



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

The Landlord and the Landlord’s spouse were present for the teleconference hearing, as was one of the Tenants. The Landlord testified that the Notice of Dispute Resolution Proceeding and a copy of their evidence was served to each Tenant by registered mail. The Tenant present at the hearing confirmed receipt of the Notice of Dispute Resolution Proceeding and the Landlord’s evidence by registered mail. The Tenants did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be allowed to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on July 1, 2017 and current monthly rent is \$2,054.00. A security deposit of \$987.50 was paid at the outset of the tenancy. One of the tenants still resides in the rental unit, while the other two named on this dispute have since moved out. The parties confirmed that the Landlord is still in possession of the full security deposit amount.

The Landlord provided testimony that on December 15, 2017, around 9:30 am, she received a text message from one of the Tenants advising that the upstairs toilet flooded overnight and leaked through the ceiling of the main floor of the home. The Landlord stated that she was in a meeting, so did not receive the text until approximately one hour later when she called a plumber and attended the home right away.

The Landlord was concerned about contamination in the water leaking through the ceiling, so also had a restoration company attend the home to complete testing which was conducted over the weekend. The Landlord has claimed \$120.75 for the cost of the plumber and \$1,306.03 for the cost of the restoration company.

The Landlord has also claimed \$2,047.50 for the ceiling refinishing and \$1,023.75 for the repair of the bathroom. Invoices for the plumber, the restoration company and the ceiling repair were submitted into evidence. A quote for the repair of the bathroom floor was also submitted into evidence. The Landlord testified that the bathroom floor repair had not yet been completed as she was waiting to find out the results of this hearing.

The Landlord stated her concern that the Tenants did not notify her the night before when they first realized there was an issue with the toilet. She also stated that while they have home insurance, the deductible was \$5,000.00, which is more than the cost of the repairs.

The Landlord noted that there were some previous plumbing issues in the home, but they were not connected to the upstairs toilet where the overflow happened. She testified that shortly after the Tenants moved in, there were some issues with drainage in the bathroom and the water was leaking into the laundry room. They figured out that a branch was interfering with a pipe outside and the issue was corrected. The Landlord

stated that once the cause was determined and corrected, there were no further drainage or plumbing concerns in the home.

The Landlord submitted that the Tenants had her contact phone number and email address, as well as the contact number of a family member in case she was not available.

The invoice from the plumber, dated December 15, 2017, states in part the following:

'Cut hole in the drywall to help the water drain out of the ceiling. Fill valve on the toilet upstairs was out of adjustment constantly running down the overflow tube filling the bowl. That couple with the blockage caused the toilet to overflow.'

(Reproduced as written)

The Tenant provided testimony that on December 14, 2018, they noticed that the upstairs toilet was clogged. However, she stated that the water was not rising, nor overflowing out of the toilet. They attempted to fix the toilet with a plunger, which did not work. As it was late at night and there were no concerns with water overflowing, they did not call the Landlord.

In the morning, as soon as the Tenant woke up she said she noticed that the toilet had overflowed and there was water in the bathroom upstairs. She then noticed that it had leaked through the ceiling of the main floor as well. She said that she woke up one of the other Tenants who sent a text message to the Landlord.

The Tenant present at the hearing had to go to work after waking up the other Tenant, but stated that first they soaked up some of the water on the floor of the bathroom, put a bucket on the floor of the main level to catch some of the water, and moved the furniture out of the way.

The Tenant provided further testimony as to the plumbing issues in the home, which she believed may have caused the toilet to overflow as well. She named two times where there was flooding into the laundry room. She was aware that the water was cleaned up both times, but not that a plumber had attended, or that the branch was removed from the pipe outside.

Analysis

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

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

Based on the evidence and testimony of both parties, and on a balance of probabilities, I do not find sufficient evidence before me to establish that the Tenants breached the *Act* and should therefore be responsible for any resulting loss that occurred.

Although the toilet was clogged on December 14, 2017 when the Tenants went to sleep, I do not find that this meets the definition of an emergency repair, as defined by Section 33(1) of the *Act*. Due to the lack of sufficient evidence to prove otherwise, I accept the testimony of the Tenants that the toilet was not leaking or overflowing when they went to sleep, and therefore I find it reasonable that they would not have contacted the Landlord regarding the toilet.

As soon as the Tenants realized that the situation was urgent, they took steps to contact the Landlord. Although I do find that the Tenants should have contacted the Landlord through various means to reach her right away, rather than just through text message, the Landlord attended the home that same morning with a plumber. I also accept the evidence of the Tenant that they took steps to prevent further loss from occurring, by moving the furniture, using a bucket, and cleaning up the water on the floor.

While I do find that the Landlord experienced a loss resulting from an issue that occurred with the toilet, I do not find that this loss meets the four-part test outlined above, as I find I cannot determine that the Tenants breached the *Act*.

I also find, based on the statement on the invoice from the plumber, that there may have been an existing issue with the toilet fill valve, that may have caused a clogged toilet to fill with water overnight and eventually overflow.

As I do not find that the Tenants were in breach of the *Act*, I decline to award any monetary compensation to the Landlord.

As the Landlord was not successful in this Application for Dispute Resolution, I also decline to award the recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety.

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 09, 2018

Residential Tenancy Branch