



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenants on March 26, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2013 on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable on the first day

of each month. The tenants paid a security deposit of \$650 on June 27, 2013. The tenancy ended on February 28, 2014.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

The Application for Dispute Resolution filed by the landlord seeks a monetary order in the sum of \$9567.37. The landlord alleges the tenants' negligence caused the toilet to overflow on two occasions causing damage to the rental unit and the downstairs rental unit. The tenants deny they are at fault.

Briefly, the landlord relies on the following evidence.

- He testified has been charged the amount claimed by the strata corporation because his tenants disposed of wood chips and Kleenex down the toilet causing the toilet to back up and overflow on two occasions.
- He testified that the tenants represented they had a small kitten only. However, in fact unknown to him they had a lizard, a snake, 3 cats and a dog. He found out later that the tenants kept the snake in an enclosure and used wood chips for a bedding for the snake.
- The landlord presented a bill from Elafor Mechanical Ltd. In the sum of \$1131.90 for work when they attended the rental unit and the unit immediately underneath to stop the overflow of the W/C in the rental unit. The invoice states "We

vacuumed W/C and found tweezers and wood chips (pet bedding) in bowel. Unplugged and re-installed W/C – flush test. Restoration company arrived and did their job...”

- The landlord testified the tenants acknowledged on 3 occasions they placed wood chips down the toilet as they had down in their previous rental unit.
- The landlord presented an invoice from the Phoenix Restorations Company in the sum of \$5164.26 for restoration work done on the rental unit.
- The landlord produced an invoice from Phoenix Restorations Ltd. In the sum of \$1952.76 for repairs to the water damage for units 608 and 609.
- The landlord testified the tenants’ negligence caused a second blockage of the toilet on September 19, 2013. He presented a bill from Elafon Mechanical Ltd. In the sum of \$417.90. The invoice states “It appears that the W/C in 709. overflowed again and leaking into 609. Am suspicious that 709 ran out of WC paper and was suing Kleenex and that plugged up the W/C and overflowed...”
- The landlord also presented an invoice in the sum of \$200.55 from Elefon Mechanical Ltd. for their attendance on July 15, 2013 to inspect 608. They were not able to get access to 709 and 609 at that time.
- The landlord testified he has paid a fine imposed by the strata corporation in the sum of \$400 because his tenants’ had pets.
- The landlord testified he has paid \$300 to the strata corporation for the cost of removing the snake.

Briefly, the evidence presented by the tenants is as follows:

- They moved into the rental unit late at night when there was no electricity
- The tenants testified the toilet was defective since they moved in. The toilet was slow draining and they found the flush to be getting slower and slower. A few days later the toilet was completely clogged and the downstairs started leaking.
- The plumbers came and said it would take several days to repair. They went away for 2 weeks. When they returned the toilet did not work properly.

- That at all material times that he had the snake in this unit it was kept in a special glass case. He bought the snake from a pet shop in Burnaby and it is not illegal. He further testified the snake was not removed by the SPCA but that he sold it.
- The tenants denied flushing Kleenix down the toilet the second time there was a clog or at all.
- The tenants alleged the clogging of the toilet was caused by a faulty sewage line.

Monetary Order and Cost of Filing fee

The applicant has the burden of proof based on a balance of probabilities to establish the claim based on the evidence presented at the hearing. After hearing the conflicting evidence of the parties I determined the landlord has presented sufficient evidence to establish the tenants' negligence caused the overflow of the W/C leading to damage in the rental unit and the unit below. The evidence contained in the invoice from the plumber also provides the blockage in middle of July 2013 was caused by woodchips and tweezer. I am satisfied based on the evidence presented that the tenants disposed of woodchips causing the damage in the middle of July and disposed of Kleenix causing the overflow in September. I accept the evidence of the landlord that the tenants acknowledged to him on 3 occasions that they put wood chips down the toilet. The tenants evidence denying this is not credible. Their testimony was vague and inconsistent with the other evidence on this point. The tenants alleged but failed to prove the toilet and the sewage system was defective. Further, I am satisfied the negligence of the tenants caused the overflow in September.

As a result I determined the tenants are responsible to pay the following invoices:

Elefon Mechanical Ltd.	\$1131.90
	\$ 417.90
	\$ 200.55
Phoenix Restorations Ltd.	\$5164.26

\$1952.76

\$8867.37

In addition I determined the landlord is entitled to recover the strata fine of \$400 imposed for tenants having pets. I dismissed the claim for the cost of removing the snake. The tenant testified he sold his snake and the snake that was removed was owned by the downstairs tenant. The landlord did not have sufficient evidence to refute this evidence.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$9267.37 plus the \$100 filing fee for a total of \$9367.37.

Security Deposit

I determined the security deposit plus interest totals the sum of \$650. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$8717.37.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: July 18, 2014

Residential Tenancy Branch

