



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenants. The landlord and one tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 17, 2013. The rental unit is a condo in a multi-unit strata building. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$1175.00. The landlord and the tenants carried out a move-in inspection and signed a condition inspection report.

On December 14, 2014 the tenants emailed the landlord to inform them that the flooring in the hallway was swelling. The landlord inspected the flooring and also discovered cracked caulking around the bathtub. The landlord removed baseboards and the bathtub caulking and found standing water, which they attempted to soak up. From December 16 to 19, 2014 the landlord had a dehumidifier running to dry the area. The baseboards were replaced and the tub was re-caulked on December 20, 2014.

On January 4, 2015 the tenants contacted the landlord to inform them that the back portion of the toilet bowl had broken. The landlord replaced the toilet on January 6, 2015. While the landlord was replacing the toilet, the building manager informed the landlord that water had been dripping from the ceiling in the suite below. The landlord inspected but could not find any active leaks in the rental unit.

On January 8, 2015 the tenants emailed the landlord to inform them that the flooring in front of the bathroom was making squishy noises and the swelling had spread out and gotten worse. The landlord inspected the next day but could not find any active leaks. On January 13, 2015, a tradesperson cut a hole in the hallway wall to inspect for water under the tub. The tradesperson discovered a little bit of water and they left the hole open to check whether the water dried out or there were any active leaks. The hole was sealed on February 25, 2015.

The tenancy ended on March 1, 2015. The landlord and the tenants carried out a move-out inspection and signed the condition inspection report. The tenants agreed in writing that they were responsible for the cost of four light bulbs.

Landlord's Claim

The landlord submitted that the tenants were responsible for the costs to replace and repair the toilet. The landlord stated that the male tenant told the landlord that the toilet broke when he leaned back on it. The landlord stated that they asked the strata about the history of the toilets in the building, and were told that a couple of toilets in other units had broken. The strata was unable to provide any further information on that issue. The landlord stated that the toilet that broke was 10 years old. The landlord has claimed \$1916.66 for replacing the toilet.

The landlord submitted that the tenants were responsible for the leaking water that caused damage to the floorboards and the ceiling in the unit below. The landlord stated that on December 16, 2014 the landlord's contractor recommended that a blower be used to dry out the wet area, but the tenant did not agree to a blower, so the landlord ran a dehumidifier instead. The landlord stated that a tradesperson told the landlord that the leak that damaged the ceiling in the unit below may have come through the cracked caulking, and sometimes it takes a little time for water to make its way through cement. The strata determined that the ceiling damage in the unit below originated from the rental unit, and they charged the landlord for the ceiling restoration costs. The landlord has claimed \$1079.47 for replacing flooring in the unit, and \$288.75 for ceiling restoration in the unit below.

The landlord stated that when the tenants vacated they failed to clean the stovetop, stove grates, oven and baseboards in the kitchen. The landlord has claimed \$90.00 for one hour of cleaning by a cleaning service.

The landlord has also claimed \$62.36 for replacement of four lightbulbs.

The tenants' response to the landlord's claim was as follows. The tenants submitted that there must have been pre-existing damage on the toilet such as hairline cracks, and they denied damaging the toilet.

The tenants stated that they did not say that the landlord could not put in a blower; they said that it would be extremely disruptive and not very useful, so the landlord agreed to a dehumidifier. The tenants stated that the landlord came to do work on the bathroom faucet three times, and the leakage that damaged the flooring and the ceiling below could have been as a result of faulty installation of the faucet. The tenants stated that the caulking work was fairly sloppy and not fully sealed, and the landlord was "doing things on the cheap."

The tenants submitted that a five-minute cleaning job should not cost \$90.00, and they did not clean the stove because it was very old and not worth cleaning.

Tenants' Claim

The tenants claimed compensation for loss of quiet enjoyment and loss of use while repairs were being done. The tenants submitted that there were constant interruptions, with at least 20 contractors visiting the unit over a three-week period. The tenants stated that they were without use of the main washroom while repairs were done; and they suffered minor nose bleeds, red or itchy eyes, cracked lips and general discomfort while the dehumidifier was running, since the air was so dry. The tenants stated that they had to barricade off the construction area because they have a toddler who may have otherwise become injured. The tenants stated that the stove was The tenants have claimed compensation equivalent to 25 percent of one month's rent, in the amount of \$587.50.

The landlord's response to the tenants' claim was as follows. The tenants had another bathroom in the suite that they could use. The tenants could not use the bathtub for six days, and they could not use the broken toilet for two days. There were 11 total visits by contractors.

Analysis

Landlord's Application

The tenants acknowledged that they were responsible for the cost of replacing four light bulbs, and I therefore grant the landlord \$62.36 for replacement bulbs.

I find that the landlord has failed to provide sufficient evidence to establish that the tenants were responsible for the broken toilet or the water leakage damage to the flooring in the unit and the ceiling below. I find it unlikely that a toilet bowl would crack and break from someone merely leaning back on the toilet, unless the toilet was poorly constructed or installed, or had pre-existing damage. The landlord has merely speculated that the tenants were responsible for the water leakage. The landlord could have taken up this issue with the strata, but chose not to do so. Therefore, I dismiss these portions of the landlord's claim.

The tenants acknowledged not cleaning the stove. The tenants did not have the authority to decide that it was not worth it to clean the stove because it was too old. However, I find the landlord's claim of \$90.00 for one hour of cleaning excessive. I therefore grant the landlord \$45.00 for one hour of cleaning.

Tenants' Application

I find that the loss of use of the toilet was insignificant, as it was only for two days and there was another toilet in the unit. I find, in the absence of specific evidence, that the loss of use of the bathtub for six days was also fairly insignificant. The tenants may not have suffered any or as much physical discomfort if they had agreed to allow the landlord to use a blower rather than a dehumidifier, so I find that they are not entitled to compensation for three days of minimal discomfort that may have been avoided.

I find that the tenants' quiet enjoyment of their unit was disturbed by the visits of several contractors over a three-week period. I also find that the tenants are entitled to compensation for concern over their toddler's safety while the landlord left an open hole in the wall for over six weeks. I therefore grant the tenants compensation of \$470.00, equivalent to 20 percent of one month's rent.

Filing Fees

As both applications were only partially successful, I decline either party recovery of the filing fee for their applications.

Conclusion

The landlord is entitled to \$107.36. The tenants are entitled to \$470.00. The landlord continues to hold in trust the tenants' security deposit of \$1175.00, and they must return it to the tenants. I therefore deduct the landlord's monetary award of \$107.36 from the tenants' award of \$1645.00, and I grant the tenants an order under section 67 for the balance due of \$1537.64. This order may be filed in the Small Claims 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: June 23, 2015

Residential Tenancy Branch

