



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 5, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?

Background and Evidence

This tenancy started on September 1, 2014 as a month to month tenancy. Rent is \$1,550.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$775.00 at the start of the tenancy.

The Landlord said there was a flood in the rental unit on July 27, 2015 that was caused by a blocked toilet. The Landlord continued to say the building manager went to the unit on July 27, 2015 and found the toilet flooding and water on the floor. The Landlord submitted a letter from the Building Manager stating this and that the flood damaged unit 304 and the hallway. The Landlord added that the flood also damaged unit 405. As a result of the flood the Landlord is requesting compensation from the Tenants for the cost to repair the damage caused by the flood.

The Landlord is claiming:

1. Restoration cost	\$5,027.63
2. Plumber costs	\$ 459.90
3. Legal costs	\$ 414.40
4. Renovations to #404	\$ 500.00
5. Settlement with #304	\$ 400.00
6. Settlement with #405	\$ 225.00
7. Settlement for hallway repairs	\$2,429.20
8. Filing fee	<u>\$ 100.00</u>
Total	<u>\$9,556.13</u>

The Landlord continued to say that this unit was the only unit to flood and he believes the children of the Tenants put toys in the toilet which clogged the drain. The Landlord said the plumber did not find the source of the clog because the Tenant plunged the toilet and cleared it before the plumber got to the unit. The Landlord said the plumber did find small toys in the bathtub drain. The Landlord said the children putting toys in the toilet this is the only reasonable explanation for the drain to be clogged.

The Tenants' agent said the Tenants did not clog the toilet and their children did not put any toys down the toilet. The Tenants' agent continued to say that there is no evidence in the Landlords application and evidence package that proves the Tenants clogged the toilet. The Tenants' agent said the toilets in the building are all connected to one stack or drain and so if there is a clog in the main stack it will back up to the closest toilet. The Tenants agent said in this situation it is his option that the Tenants toilet was the closest toilet to the blocked that happened in the main stack. Further the Tenants' agent said the Tenants used their toilet before the back up without problem. The Tenants' agent submitted a letter from a plumber which says in the plumber's opinion a toy clogging a toilet or a drain is not likely.

The Tenants' agent continued to say he is the Tenants' insurance adjuster and the Tenants' insurance company offered the Landlord \$2,000.00 as an estimated amount of the deductible for the Landlord to make an insurance claim. This was refused by the Landlord when the Landlord was told by the Landlord's insurance company he did not have sewer back up insurance in his policy. The Tenants' agent said the Landlord did not have the correct insurance because he did not want to pay for sewer back up protection.

The Landlord agreed he did not have sewer back up insurance on the rental unit. The Landlord said he is applying for compensation through the Residential Tenancy Branch for his full costs.

The Tenants' agent said in closing that the Tenants did not cause the sewer back up and the Tenants are not responsible for the damage to the rental units or the building.

The Tenants' agent said the Landlord has not proven what or who clogged the sewer and the Landlord has not provided any evidence to support his claims.

The Landlord said in closing that he has seen the children playing in the bathroom and that the possibility of the children dropping a toy into the toilet is the only reasonable explanation for the clogged drain pipe. The Landlord said there has been no problem with this units plumbing before and he hopes to recover his costs for the repairs and restoration.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has proven a loss existed and he has verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord has experienced a loss because of the sewer back up and damage to rental units 404, 304, 405 and the hallway. The Landlord has provided letters from the Building Manager that she saw the flood and called the plumber and the Landlord provided a letter from the plumber that said he did not find the cause of the clogged pipe because the Tenant had cleared the clog before he arrived. As a result the actual reason for the clogged pipe is not clear. The Landlord says a toys dropped in the toilet by the Tenants children blocked the drain and the Tenants' agent says the clog could have come from any unit in the high rise building above the Tenants unit. What clogged pipe is not clear and has not been proven. Consequently the Landlord has not proven the Tenants were the sole cause of the Landlord's loss or damage. Further an applicant must show how they mitigated or tried to minimize their loss. In this case the Landlord did not mitigate or minimize his loss as he did not carry sewer back up insurance on the rental unit. As a result I find the Landlord did not mitigate or try to minimize his loss. Consequently as the Landlord has not proven the cause of the clogged pipe and the Landlord did not carry insurance to mitigate sewer back up damage; I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

As the Landlord was not successful in this matter I dismiss his application to recover the filing fee of \$100.00 from the Tenant.

Conclusion

I dismissed the Landlord's application without leave to reapply.

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: July 26, 2016

Residential Tenancy Branch