Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

In regard to the delay in the writing of this decision I note that Section 77 (1) (d) of the *Act* stipulates that a decision of the director must be given promptly and in any event within 30 days after the proceedings conclude. I also note that Section 77(2) states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d). I apologize for the delay in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy began on June 1, 2016 as a fixed term tenancy for a monthly rent of $1,190.00 due on the 1st of each month with a security deposit of $595.00 paid. I note the rental unit is a privately owned strata property with onsite property management.

There is no dispute that on December 18, 2016 a flood was reported to the property management company by the occupant of a unit below the rental unit or that the flood was caused by a plugged toilet and a faulty filler valve in the rental unit. The landlord does not blame the tenant for causing the flood.

The tenant submits that he had been at work at the time the flood had been reported and that he was called by the onsite property manager who advised him that if he did not return right away to open the door to the rental unit they would have to break it down. The tenant stated that he left work in order to open the door. While there he turned off the water supply to the toilet and placed towels but then had to return to work.

The tenant submitted that he did not contact the plumber or restoration company and that it was likely the property manager that did. The tenant submitted he did not have any emergency contact number for the landlord to report any such event.

The tenant further submitted that he sent a text message to the landlord's sister the following day after he finished work to advise her of the flood. The landlord submitted that her sister was the tenant's primary contact for all dealings of the tenancy and that the tenant should have contacted her immediately to report the flood.

The landlord seeks compensation in the amount of $4,204.60 for the cost of the plumber ($369.66) and the restoration work ($3,834.94) on this rental unit because the tenant failed to call the landlord and seek approval for any work required before starting any of the emergency work.

In support of her claim the landlord submitted in to evidence some email correspondence between herself and the property management company. A partial email, dated January 5, 2017, indicates: "They are not the same company as last time, that company was CR, but they are a company this strata has used in the past."

The landlord also submitted copies of invoices from the plumber and the restoration company made out to the strata corporation and/or property management company for the work completed. The landlord also confirmed that she did not have insurance for the rental unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(4) states a landlord may take over completion of an emergency repair at any time. Section 33(5) stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) allows that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

As noted above, in order for the landlord to be successful in her claim she must provide sufficient evidence that the tenant has violated a provision of the *Act*, regulation or tenancy agreement. While I agree with the landlord's position that a tenant must first attempt to contact the landlord before they authourize emergency repairs, pursuant to Section 33, I find there is no evidence that the tenant contacted either the plumber or the restoration company to authourize any repairs.

I do accept that the tenant did have a contact number for the landlord's sister and that he could have contacted her earlier than he did to advise her of the flood. However, again there is no evidence before me that it was the tenant who contacted the plumber or restoration company.

While the landlord provided no evidence of the obligations of the property management company to owners of individual strata units in the residential property in such events, I find that, on a balance of probabilities, the evidence submitted by the landlord (the partial email dated January 5, 2017 and the invoices naming the strata and/or property management company confirm it was the property managers who contacted the plumber and restoration company to authourize the work. As such, I find the tenant

cannot be held responsible for the actions taken by the property manager in authourizing work for the emergency repairs.

Therefore, I find the landlord has failed to establish that the tenant has violated Section 33 of the *Act*; any section of the regulation or the tenancy agreement.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety and 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: August 25, 2017

Residential Tenancy Branch