



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing convened pursuant to an application by the Landlord for a Monetary Order for damage to the unit and for compensation for damage or loss under the Act, regulation or tenancy agreement. The Landlord also sought to recover the filing fee.

The Landlords' J.W. and J.W. appeared. The Tenant, N.F. appeared as did his advocate and support worker, C.G. The hearing process was explained and the participants were asked if they had any questions. The parties provided 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 to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

J.W. provided details as to the Tenancy. He testified that the tenancy began in October 2011 and that the current rent is \$570.00 per month payable on the first of the month.

The Landlord's monetary claim relates to an incident which occurred on January 30, 2014. At this time, the Tenant called the building manager, L.D. as a result of an overflow of his toilet.

The Landlord submitted that the damage was caused by the Tenant; according to the Landlord, when the toilet failed to flush the Tenant continued to attempt to flush it creating a significant amount of waste discharge.

A specialty company, K.C. was called in to deal with the water damage. The carpet was taken up and the underlay was removed. The entire area was also dried with blowers. Introduced in evidence was a detailed invoice dated February 17, 2014 wherein payment of the total sum of \$695.75 was requested from the Tenant. The Landlord sought reimbursement of \$645.75 charged by K.C. (this invoice was included in evidence) as well as \$50.00 for two hours of L.D.'s time at \$25.00 per hour.

The Landlord testified that he has owned the rental property for 35 years. There are 19 units in the rental building. He stated that during his ownership no one else has ever plugged their toilet, nor has he been made aware of any other overflows. He stated that "all other occupants of the rental building are clean". The Landlord testified that the toilet in the subject rental unit was the original toilet which was installed approximately 40 years ago; despite this, the Landlord stated that he believed there was no issue with the existing toilet and that any issues were a direct result of the Tenant's actions or negligence.

The Landlord submitted that he believes the Tenant caused the overflow as he believes the Tenant simply does not flush his toilet after each use and allows waste to accumulate. In support of this claim, the building manager, L.D. testified that she attended the rental unit on two separate occasions and observed such waste accumulation in the toilet bowl.

The Landlord noted that he has now renovated all units in the rental building. The Tenant's unit was the last to be renovated. A previous arbitration occurred in March of 2014 wherein the Landlord sought an Order of Possession and the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use (issued February 10, 2014). The Landlord's reasons for issuing the Notice at that time were that the Landlord sought to renovate the Tenant's bathroom. The Landlord's application was dismissed as the Arbitrator found that the Landlord had more than one motive for ending the Tenancy.

Following the arbitration, and in August of 2014, the parties agreed to a Mutual End to Tenancy. After the Tenant moved out, the Landlord completely stripped the rental unit including the bathroom and replaced the rental unit's toilet with a low flush unit.

The Tenant's advocate, C.G., submitted that the August 2014 settlement was a comprehensive agreement wherein the Tenant agreed to move out of the rental unit, the

security deposit was paid back, and no further claim was to be made by either party against the other. The terms of this alleged comprehensive settlement were not reduced to writing.

Introduced in evidence was a letter from the Landlord dated May 28, 2014 wherein the Landlord attaches the signed Mutual Agreement to End Tenancy. The Landlord also writes about the “issue of the outstanding invoice covering the damage to the suite”.

The Tenant’s advocate, C.G., submitted that the problems with the toilet in the Tenant’s rental unit were due to its age. She stated that the Tenant had raised concerns about his toilet directly with the building manager L.D. on numerous occasions and as early as in the spring of 2012 and also in 2013. Through discussions with L.D., C.G. was aware that the Tenant’s toilet was the oldest toilet in the rental building.

C.G. testified that she, as the Tenant’s support worker, was in his rental unit regularly, as much as 3-4 times a week and during those visits, she did not observe waste accumulation in the Tenant’s toilet as alleged by the Landlord. She submitted that the Landlord continually harassed and blamed the Tenant, yet the real problem was the age of the Tenant’s toilet.

L.D. agreed that the Tenant had brought forward concerns to her about the toilet in his rental unit. She testified that she advised him to remove the float to prevent overflow. On another occasion, she says the washer was cracked where the handle attached to the tank. A new flush handle and washer were installed in response to the Tenant’s concerns. L.D. stated that she was not aware of any further issues with the Tenant’s toilet.

Analysis

The Landlord sought a Monetary Order for compensation for damage or loss pursuant to section 67 of the Act; that section provides as follows:

Director’s orders: compensation for damage or loss

- 67** Without limiting the general authority in section 62(3) *[director’s authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Related to section 67 is section 7 of the Act which provides as follows:

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.

The Tenant submitted that a comprehensive settlement was reached in August of 2014 when the Tenant agreed to vacate the rental unit. While it is questionable why the Landlord returned the Tenant's security deposit when an amount remained outstanding from the January 2014 incident, I find insufficient evidence to conclude that this was a complete settlement of all claims. In support, I note that the May 28, 2014 letter from the Landlord to the Tenant, attaching the signed Mutual Agreement to End Tenancy, specifically references the invoice as *outstanding*. Presumably, had this amount been considered in a global settlement, the Landlord would have made no such mention of it.

Section 32 of the Act provides as follows:

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.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides that, “a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site...Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

Residential Tenancy Policy Guideline 40: Useful Life of Building Elements is intended as a general guide for determining the useful life of building elements for determining damages. This guideline provides that the useful life in years for a tub, toilet or sink is 20 years.

In this case, the toilet in the subject rental unit was at least 40 years old. The Tenant raised concerns about his toilet on at least two separate occasions and beginning as early as two years before the incident giving rise to the Landlord's damage claim. The Landlord sought to end the tenancy in March of 2014, after the incident giving rise to the Landlord's damages claim, for the stated purpose of renovating the Tenant's bathroom. I find that the Landlord was aware of the need to update the Tenant's rental unit. I do not accept the Landlord's evidence that in 35 years no other Tenant plugged their toilet or experienced an overflow, as it is more likely the Landlord was simply unaware of such occurrences.

I do not accept the Landlord's evidence that the Tenant's behaviour or neglect contributed to the January 2014 incident. The Tenant's advocate testified that she attended the rental unit on a weekly basis and did not observe circumstances which would support the Landlord's position in this regard.

I find that the 40 year old toilet naturally deteriorated due to aging and other natural forces and not due to any deliberate action or neglect on the Tenant's part. Accordingly, I dismiss the Landlord's Application.

Conclusion

The damage caused by the overflowing toilet was a result of natural aging and deterioration, not any deliberate action or neglect on the Tenant's part. The Landlord's application 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: November 14, 2014

Residential Tenancy Branch

