



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for: damage to the rental unit; unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; for authority to retain the security deposit; and, to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on July 1, 2013. Monthly rent was payable in the amount of \$2,000.00 and the Tenants paid a security deposit of \$1,000.00 which the Landlord continues to hold.

The Tenancy ended on May 31, 2015. The Landlord confirmed the Tenants provided her with their forwarding address in writing for the purposes of returning the security deposit.

The Landlord testified that a move in condition inspection report was prepared, but not a move out as the Tenants refused to participate in the condition inspection. The Landlord testified that she provide the Tenants with two opportunity to participate in the move out condition inspection, the first being May 30, 2015 when she sent them a text message proposing May 31, 2015 at 12:00 noon; apparently the Tenants responded that they were unavailable as they were "out for the day". The Landlord further testified that despite indicating they were not available, the female tenant, R.G., was at the rental unit with her friends on the 31st and when the Landlord again asked to do the move out inspection the Tenant refused.

The Landlord did not give the Tenant notice of a second opportunity in the approved form as required by section 17 of the *Residential Tenancy Regulation*.

The Landlord alleged that the Tenants did not clean the following:

- the inside of the cupboards;
- the inside of the refrigerator;
- the outside or inside of the stove; and
- the floors.

The Landlord testified that she spent over 10 hours cleaning and as such requested the sum of \$150.00 as compensation for her efforts.

The Landlord testified that the Tenants were responsible for paying 33% of the electricity utility and 50% of the gas utility. The Landlord conceded that the residential tenancy agreement did not make any provision for the payment of utilities, but stated that the parties agreed to this and the Tenants paid their share throughout the tenancy.

In her application the Landlord claimed compensation for the Tenant's share of the utilities from March to May of 2015 in the amount of \$270.25; during the hearing the

Landlord confirmed that at the time she filed she did not have the invoices and that the amount actually charged and for which she sought compensation was \$225.21.

The Landlord also sought compensation for water damage she alleges was caused by the Tenants' guest. She testified while the Tenants were away from the rental unit on November 14, 2013 their housekeeper overflowed the bathtub causing water to accumulate in the downstairs rental. Apparently the downstairs renter, F.S., noticed water dripping from the ceiling, which appeared to be coming from the upstairs rental unit. According to the Landlord the downstairs renter then went upstairs, "banged and banged on the door" and when the housekeeper answered the downstairs tenant could hear the water running. The Landlord estimates that the water in the bathtub was running unattended for approximately 35 minutes.

The Landlord stated that she did not live in the community in which the rental unit was located and admitted that she wasn't "totally involved in the whole thing".

In total the Landlord sought compensation in the amount of \$4,550.00 for losses she says she incurred as a result of the Tenants' guest overflowing the bathroom. Initially the Landlord pursued insurance coverage, however, when she was informed the deductible was \$5,000.00 and a claim would negatively impact her ongoing insurance rates she withdrew her claim. At the hearing she sought the sum of \$4,550.00 and provided the following in support of that claim:

- An invoice dated December 30, 2013 from R.G. in the amount of \$1,550.00 for; and,*
- While she was charged \$4,327.04 by C.R., they accepted the sum of \$3,000.00 as full and final payment such that the Landlord only sought \$3,000.00 in compensation for their charges.

The male Tenant, R.G., confirmed that they were not disputing the amounts claimed by the Landlord for cleaning or utilities.

R.G. also stated that communication with the Landlord deteriorated to such an extent that when his wife, R.A.G., was moving out and cleaning the rental at the end of the tenancy she and the Landlord were "screaming at each other". He said the situation was so unpleasant that there was no opportunity to perform a move out condition inspection.

