



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREIGHTON & ASSOCIATES REALTY
and [tenant name suppressed]

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 damage and compensation for loss pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary award for damage and compensation for loss pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The rental unit is condominium unit on the 9th floor in a large complex. The tenancy began on October 31, 2015 with a monthly rent of \$1675.00 payable on the 1st day of each month. The tenant paid a security deposit of \$835.00 at the start of the tenancy which the landlord continues to hold.

On May 4, 2016 there was a flood which originated from the bathtub of the rental unit resulting in water leaking from the 9th floor down to the parking garage. On this day there was a scheduled shut down of the water supply and notices were posted throughout the complex. Tenant O.M. testified that she intended to take a shower on

the morning of May 4, 2016 but recalled the water shutdown notice after attempting to turn on the bathtub faucet. She testified that she closed the tap but did not notice that it was not fully closed as the water was shutoff. The tenants left the rental unit and did not return until later in the day. The bathtub drain was open but when the water supply was turned back on the bathtub flooded as it was filling quicker than it was able to drain.

The landlord is claiming \$20,000.00 which is the cost of the insurance deductible charged back to the landlord by the strata corporation. The landlord provided receipts of the invoice and payment to the strata corporation for this amount.

The tenants argue that although the tap was inadvertently left on, they should not be held liable as the bathtub would not have flooded if it was draining properly. The tenants submit that they were not aware that the bathtub was not draining properly as they only have showers versus baths. The tenants argue that the invoice from the plumbing company attending to the flood which reports the tub was filling faster than it was draining due to a hair clog past the p-trap. The plumber tested the drains after removing the clog and the tub was draining well even with the taps open.

The landlord submits that the tenants did not report any drain issues with the bathtub and they should have noticed the slow drain even if showering as some water would still pool in the tub.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The facts of this case are essentially not in dispute. The flood occurred after the tenants failed to completely shut off the bathtub faucet. However, I find that on a balance of probabilities the tenants inadvertently leaving the faucet open was not the sole reason for the bathtub overflowing. I find that the bathtub would not have

overflowed if the drains were not slow as a result of a clog. This is supported by the comments in the invoice from the plumber who attended to the incident. The landlord has not provided any evidence to establish the clog in the drain was caused by the tenants or that they were aware of the slow drain and failed to report it. I accept the tenants' testimony that they were not aware of a problem with the drain.

I find the landlord has failed to establish that the damage was caused due to the actions or neglect of the tenants. The landlord's application is dismissed without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed 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: October 03, 2016

Residential Tenancy Branch