



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Providence Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a determination as to whether she owed money to the landlord. Both parties participated in the conference call hearing with the tenants represented by SA. In this decision where I refer to the tenant in the singular form, it is SA to whom I refer.

Issues to be Decided

Are the tenants entitled to compensation as claimed?
Do the tenants owe money to the landlord?

Background and Evidence

The parties agreed that the tenancy began on June 30, 2013 and that rent was set at \$1,350.00 per month. They further agreed that the unit was equipped with a washer and dryer and from the beginning of the tenancy, the dryer did not function properly.

The tenants immediately reported the malfunctioning dryer to the landlord and the landlord began crediting them with \$20.00 per month to compensate them for loss of use of that appliance. The landlord attempted to find the parts required to repair the dryer, but was unable to do so. Eventually, the landlord offered to re-wire the dryer and tried to arrange a time for an electrician to perform that task. The tenants determined that they would rather not have a washer and dryer at all, so as of September 1, 2014, the tenants' rent was reduced by \$50.00 per month to \$1,300.00 and the washer and dryer were removed.

The tenant testified that the \$20.00 per month credited to them as compensation for the non-functional dryer was inadequate. She reasoned that because her rent was reduced by \$50.00 per month when both appliances were removed, she deserves an additional \$5.00 per month. The tenant seeks an award of \$70.00.

The tenant testified that when they moved into the rental unit, it had not been adequately cleaned and that the property manager at the time offered her \$50.00 in compensation. The tenant provided an email dated October 7, 2013 from the property manager in which she referred to the "\$50 for cleaning that we agreed upon." The landlord's agent who appeared at the hearing, NH, testified that he had no knowledge of an offer of compensation and referred to the condition inspection report, which was not submitted into evidence, saying that there was no notation on the report that cleaning was required or that compensation was offered. The tenant seeks an award of \$50.00.

The parties agreed that in July 2013, the tenant summoned the landlord to repair a clogged toilet. The tenant testified that no water would flush through the toilet and that she had tried for a considerable time with a straightened coat hanger to loosen the obstruction, with no success. She testified that when the landlord's maintenance person attended the unit, he used the straightened coat hanger once or twice but was also unable to remove the obstruction. She testified that he then removed the toilet and took it into the parking lot where he broke it and found a few paper towels inside. The maintenance person charged the landlord \$300.00 for the cost of attempting to remove the obstruction and removing and replacing the toilet which the landlord charged to the tenants. The tenant argued that they should not be responsible for the cost of replacing the toilet as a certified plumber would have been able to address the issue much more quickly and effectively without having to replace the toilet.

NH testified that he was present at the unit when the maintenance person was working on the toilet and testified that he observed him using a plunger and then a toilet auger. He testified that the maintenance person attempted to auger the toilet in the bathroom with no success and then removed the toilet to the parking lot where he tried again. It was only when he could not remove the obstruction after having tried from both the top and bottom that he broke the toilet. NH testified that he personally witnessed the maintenance person remove a significant number of paper towels from the toilet.

The tenant strongly denied that there were numerous paper towels, claiming at first that there were no more than 4 and later claiming that there were no more than 2. The tenant insisted that the maintenance person did not use an auger and used no other tools but her straightened coat hanger.

The tenant seeks a determination as to whether she owes the landlord money for the toilet.

Analysis

First addressing the question of what amount of compensation is appropriate for the months in which the tenants lost use of the dryer, I accept the tenants' argument and find that each appliance was valued at \$25.00. I find that the landlord should have credited the tenants with \$25.00 for each of the 14 months in which the dryer was non-functional for a total credit of \$350.00.

I also accept that the landlord's agent who wrote the October 2013 email referenced above agreed to pay the tenants \$50.00 in compensation for cleaning performed at the beginning of the tenancy. Regardless of whether the current agent is aware of that commitment, the landlord is bound by the representations and promises of its agents. I find the tenants should be credited with an additional \$50.00.

I do not accept the tenants' argument that the landlord did not have the right to break the toilet or that they had an obligation to retain a professional plumber. There is no dispute that the tenants are the ones who chose to flush paper towels down the toilet. Because the problem with the toilet was clearly their fault, the tenants could have chosen to contact a plumber and pay the plumber directly for unclogging the toilet. Instead, they chose to request assistance from the landlord and in doing so, gave the landlord the discretion as to how to best address the problem. The landlord has the obligation under the Act to act reasonably to minimize the financial impact and I find that using their maintenance person, who the landlord testified has been doing maintenance at the building for a considerable time, was a reasonable course of action. I further find it more likely than not that the maintenance person had the tools described by NH and that he used those tools without any success. As the obstruction could not be removed through the use of an auger, I find it more likely than not that there were a considerable number of towels which had been flushed and I find it very likely that even if a plumber had been called, the plumber may not have been successful in removing the obstruction without breaking the toilet. I find the \$300.00 charge to be reasonable and I find that the tenants must be held responsible for that charge.

The tenants have been substantially successful in their application and I find they should recover their \$50.00 filing fee. When added to the awards above, the tenants have a credit of \$450.00. After applying that credit to the \$300.00 they owe for the toilet, the tenants have a remaining credit of \$150.00. The tenants may deduct \$150.00 from a future rental payment.

Conclusion

The tenants should be credited with a total of \$350.00 for the loss of use of the dryer, with \$50.00 for cleaning and \$50.00 for their filing fee for a total credit of \$450.00. The tenants owe \$300.00 for the toilet which means after applying the credit to what they owe, the credit is reduced to \$150.00 which may be deducted from a future rental payment.

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: April 21, 2015

Residential Tenancy Branch

