



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC MNDC MNSD FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to section 47 for cause;
- b) A monetary order to compensate the landlord for repairs to the property;
- c) To retain the security deposit to offset the amount owing; and
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated October 10, 2014 to be effective November 30, 2014. The tenant agreed they received the Application for Dispute Resolution by registered mail. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Both parties agreed the tenant vacated on December 6, 2014 so an Order of Possession is no longer required. The remaining issue is if the landlord has proved on the balance of probabilities that the tenant damaged the unit, that the damage is beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover filing fees for this application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2014 for a fixed term, rent was \$1000 a month and a security deposit of \$500 was paid in June 2014. The home was about 19 years old; the landlord purchased it about 11 years ago and replaced the grinder pump that serves only the basement sewage system about 7 years ago. The landlord lives upstairs in the home and the tenant lived in the basement. The landlord's daughter had one bedroom and a half bath in the basement too.

On or about November 3, 2014, the families were awakened by an alarm from the basement sewage pump. The landlord examined it and pulled out some items that he thought looked like baby wipes and he had a professional attend the next day to solve the problem. The professional states in the invoice that he “pulled out about 10 rags and the pump was done”. The cost to replace the pump was \$905.80. The landlord claims the tenant is responsible for this damage as they had a baby and some guests. The tenant denies responsibility; she said it looked like multi colour rags that were pulled out of the pump. She said they have always been careful to only flush waste and toilet paper as she understands the issues with septic systems and they even go elsewhere to dye hair. She agreed that she had a stepson and guest stay in her unit from October 10 to October 24, 2014 and she was away for part of that time. The landlord’s daughter who is an adult said she saw what looked like a bundle of wet wipes pulled out by her father.

Included with the evidence is a copy of the Notice to End Tenancy, an invoice, the tenancy agreement and letters and statements of the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As the tenant has vacated, the reasons for the Notice to End Tenancy were not discussed as this is moot.

Regarding the landlord’s claim for damages, the onus is on the landlord to prove on a balance of probabilities that the tenants caused the damage, that it is beyond reasonable wear and tear and the cost to cure the damage. .

I find the evidence of the landlord credible that the tenant or her guests caused damage to the pump necessitating its replacement. I prefer the landlord’s evidence to the evidence of the tenant as I find the weight of the evidence is that the pump serviced only the basement area which was primarily occupied by the tenant and her guests. The landlord’s evidence is also supported by the invoice from the professional that states that ten rags were pulled out of the pump; I find the weight of the evidence is that this must have been caused by the tenant or her guests; while she may have been very careful, her guests may not have exercised the same care. However, the Residential Tenancy Guideline provides a useful life for items in rented premises; this is designed to account for reasonable wear and tear. The Guideline provides a useful life of 15 years for items such as this mechanical pump. I find the pump was seven years old so I find

the landlord entitled to recover 53% of the cost of its replacement for its remaining 8 years of useful life, for a total of \$483.09.

Conclusion:

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application. The landlord noted that he also was owed some rent which he had not claimed on this application. I give the landlord leave to reapply for further amounts owed to him.

Calculation of Monetary Order:

Allowance for pump replacement	483.09
Filing Fee	50.00
Less Security deposit (no interest 2014)	-500.00
Total Monetary Order to Landlord	33.09

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 16, 2014

Residential Tenancy Branch