R.G. advised that he disputed the amounts claimed by the Landlord for the water damage. He submitted that a properly installed tub overflow should be able to prevent

flooding of a bathtub as it is able to take 100% of the water. The Tenant further testified that the tub overflow was incorrectly installed by the Landlord's husband who is not a certified or qualified plumber as the tub overflow was not connected to the main floor drainage at all. In support, he provided a photo of the tub, which he obtained from the insurance adjuster, J.M., and which clearly depicted an improperly installed tub overflow drain.

The Tenant further testified that a plumbing company attempted to clean the drain and was unable to do so as the tub was not properly vented. In all, the Tenants allege that any damage caused by water in November of 2013 was a result of the Landlord's husband's poor installation of the tub, the incorrectly installed overflow drain, and the lack of venting. The Tenant stated that when the insurance company personnel were investigating the flood they informed the Tenant that the overflow connection was the problem and the cause of the flood.

The Tenant further alleged that the flood occurred in November of 2013, yet the Landlord did not give the Tenants notice that she sought compensation for the water damage until they moved from the rental unit in July of 2015. In this way, the Tenant submits, the Landlord prevented the Tenants from obtaining evidence of the condition of the tub as they had already vacated the rental unit. The Tenant also claims that he spoke to the

Analysis

The Tenants consented to the Landlord recovering the amounts claimed for cleaning and outstanding utilities in the amounts of \$150.00 and \$225.21 respectively. Pursuant to section 63 of the *Residential Tenancy Act*, I note these amounts are recoverable by agreement of the parties.

I accept the Tenants evidence that the communication between the parties had deteriorated to such an extent that arrangements for a move out condition inspection report were not effectively made. I am unable to determine who is more responsible for this failure and as a result decline to make any finding with respect to extinguishment pursuant to section 36 of the *Residential Tenancy Act*.

The Tenants dispute the Landlord's claim for compensation for losses incurred as a result of the tub overflow.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim with respect to the losses incurred as a result of the tub overflow.

The Tenants did not take issue with the \$4,550.00 claimed by the Landlord as losses associated with the water damage, save and except for their clear opposition to paying any amount to the Landlord to compensate her for this loss. In this regard, I find that the Landlord has proven she suffered a loss as a consequence of the tub overflowing.

Neither party was in attendance when the tub overflowed. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I accept the Landlord's evidence that the Tenants' housekeeper overflowed the bathtub causing water to seep to the downstairs unit. I also accept her evidence that the housekeeper allowed the water to run unattended for some time.

The Tenants claim that the water damage occurred as a result of the incorrectly installed tub overflow drain. The Tenants further submit that a properly installed tub overflow drain should be able to manage 100% of an overflow. No evidence was submitted by the Tenants to support this claim. In any case, I am persuaded by the photos submitted by the Tenants and find that the overflow drain was in fact incorrectly installed. I am unable to determine how much of the water would have been diverted through the drain had it been correctly installed, but it is obvious that an incorrectly installed overflow drain is of no purpose.

While I am satisfied that the Landlord suffered a loss as a result of the bathtub overflowing in November of 2013, I am unable to find that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the *Residential Tenancy Act*, as I find it more likely that the damage or loss occurred due to the incorrectly installed bathtub overflow drain. As a result, I deny the Landlord's request for \$4,550.00 in compensation for losses incurred as a result of the flooding.

In sum I award the Landlord **\$425.21** including \$150.00 for cleaning (as agreed), \$225.21 for outstanding utilities (as agreed) and the \$50.00 filing fee. The Landlord may retain the sum of \$425.21 from the Tenants' security deposit of \$1,000.00 and must return the sum of \$574.79 to the Tenants. The Tenants are awarded a Monetary Order for \$574.79 and must serve the Order on the Landlord. Should the Landlord fail to pay this amount the Tenants may file the Order in the B.C. Provincial Court (Small Claims Division) and enforce it as an Order of that Court.

Conclusion

The Landlord is entitled to compensation in the amount of \$425.21 and must return the balance of the Tenants' security Deposit in the amount of \$574.79.

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 07, 2015

Residential Tenancy Branch

