



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$4,827.92 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement – claiming against the security deposit, and to recover the cost of her \$100.00 Application filing fee.

The Tenant, the Landlord and her husband P.G., and an agent for the Landlord, A.S. (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party. At the outset of the hearing, I asked the Agent for the property management company's

legal name; however, I was told that it is not an incorporated company and, therefore, not a legal entity. I have amended the Application to identify the Applicant as the owner of the rental unit who attended the hearing and whose name is on the tenancy agreement as the Landlord. I make this and the next amendment pursuant to section 64(3)(c) and Rule 4.2.

The Landlord initially applied for compensation for \$7,940.39; however, in the hearing she revised the amount to \$4,927.92, still claiming against the security deposit, and including applying to recover the \$100.00 Application filing fee.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2018, running to April 30, 2019 to be followed by a month-to-month tenancy. The Parties agreed that there was a monthly rent of \$1,700.00, due on the first day of each month and that the Tenant paid the Landlord a security deposit of \$850.00 and no pet damage deposit. The Parties agreed that the tenancy ended based on a settlement agreement that was reached during another dispute resolution hearing, in which the Parties agreed to end the tenancy on May 31, 2019.

The Landlord said that the Tenant caused damage to the residential property by having allowed the bathtub to overflow on two occasions. The Landlord said she was charged \$2,661.84 and \$2,166.08 by the Strata Council for the restoration work they arranged following the respective bathtub overflows in September 2018 and March 2019.

The Landlord submitted a letter she received from the Strata Council dated October 15, 2018, which sets out the monetary charges to the Landlord, due to a water overflow from the rental unit in September 2018. The Landlord's evidence indicates that this overflow caused damage to the unit below, as well as to the rental unit. This letter enclosed invoice #IN-17139 from a restoration company billing the Strata Council \$2,661.84.

The Landlord provided a bank statement showing that she paid the Strata Council \$3,014.53 on December 3, 2018; in the hearing, the Landlord said that this amount

covers more than just the restoration work and that only \$2,661.84 is attributed to the Tenant's bathtub overflow in September 2018.

The Tenant also submitted a copy of invoice #IN-17139 and pointed out that the "source" of the problem identified in this invoice was "sink back up unit #25" at the residential property street address. Invoice #IN-17139 also provides the following description:

TO INVOICE EMERGENCY SERVICES FOR WATER DAMAGE AT THE
ABOVE LOCATION, UNITS: [rental unit number] AND 308.

The Landlord submitted a letter she received from the Strata Council dated March 21, 2019, which sets out the charges the Landlord incurred due to a second water overflow from the rental unit. This letter enclosed invoice #IN-18567 from a restoration company billing the Strata Council \$2,166.08 for work done on the residential property that was caused by a bathtub overflow from the rental unit.

The Tenant said that the tub overflowed because of a faulty tub spout. He also said that the restoration work was done in the apartment below his, therefore, he should not have to pay for it.

The Tenant submitted a copy of an email dated April 29, 2019, to the Landlord from an insurance agent. The Tenant said that the email indicates that an insurance company might cover the loss for the Landlord, so the Tenant should not have to pay for it. The email states:

Dear [Landlord]

Regarding your question, please note that when frequent water damage claims happen, insurance companies usually tend to not offer renewals or in best cases exclude water damage from policy.

Due to incidents relating to water in 2016 which was not you or your previous tenant and caused by the unit above you, which insurance covered in Sep 2016, your 2018 was paid by yourself since it was below 3 years and the most recent one in March 2019 caused by the same tenant, my guess is that insuring the suite with normal conditions will be a very difficult task.

Please note that the above mentioned comments by me are based on my experience as an insurance agent. To know about insurance company's position and reactions each insurance company should be approached separately.

Regards,

[B.R.]

[R. & F. Insurance]

[reproduced as written]

The Tenant submitted four photographs of the rental unit bathroom that he said demonstrate that the floor was not wet, so there was no bathtub overflow from his rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

I find that the Tenant's testimony was internally inconsistent. He agreed that the bathtub overflowed, but he also blamed it on a faulty spout. He did not indicate in what way the spout was faulty or how it caused the bathtub to overflow. The Tenant did not provide evidence to support his statement about the faulty spout. Further, his photographs of the dry bathroom floor could have been taken at any time; as such, I find they do not support his contention that the bathtub did not overflow.

Regarding the Tenant's email quoted above between an insurance broker and the Landlord, I find that the Tenant's interpretation of it is inconsistent with the insurance agent's statements. The agent said that "...insuring the suite with normal conditions will be a very difficult task". In the context of the email, I find this to imply that the Landlord would not be covered by insurance for water damage if she claimed for the restoration work addressed in the hearing. The insurance agent even addressed the "most recent one in March 2019 caused by the same tenant". I find the insurance agent is pointing to the damage that occurred while the Tenant was occupying the rental unit as being a significant reason for insurance companies' reluctance to offer further coverage for the rental unit. As such, I find that the Landlord will have to bear the restoration costs, herself, which were caused by a bathtub overflow flood in the rental unit.

Regarding the Tenant's evidence of invoice IN-17139 referring to unit #25, and based on all the evidence before me overall, I find for the following reasons that it more likely than not that the reference to unit 25 is an error on the invoice document. The rest of the invoice is consistent with the evidence before me that indicates a bathtub flood occurred in the rental unit, which affected the unit below, as well. Further, the Tenant acknowledged the Landlord's photographs of industrial dryers being in place in the rental unit bathroom in September 2018, although the Tenant said that it was there to dry the walls. Finally, unit number 25 is inconsistent with the numbering system of the residential property, which makes it likely a mistake on the part of the restoration company. As such, I disagree with this being a compelling issue with the invoice.

When I consider all the evidence before me overall, I find on a balance of probabilities, that the Tenant caused a bathtub to overflow twice within seven months, which damaged both the rental unit and the unit below it. Further, I find that the Landlord has incurred a monetary loss or damage in the amount of \$4,827.92, due to the actions or inactions of the Tenant in the rental unit. Accordingly, I award the Landlord a monetary order against the Tenant pursuant to section 67 of the Act. I also award the Landlord recover of her \$100.00 Application filing fee pursuant to section 72 of the Act, for a total monetary award of **\$4,927.92**.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$850.00 in partial satisfaction of the Landlord's monetary claim.

I grant the Landlord a monetary order pursuant to section 67 of the Act for the balance owing by the Tenant to the Landlord in the amount of **\$4,077.92**.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenant is successful.

The Landlord has established a monetary claim of \$4,927.92, including recovery of the \$100.00 Application filing fee. I authorize the Landlord to retain the Tenant's full security deposit of \$850.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenant to the Landlord in the amount of **\$4,077.92**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 19, 2019

Residential Tenancy Branch