



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNRT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for the cost of emergency repairs and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

None of the evidentiary material provided by the landlord was served to the tenants, and none was filed with the Residential Tenancy Branch within the time required by the Rules of Procedure, and therefore, I decline to consider any of the landlord's evidence. All evidence of the tenants has been provided within the time required and has been provided to the landlord and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for the cost of emergency repairs, and more particularly 2 plumbing bills?

Background and Evidence

The first tenant (JM) testified that this fixed term tenancy began on March 1, 2018 and expired on February 28, 2019 thereafter reverting to a month-to-month tenancy which ultimately ended at the end of March, 2019. Rent in the amount of \$1,700.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$850.00 which has been returned in full to the tenants. The rental unit is a basement suite and the landlord resides in the upper level of the home.

The tenant further testified that during the tenancy the landlord delivered 2 plumbing bills to the tenants requesting that the tenants pay the bills, and they did, but that was before they learned their rights. The tenancy agreement, a copy of which has not been provided for this hearing states that is the tenant's responsibility if any damages are incurred, specifically by tampons or condoms, but there is no proof or evidence that the tenants did any of that, and the tenant testified that they absolutely did not. Copies of the bills have been provided as evidence for this hearing. The first is dated October 9, 2018 in the amount of \$102.90 which states: "The float switch had debris on it and toilet paper. I removed all the debris on it and test sub pump two times and it turn off each time." The second is dated November 1, 2018 in the amount of \$208.95 and states: "Removed sub pump to check if it was jammed in the propellers of sub pump. There was something in the 2 in. discharge line. I used hand auger to clear it. Put sub pump back together and tested it 3 time and it pumped away." The tenants claim the total of \$311.85.

The second tenant (KL) testified that the tenants signed a tenancy agreement which also specified that the tenants wouldn't flush anything other than human waste. The tenants abided and were very respectful. The landlord handed one of the bills to the tenant and the other was sent to the tenant via messaging, and the tenants discussed it but the landlord insisted that the tenants were responsible for over-using the systems which caused stress on the pumps. The landlord said the tenants had to pay the bills, so they did.

The tenants had guests from time-to-time, and in mid-September the tenants had a guest stayed while the tenants were in Thailand. Everyone was told about not flushing stuff down the toilet. There was a very detailed note about it in the rental unit and another by the toilet paper in the bathroom.

The landlord testified that she has been a landlord for 13 years. Tenants are responsible for any deliberate or accidental damage caused by themselves or their guests.

While the tenants were in Thailand, the landlord heard the pump running and testified that if it continues, the motor can burn out or cause a sewage backup in the tenant's suite. The landlord turned off the pump and called a plumber, who couldn't arrive until the following day. He opened the pump and looked in and said the float switch couldn't rise because it was covered with debris, of no specific description, and toilet paper. He cleaned it and put it back together and the float switch raised. The landlord determined

that it wasn't a mechanical issue, so the bill was given to the tenants to pay, and they did.

About 3 weeks later, the landlord heard a very loud banging noise and ran downstairs. The pipe that goes to the pump was shaking and the pump was running. The landlord turned it off and called back the same plumber. The plumber was there on November 1, 2018 and he took it apart, checked to see if it was jammed, but it was not. He said that there was something, such as toilet paper in the discharge line. The plumber got an auger and cleared the line and put it back together, and it pumped away. Something was in the system blocking the pipe. The landlord guesses that the overload finally made its way into the pipe and stopped everything. Nothing was broken and the motor didn't burn out. The landlord did not put anything into the system herself, and the rental unit runs on a different system than the landlord's upper unit.

The next repair was made on November 12, 2018 when the landlord heard the pump. She shut it off and texted the girls asking that they not use water, but the landlord didn't call the same plumber. The landlord called another company who opened it up and found that the wiring had not been replaced properly and the float switch wouldn't rise. He fixed it, but because it was an error from the previous plumber, the landlord paid the \$115.00 bill and didn't ask the tenants to contribute.

In February, 2019 the landlord heard the pump running again and turned off the power and texted the tenants. The landlord found another plumber who was available, who took it apart and said the first plumber didn't set the arm properly and he adjusted it. The landlord paid the \$231.00 bill.

The landlord has been careful about renters, and there is no dishwasher. The landlord has ensured that no more than 2 people rent the unit, so she's been careful. They were not repairs caused by normal wear and tear.

The landlord also attended the rental unit during the tenancy and found no note about flushing in the bathroom, but there was a note at the end of the tenancy. The tenant also had a client based business with clients attending at the rental unit.

The life of a pump is up to 25 years if treated properly, and the landlord has it maintained annually. The house was built in 2011 and the suite in 2012.

Analysis

The landlord relies on a Policy Guideline or Fact Sheet that she obtained indicating that accidental or deliberate damage is a tenant's responsibility. In this case, the landlord "guesses" that the tenants caused the pump to malfunction, but also had to call another plumber twice after these 2 bills were paid by the tenants. A "guess" is not sufficient. Neither of the bills that the tenants reimbursed the landlord for give any indication that the tenants caused any damage.

I find that the tenants paid bills that the landlord is responsible for, and I grant a monetary order in favour of the tenants in the amount of \$311.85.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$411.85.

This order is final and binding and may be enforced.

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: May 31, 2019

Residential Tenancy Branch