



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties (2 landlords and the tenant with his assistant) attended this hearing. Both parties confirmed receipt of the other party's materials for this hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, damage or compensation by the tenant?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on March 1, 2013 as a one year fixed term tenancy. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The rental amount of \$1650.00 is payable on the first of each month. The landlord continues to hold an \$825.00 security deposit paid by the tenant on March 1, 2013. The tenant vacated the rental unit prior to this hearing however his family (wife and children) still reside in the rental unit.

The landlord sought to recover \$15, 404.13 from the tenant as a result of a leak and flooding within the rental unit and other surrounding rental units (in the following amounts),

| Item | Amount |
|---|-------------------|
| Settlement Agreement between landlord and owner of damaged unit (surrounding rental unit) | \$12000.00 |
| Legal costs of Settlement Agreement | 546.29 |
| Painting of the Another damaged unit and telephone room on residential premises | 2562.00 |
| Restoration of the Rental Unit (water extraction) | 295.84 |
| Less Security Deposit | -825.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order Sought by Landlord | \$14679.13 |

The landlord presented estimates to document the required work to the damaged unit below this rental unit with amounts ranging from \$10747.77 to \$14000.00 and additional costs from \$4027.83 to \$4700.85. He testified that he attempted to discuss the ultimate settlement of \$12000.00 with the tenant but that the tenant refused to acknowledge any responsibility and that the tenant told the landlord he should have had insurance to cover the costs.

The tenant testified that he and the landlord had an arrangement allowing the tenant to pay a reduced amount of rent if he fixed items within the residence. He testified that he hooked up hoses when new washer and dryer were delivered and addressed both a leaking kitchen tap and a shaking toilet.

On July 17, 2015, the tenant testified that he was attempting to address a leaky faucet. He testified that he believed a valve had seized in his bathtub faucet and he attempted to tighten the faucet. He testified that he used a screwdriver to tighten the faucet and, in his attempt to do so, the faucet broke off. The broken faucet resulted instantly in a substantial leak. The tenant testified that he contacted the landlord to ask where the main water shut off was and the landlord did not know. The tenant testified that he was able to find the caretaker within approximately ten minutes. The caretaker turned off the water. Within the time from the faucet breaking, the tub had overflowed and was leaking within the rental unit.

The landlord testified that this building is managed by a strata corporation. He testified that the bylaws of the strata corporation include a clause that residents may not conduct repairs, particularly with respect to items like plumbing and electrical. He denied that he and the tenant had an agreement for the tenant to make repairs. He testified that he is

aware that the tenant has made repairs in the past and that he has cautioned the tenant not to do so without prior permission.

The landlord testified that, as a result of this 20 minute faucet leak, three other units and a telephone room at the residential premises were damaged. He provided a copy of the legal settlement agreement to verify that he paid \$12000.00 to the owner of another unit for repairs and \$546.29 in legal costs to assist in the preparation of the settlement. The landlord also testified that neither he nor the tenant had insurance for the rental unit. He also provided evidence that the telephone room and another unit required repair and repainting. He submitted an invoice given to him by the strata in the amount of \$2562.00.

The landlord testified that he discovered after the fact that he was on the phone with the tenant at the time that the tenant was attempting to fix the faucet. The landlord testified that the tenant did not advise him that there was an issue with the faucet or that he was attempting to fix the faucet. The landlord provided undisputed testimony that the tenant did not ask his permission to attempt to fix the faucet. The landlord testified that, even when the tenant asked him where the main water shut off was, he did not advise him what was happening in the rental unit.

The landlord submitted a letter from the caretaker. The letter stated that the caretaker received an emergency call from the tenant's wife regarding a leak. The caretaker's letter stated that, when he arrived, the tenant indicated that he had tried to repair a leaking faucet and broke it. Further, the caretaker's letter stated that, if he had not been called, the leak and subsequent flood would have been much worse.

