



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide testimony and present evidence.

The landlord testified that on October 4, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. Subsequently on March 2, 2017, a 41 page evidence package was sent to the tenant by registered mail. The landlord provided registered mail tracking number(s) in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the written evidence for this hearing, and the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 88, 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to a monetary award for compensation for loss?

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

Background and Evidence

The tenancy began on May 1, 2016 with a monthly subsidized rent of \$475.00 payable on the 1st day of each month.

The landlord is claiming an amount of \$168.00 as loss suffered as a result of the tenant refusing entry to a plumbing contractor on two separate occasions. The landlord testified the plumber was called as a result of the tenants call to the emergency afterhours maintenance line on August 6, 2016. The call was with respect to an overflowing toilet. As a result of the rental unit being in a remote community and the emergency call being placed on a weekend, the landlord was unable to contact any local plumbing contractor until August 8, 2016. In the meantime, the landlord was able to have a restoration company attend and clean up the overflow of sewage. The tenant was advised to not use this toilet until the plumbing contractor could attend.

The landlord testified that she had a telephone conversation with the tenant and advised her that a plumbing contractor would be attending on August 8, 2016 to deal with the clogged toilet. The tenant agreed; however, the contractor was refused entry when attending. The tenant requested the contractor to come back the following day as she first wanted to clean up the toilet etc. The contractor agreed and returned the following day. Neither the contractor nor the landlord was able to contact the tenant on the following day to gain access to the rental unit.

The landlord issued a 24 hour Notice to enter on August 12, 2016 and the plumbing contractor was able to gain entry to fix the clogged toilet on August 15, 2016.

The landlord submitted an invoice from the plumbing contractor for the service call charges on the two previous occasions in the amount of \$168.00.

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.

As per the landlord's own undisputed evidence, the landlord arranged for a plumbing contractor to attend to the rental unit in response to an emergency of a clogged and overflowing toilet. As per section 29 of the *Act*, the landlord may enter a rental unit if an emergency exists and entry is necessary to protect property. I find the landlord did not take steps to mitigate the loss being claimed as the landlord could have taken steps to attend at the rental unit and allow entry to the plumbing contractor. Rather, the landlord left it to the tenant to arrange an alternative time with

the contractor for which the landlord subsequently got billed. Further, on the second attempt, the landlord again left it to the tenant to be available to allow entry. The landlord again could have attended and allowed the plumbing contractor to attend in response to the emergency. Further, it is also questionable if this situation was a true emergency warranting entry to protect property without 24 hour written notice to the tenant as required under section 29. The landlord's own evidence was that the sewage overflow had been cleaned up by the restoration company. The tenant had been advised to not utilize the toilet any further until a contractor could attend to clear the clog. As the toilet was no longer being used or overflowing, it could be argued that entry by the plumbing contractor was no longer an emergency which required immediate entry to protect property and the landlord should have provided 24 hour written notice to attend. The landlord eventually did provide 24 hour written notice and was permitted entry.

The landlord's application is dismissed.

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

Conclusion

The landlord's application is dismissed.

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: April 04, 2017

Residential Tenancy Branch