



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STANMAR SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, ERP, RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order of a monetary order for compensation under the Act, to make emergency repairs for health or safety reasons and to allow a tenant to reduce rent for repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Issues to be Decided

Should the landlord be order to make emergency repairs for health and safety reason?

Is the tenant entitled to reduce rent for repairs?

Is the tenant entitled to a monetary order for compensation under the Act?

Background and Evidence

The tenant testified on April 17, 2014, in the evening that she went to the bathroom and after using the toilet it became clogged. The tenant stated "there was lots of poop" in the toilet and she tried to user a plunger but it did not release the clog.

The tenant testified that she contacted the answering service using her neighbour telephone, two times Thursday evening, at least three time on Friday, Saturday, Sunday and Monday. The tenant stated that the landlord did not come to make the repair.

The tenant testified because of that she had to continue to use the toilet even though it did not flush and by the end of the long weekend there was "a lot of poop" and she said she had scoop it out because she did not want the plumber to have to deal with it.

The tenant testified that on the Tuesday after the long weekend she attend the office to talk to the amount the toilet problem and a plumber was arranged to come the next day.

The tenant testified that she is entitled to receive compensation for \$50.00 each day without a toilet because it put her in an unsafe and unhealthy position. The tenant seeks \$400.00.

The landlord testified that they are not responsible to unclog a toilet when it from the tenant's neglect. The landlord stated the clog in the toilet happened the evening of the Easter long weekend and that they were unable to arrange for a plumber to attend until the Wednesday.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenant has the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

Under section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this case, I find the clog in the toilet was caused by the tenant, as the evidence of the tenant was the clog occurred as a result of "lots of poop". The evidence of the tenant was that they continued to use the toilet for a further 7 days knowing the toilet was clogged. The tenant alleged that she scooped her feces from the toilet prior to the plumber attending, as a result placed her in an unsafe and unhealthy position.

Under the Act, the tenant must maintain reasonable health, cleanliness and sanitary standard throughout. The tenant is also responsible to repair damage that is caused by their action or neglect, such as when they clogged the toilet from their own usage.

I also find it would be unreasonable for the tenant to continue to use the toilet for a further 7 days knowing it would not flush, and then scooping her own feces from the toilet. Rather it would have been reasonable for the tenant to ask the neighbour to use the washroom when she was using the neighbour's telephone on a regular basis.

Further, the incident occurred on a long weekend and the landlord was unable to make arrangements for a plumber to attend until the next business day, which was a Tuesday and the plumber attended the following day.

Although I find the landlord was not responsible to unclog the tenant's toilet as the clog was caused by the tenant's actions, rather than the landlord's actions of failing to maintain the premises. The landlord took reasonable steps by arranging to have a plumber attend. I find the tenant has failed to prove the landlord has violated the Act.

In light of the above, I find the tenant is not entitled to monetary compensation and is not entitled to reduce rent. I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application 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: May 27, 2014

Residential Tenancy Branch