The landlord submitted strata meeting minutes after the leak as well as a copy of the strata bylaws relating to repairs. The tenant denied receiving a copy of the bylaws at the outset of his tenancy. The landlord provided sworn testimony that the tenant did receive a copy of the bylaws. At a later point in the hearing, the tenant waived in his position on whether he had received the strata bylaws from the landlord.

The landlord also submitted correspondence with the tenant including emails and text messages that discussed a variety of tenancy issues and included warnings/requests from the landlord that the tenant not undertake repairs himself.

The tenant was assisted by a lawyer. His lawyer submitted that the issuance of any monetary order would require a finding that the tenant was negligent and that the tenant was not negligent: that he was authorized to act in making repairs and that this was an

emergency situation that could have been worse if the tenant hadn't taken the steps that he took.

The tenant's lawyer also submitted that the landlord was also negligent by not having insurance and that the landlord was imprudent to settle the case with the owner of the other unit. He submitted, as well, that the tenant was not consulted regarding the settlement. The tenant's lawyer also submitted that the landlord should have requested that the strata use their insurance to support the necessary repairs.

Analysis

Residential Tenancy Policy Guideline No. 1 clarifies the responsibilities and obligations of the landlord and tenant to the residential property in accordance with section 32 and 33 of the Act.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit ..., and property ... The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. ...

In the case of emergency repairs, pursuant to section 33 of the Act, these repairs are so defined when they are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property, and damaged or blocked water or sewer pipes or plumbing fixtures. Section 33(3) of the Act states that a tenant may only have emergency repairs made only when; the repairs are needed; the tenant has made at least 2 attempts to telephone the person to contact for emergency repairs; and following those attempts, the tenant has given the landlord reasonable time to make the repairs. In this case, there is no doubt that the repairs were needed. However, the tenant's testimony as well as the landlord's testimony provides evidence that the tenant did not make 2 attempts to contact the appropriate emergency person before making his own repairs. The tenant did not inform the landlord although he had the landlord on the phone. The tenant did not give the landlord an opportunity to make the repairs nor did the landlord contact a professional to address the repairs. The tenant identified an issue and took initiative to address the leak himself. I find that the tenant did not meet his obligations to the property in accordance with the Act. Further, I find that the tenant's actions were tantamount to neglect that resulted in the extent of the final damage.

I accept the evidence of the landlord that the settlement with the neighbouring unit was necessary. The evidence shows that the landlord incurred a cost of \$12000.00 as a result of this settlement as well as an additional cost of \$546.29 in legal fees. The landlord is entitled to recover these costs.

I accept the evidence of the landlord that repainting cost \$2562.00 however I note that, under the Useful Life provisions of the Act laid out at Policy Guideline No. 40, a residential premise requires interior painting approximately every 4 years. The landlord's testimony was that the residential property was over 10 years old. Therefore, I find that the landlord was due to paint the interior of the residence regardless of the leak. I find that the landlord is entitled to a portion of the cost for the other neighbouring unit and telephone room to account for the tenant's neglect in his actions within the residential premises. The landlord is entitled to \$1250.00 towards the cost of painting and repairs.

I find that, as a direct result of the actions (or inaction) of the tenant, the landlord incurred a cost of \$295.84 in restoration fees to take initial steps against the damage as a result of the leak. The landlord is entitled to recover \$295.84 from the tenant.

Pursuant to section 72(2), the landlord is entitled to retain the tenant's security deposit towards this monetary award. As the landlord was successful in his application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

I issue a monetary order to the landlord as follows,

| Item | Amount |
|---|-------------------|
| Settlement Agreement between landlord and owner of damaged unit (surrounding rental unit) | \$12000.00 |
| Legal costs of Settlement Agreement | 546.29 |
| Painting of the Rental Unit (partial cost) | 1250.00 |
| Restoration of the Rental Unit (water extraction) | 295.84 |
| Less Security Deposit | -825.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order Sought by Landlord | \$13367.13 |

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 8, 2016

Residential Tenancy Branch

