



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, OPB, OPC, MND, MNDC, MNSD, FF

Introduction

This hearing was convened to address a claim by the tenant for an order of possession and a claim by the landlord for an order of possession, a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenant had vacated the rental unit. The tenant withdrew her claim and I consider the landlord's claim for an order of possession to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about May 15, 2014 and ended on May 31, 2015. They further agreed that at the beginning of the tenancy, the tenant paid the landlord a \$487.50 security deposit. The parties agreed that the tenant used the security deposit to pay her rent for the last half of the month of May.

The landlord testified that on September 3, 2014, the tenant left a faucet running in the rental unit and because the sink was clogged, it overflowed and the water ran to the second floor, affecting 2 suites. The landlord stated that she was called by the building management and she immediately attended the unit and found the water running. She turned off the water and plunged the sink. The landlord testified that she paid \$2,293.43 to dry the affected suites and test them for mould and provided a receipt showing that she was invoiced this amount by the restoration company. She further stated that the flooring in the rental unit would need to be replaced, for which she received an estimate of \$5,416.36. She stated that she is going to file a claim with her insurance company to

recoup the costs paid to the strata as well as the cost of new flooring, but the company will charge her a \$1,500.00 deductible which she seeks to recover from the tenant.

The tenant denied having left the water running and testified that she left the unit at approximately 8:15 the morning of the flood and was notified approximately an hour later that the sink was overflowing. The tenant theorized that a leak had caused the overflow or that the landlord turned on the water when she arrived in the apartment in order to flood the apartment and find a reason to charge the tenant for the cost of new flooring.

The landlord also seeks to recover the cost of a plumbing bill from the end of September 2014. She testified that on the day of the September 3 flood, the tenant told the landlord about a leak under the kitchen sink. The landlord arranged for the strata plumber to attend at the unit at 8:00 a.m. on September 26 to repair the leak as well as clear a slow drain in the bathtub and the tenant was not home to grant him admittance. The tenant did not arrive home until 9:00 a.m. The landlord seeks to recover one half, or \$196.47 of the \$392.96 plumbing bill. She testified that the plumber found an excessive amount of hair in the bathtub clogging the drain.

The landlord also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

The landlord bears the burden of proving her claim on the balance of probabilities. The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (if applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 32(3) of the Act provides that tenants must repair damage to the rental unit or common areas that is caused by their own actions or neglect.

I do not accept the tenant's theory that the flood on September 3 was caused by a leak. If the bathroom faucet had been leaking, I find it highly unlikely that it would have caused a flood within the hour after the tenant left the home and the time the leak was discovered. I also do not accept the tenant's accusation that the landlord turned on the water. The building manager telephoned the landlord only after the water was

discovered leaking into the lower units and I find that the landlord could not have started the faucet to purposely cause the leak if she was not at the location prior to the time the leak was discovered. I find it more likely than not that the tenant left the water running in the bathroom and that the sink overflowed as a result. I find that the tenant is obligated to repair the damage that resulted from that leak. I find that the landlord has proven that she has already paid over \$2,000.00 to dry the affected units and I find that her claim for the \$1,500.00 insurance deductible is reasonable. I award the landlord \$1,500.00.

I find no basis on which the tenant should be held liable for any part of the September 26 plumbing repairs. The tenant did not have an obligation to admit the landlord's plumber and I find that her absence from the rental unit was not in breach of the Act or tenancy agreement. The landlord has presented no evidence to show that the tenant's actions or neglect caused the leak under the kitchen sink and while some of the hair clogging the bathtub likely belonged to the tenant, she had only been in the rental unit for 4 months and I find it very likely that some of the hair belonged to a previous tenant. I find that the landlord has not proven that the tenant is responsible for the plumbing problems addressed on September 26 and I dismiss that claim.

As the landlord has been substantially successful in her claim, I find she should recover the filing fee and I award her \$50.00 for a total award of \$1,550.00. As the security deposit has already illegally been used by the tenant to pay her rent in May, the deposit will not be set off against this award. I grant the landlord a monetary order under section 67 for \$1,550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$1,550.00.

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 04, 2015

Residential Tenancy Branch

