unit but relied upon the strata building insurance which has a $10,000.00 deductible. The landlord is fairly new to the country and did not understand that she should obtain her own insurance coverage, to cover her unit. The landlord did pay strata fees for services, including strata insurance.

The tenant did not dispute that some damage was caused. The tenant and his assistant present at the hearing both work in construction trades and would have completed the work for much less. The tenant believes that the companies over-charged the landlord. He also did not receive any estimate for the work completed.

The tenant offered the landlord $2,000.00 as a settled agreement. An explanation of mitigation was given to the parties. The landord declined to settle the dispute.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in

damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

During the hearing I fully explained the concept of mitigation; and asked the landlord why she had not chosen to obtain insurance for her unit in order to mitigate against the possibility of potential damage caused by a tenant. Just as a tenant cannot expect a landlord to provide compensation, when insurance would provide a tenant with reimbursement of costs; a landlord cannot expect a tenant to provide compensation when reasonable steps to mitigate have not been taken.

It appears the landlord expected any potential damage to her own unit would be covered by the 3rd party strata property policy. I find that the absence of insurance covering liability for the landlord's own property resulted in a failure by the landlord to take reasonable steps to mitigate the loss related to her unit. If the landlord had insurance a claim could have been made.

Therefore, in the absence of evidence of mitigation, such as an insurance policy for her own unit, I find that the claim for compensation related to unit 317 is dismissed.

In relation to the claim for damage to the strata unit; the landlord did pay monthly fees, in support of strata insurance; the deductible was $10,000.00. One invoice supplied outlined work completed to unit 217 only, which was direct result of what I find was a toilet that was plugged by the tenant or his guest. There was no dispute that the toilet had been plugged. Even if the flush button had malfunctioned, I find, on the balance of probabilities; that the toilet overflowed due to plugging. Section 37 of the Act requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant.

The tenant knew that damage had been caused, but no apparent effort was made to approach the strata management to bid on any work that would be required to unit 217; he would have known this would be required. Residential tenancy policy suggests that

the burden of proving expenditures are unreasonable falls to the respondent. Other than testifying that the work was not reasonable, the tenant offered no evidence to counter the invoice he was given in October, 2013.

Therefore, I find that the landlord is entitled to compensation in the sum of $2,887.50 for damage to the strata unit as a direct result of the overflowing toilet.

The balance of the claim is dismissed.

I find that the landlord is entitled to filing fee costs payable for a claim under $5,000.00; $50.00.

Therefore, based on these determinations I grant the landlord a monetary Order in the sum of or the balance of $2,937.50**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for damage or loss in the sum of $2,887.50.

The balance of the claim is dismissed.

The landlord is entitled to filing fee costs in the sum of $50.00.

The balance of the claim is dismissed.

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 03, 2013

Residential Tenancy Branch