



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YORK DEVELOPMENTS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for monetary compensation from the tenants and for recovery of the filing fee paid for this application.

The landlord's agents and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties each confirmed receiving the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and to recovery of their filing fee?

Background and Evidence

The evidence showed that this tenancy began on June 1, 1997 and that current monthly rent is \$1,283, without parking.

The landlord's monetary claim is \$1,895.25, comprised of \$887.25 for a leak investigation and \$1,008.00 for ceiling repairs for the rental unit below and the adjacent rental unit to the one below the tenants' rental unit.

The landlord's agent, YB, submitted at the hearing that the tenants should be held liable for the costs of the landlords for their investigation of a "flood" in the ceiling of unit 306 of the residential property. The landlord's agent said that the tenants here, in unit 406, denied the landlord's agents access to their unit on the day of the "flood", April 9, 2019, which prevented the landlord from conducting a proper investigation as to the source of water.

The landlord's agent said that they considered the situation in unit 306 to be an emergency, yet the tenants denied access to their rental unit. The landlord's agent submitted that the building manager, SM, brought the tenant in unit 306 to be a witness when he tried to enter unit 406. Despite announcing themselves, the tenants refused entry.

The landlord's agent said that had the tenants allowed access, the landlord would bear the costs; however, as the tenants denied access to their rental unit, the tenants must bear the costs of the leak or "flood" investigation.

In response to my inquiry, the landlord's agent could not say definitely that the landlord would not have incurred the costs of the investigation if the tenants allowed access.

The landlord's relevant evidence included a statement and invoice from Pacific Mechanical company who investigated the leak, showing a charge of \$810.00 for labour and \$35.00 for materials, an invoice from a company, dated October 10, 2019, making the repair to the bathroom ceiling in units 306 and 307, and an email statement from the tenant in unit 306, dated June 26, 2019, recounting the events as he recalled from April 9, 2019.

Tenants' response-

The tenants said that they have had to defend themselves against these landlord's agents, particularly YB, many times in the past. The tenant denied that on the day of the leak, they denied proper access to the landlord's agent. The tenant denied knowing who the person was with the landlord's agent the day they knocked on the door, and questioned why the landlord's agent would bring a stranger with him.

The tenants said that when they were given a proper notice of entry by the landlord, they allowed entry eventually, as the landlord's contractor did not show up for the inspection on April 15, 2019.

The tenants submitted that they feel intimidated by YB due to all the past incidents involving him over the course of their 30 year tenancy, which is why they would always hesitate in letting him in.

The tenants pointed out that none of the landlord's experts ever attributed the leak in unit 306 to their unit. The tenants pointed out that their expert said that water in that kind of building can come from anywhere in the building and that the plumbing is 25 years old.

The tenants' relevant evidence included, but is not limited to, a tenants' email to the building manager inquiring about the missed appointment to inspect their rental unit, videos, and a result of the leak investigation.

I find it important to note that on September 30, 2019, these parties were in a dispute resolution hearing on the tenants' application for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord to the tenants. The Notice alleged that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Most, if not all the documentary, photographic and video evidence submitted for this application was also submitted for the tenants' application for the September 30, 2019, hearing. The evidence was nearly identical as the landlord brought forth the same issue used in this application, that the tenants denied access to their rental unit during an emergency situation.

The undersigned arbitrator was the same arbitrator for that hearing. I issued a Decision on October 2, 2019, cancelling the landlord's Notice. As a supporting reason for cancelling the Notice, I wrote that the building manager, SM, confirmed that the tenants were not at fault in the water or leak in unit 306 and that the plumbing company confirmed that the tenants' rental unit was not the source of the leak.

Analysis

I have reviewed all oral, photographic, and documentary evidence before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

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 their obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

In this case, I first turn to the landlord's application. The landlord states in the description for their monetary claim, that the *"tenants of unit 406 caused a flood that affected the apartment below #306 and denied a suite entry for the leak investigation during the flood. If the suite access is granted by the tenants of 406, the expenses for the leak investigation by the plumbing company Pacific West Mechanical and the ceiling repair in the suites 306 and 307 would not have happened"*.

I find this statement contradictory on its face, as the landlord first refers to a flood and then to a leak, both terms referring to the same event.

Then, in addition, the landlord's own evidence, that of Pacific West Mechanical, specifically states that the tenants' rental unit, 406, was not the source of leaks. Also in that same statement, the writer of the Pacific West Mechanical letter states that they "met with the occupants of suite 406 along with the building manager, and were denied access". I find this statement contradictory.

That same statement also indicates that there was no conclusive evidence of a leak present even in unit 306, where the leak was said to have occurred.

Then in the hearing, the landlord would not confirm that if the tenants had allowed access, then the landlord would not have had the costs associated with sourcing the leak in unit 306.

As I have found the landlord's evidence to be inconsistent and contradictory, I find it unreliable.

Overall, while the landlord's agent argued that the tenants wrongfully denied access to their rental unit, given the background of which I am aware of this tenancy, I cannot make that determination.

Despite this, I find that as the landlord's own evidence shows the tenants' rental unit was not the source of the leak, I find the landlord is responsible for the costs of making necessary and emergency repairs in the residential property, absent the fault of a tenant. In other words, the landlord in this case would still be financially responsible for investigating and repairing the leak in unit 306, pursuant to sections 32 and 33 of the Act.

I therefore find the landlord submitted insufficient evidence to prove their monetary claim against the tenants.

As the landlord's evidence was contradictory and as I find the landlord was required to investigate and repair the source of the water leak in another rental unit, I find the landlord submitted insufficient evidence to prove their claim against the tenants.

Given the above, I dismiss the landlord's application, including their request for the filing fee, without leave to reapply.

Conclusion

The landlord's application is dismissed, 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: November 19, 2019

Residential Tenancy Branch