



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act, the cost of emergency repairs and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$531.39 for the cost of emergency repairs?

Background and Evidence

This tenancy commenced in November 2010. The tenants own the home and rent a site.

Page two of the tenancy agreement supplied as evidence includes term 4(a); that the tenants are responsible for home levelling and connection; any re-levelling of the home or reconnection, for any reason, is the responsibility of the tenant. The term also requires the tenant to accept responsibility for the mobile homes' pipes, lines and connection to the sewer that attaches to the main water connection at ground level.

Term 4(b) of the agreement provides, in part:

"It is clearly understood that the Landlord has no responsibility towards the repair and/or maintenance of the Tenant's Mobile Home. It is also understood that the Landlord is only responsible for the....Water/Sewer Hookup up to and including the water value and sewer intake located at approx.. the middle rear of the pad at ground level."

(Reproduced as written)

There was no dispute that on June 26, 2016 a sewage back-up occurred. The tenants informed the landlord and had already arranged to have a plumber attend. The plumber invoice supplied

as evidence indicated that there was a blockage in the main park sewer line, located 20 to 35 feet down the line. The repair was successful.

The tenant said that sewage backed up into the toilet and bathtub. A plumbing “check-up” performed by the plumber and supplied as evidence showed all interior areas of the home passed.

The landlord paid the plumbing bill.

The tenant supplied a copy of a July 26, 2016 invoice in the sum of \$531.29 for the restoration of the insulation and under-storage of the manufactured home as a result of a sewage seepage that was caused by the plugged line. The tenants have claimed reimbursement of this cost. The tenants said they chose not to make an insurance claim as the deductible is \$500.00. The plumbers’ invoice issued on June 26, 2016 does not make any reference to the design of the tenants’ plumbing.

The tenants said that when the sewage blocked, that resulted in a back-up into a protective bladder that is installed under the home. The tenants said that nothing under the home broke and that the lines were inspected by the City when the home was placed on the site. The tenants said the fitting on those lines are designed to leak and as a result of the weight and pressure, sewage entered the bladder which pressed up against the insulation, causing damage under the home. When asked how damage could have occurred if there is a bladder to catch sewage, the tenants responded that if there had not been a sewage back-up the damage would not have occurred.

The landlord said that sewage and plumbing lines are not designed to leak, that to allow design that would permit leaks would result in environmental damage. The landlord said they have not been provided with a copy of a plumbing permit that should have been issued in 2010 when the home was installed. The home was inspected at the time of installation but the landlord does not believe a plumbing permit was issued. The landlord also believes that the home is not level, as the tenants told her effluent had travelled to the front of the unit, but all connections are in the middle of the unit on the south side. The landlord referred the tenants to a contractor as they had said some sort of fitting had come loose under the home.

The tenants responded that on August 11, 2016 they had the home inspected and it is level. The tenants have a plumbing permit and could provide a copy to the landlord.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss

From the evidence before me I find that the tenants are responsible for the sewer hookup connection below the home. This is set out in the terms of the tenancy agreement signed by the parties.

There is no dispute that the sewage back-up resulted from a blockage below the ground in an area of the lines that are under the control and responsibility of the landlord. I find that the tenants are correct; that there would not have been a problem with sewage if the landlords' main line had not blocked.

I have considered the tenants' submission that their sewage lines above-ground were designed to leak in the case of pressure and weight that might be caused by a sewage back-up, against the landlords' submission that the tenants had told her a fitting had come loose. The tenants provided no evidence in support of their claim that the plumbing is designed to leak and no other documentation such as a plumbers' assessment of the connections below the home.

Therefore, I find on the balance of probabilities that there is no evidence before me that would explain the failure of the tenants' plumbing under the home causing the bladder to fill. The tenants have signed a tenancy agreement in which they accept responsibility for the sewage hook-up, up to the in-ground sewer intake.

There was an absence of evidence that the tenants' plumbing was performing as they said it is meant to, by leaking. That submission was disputed by the landlord and it could have been reasonably expected by the tenants, as a response to the claim, that evidence supporting installation of pipes that would leak on purpose might be required. The tenants did not provide any evidence in support of their submission that the plumbing was meant to leak.

I can find no negligence on the part of the landlord; the landlord responded appropriately when the sewer line below ground became blocked and paid the cost of that repair.

Therefore, in the absence of a breach of the Act by the landlord and any evidence that there was damage caused by a breach of the Act, I find that the application is dismissed.

Conclusion

The application is dismissed.

This decision is final and binding and 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: September 23, 2016

Residential Tenancy Branch