



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 15, 2016. Rent in the amount of \$1,550.00 was payable on the first of each month. A security deposit of \$775.00, a pet damage deposit of \$775.00, and a key fob deposit of \$200.00 were paid by the tenants (the "Deposits"). The tenancy ended on June 30, 2017.

The landlords claim follows:

a.	Wrongful compensation to tenants return of money credited it rent	\$1,550.00
b.	Onside Restoration	\$1,183.14
c.	Assess and repair damage	\$3,202.50
d.	Replace shower tap	\$ 226.80
e.	Filing fee	\$ 100.00
	Total claimed	\$6,159.64

The landlords testified that there was a crack in the shower tile and they were told it was the cause of water found leaking in the bedroom. The landlords stated that they had to call the restoration company and they place dehumidifiers, and fans to control the moisture.

The landlords testified that the parties mutually agreed to end the tenancy for this problem and the landlord agreed to compensate the tenants the amount of \$2,500.00 for the inconvenience. The landlords stated that the tenants had not paid rent for June 2017, and it was agreed that the amount from the compensation of \$1,550.00 would be credited towards unpaid rent.

The landlords testified that when they went to have the work completed, it was determined that no water was leaking from the crack tile in the shower.

The landlords testified that it was determined that the damage was from the toilet being blocked by a foreign object, causing the toilet to overflow water. The landlords stated that because it was found to be damage caused by the action or neglect of the tenants that they should be entitled to recover the compensation given to the tenants, restoration cost and repairs, as claimed in items a, b, and c above.

The landlords testified that the strata replace the faucet in the bathroom and sent them an invoice. The landlords stated it was not broken when the tenancy commenced and they do not know why the faucet was replaced.

G-F witness for landlord testified that they were hired to by the landlord to make repairs to the rental unit, which the landlord though the damage was caused by water leaking through a cracked bathroom tile. G-F stated that during their investigation they had determined that there was no leak in the tiles or the pipes. Filed in evidence are photographs of the opened drywall, showing no water damage.

G-F witness for landlord testified that after further investigation they had determined that the damage was caused by a blockage in the toilet pee trap and when flushed caused the toilet to overflow. G-F stated that the blockage appeared to be from a dog toy or some other type of foreign object that was rotting. G-F stated the tenants had to have been aware that the toilet would overflow.

The tenant testified that they do not know why the toilet was clogged. The tenant stated that they had no history of the toilet overflowing during their tenancy. The tenant stated that they had other issues during their tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord(s) reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I accept the evidence of G-F that after they had inspected the premises they found that the water damage was not caused by a crack in the shower tile as originally told by the landlord. Rather the toilet was clogged by a foreign object that would overflow when it was flushed causing the water to run in to bedroom causing the damage.

While the tenant denies that they had any issues with the toilet overflowing, I find that is not support by the evidence. Further, the move-out inspection refers to a toilet being plugged and draining slowly. I find the damage was caused by the tenants neglect and this caused losses to the landlord. Therefore, I find landlord is entitled to recover the cost as outlined in item a, b & c for the total amount of **\$5,933.64**

Further, the landlords are claiming the cost of a faucet. I find the landlords have failed to prove the tenants damaged the faucet. Therefore, I dismiss this portion of the landlords claim.

I find that the landlords have established a total monetary claim of **\$6,033.64** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the Deposits of **\$1,700.00** in partial satisfaction of the claim and I grant the landlord) an order under section 67 for the balance due of **\$4,333.64**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlords are granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: March 26, 2018

Residential Tenancy Branch