



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. The landlord provided undisputed testimony that the notice of hearing package and the submitted documentary evidence was served to the tenants via Canada Post Registered Mail on December 30, 2019. The tenants confirmed that although they were not in the country for a 6 week period that they did obtain copies of the landlord's package and submitted documentary evidence. Both parties also confirmed that the tenants served their documentary evidence to the landlord via email on May 10, 2020. Neither party raised any other service issues. I accept the undisputed testimony of both parties and find that although the tenants did not receive the landlord's initial service package that the tenants have confirmed receipt of it and are prepared to continue with the hearing. On this basis, I find that both parties are deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy has been in place for approximately 1 year and that there has not been any previous damage issues regarding the toilet.

The landlord seeks a monetary claim of \$530.71 for damage to the rental unit which consists of:

\$192.27	Toilet Replacement Cost
\$13.44	Miscellaneous toilet replacement supplies
\$225.00	Toilet Replacement labour
\$100.00	Filing Fee

The landlord stated that on March 16, 2019 the tenants notified the landlord that the toilet was clogged and "a chunk was missing out of the toilet bowl". The landlord discovered that the toilet bowl rim was damaged as shown in the submitted photograph titled, "Original Toilet-Damaged Bowl..." The landlord immediately had the toilet replaced at a cost of \$192.27 (receipt provided which includes a new wax ring and connector), \$13.44 for miscellaneous supplies and a \$225.00 claim for the cost of labour in removing the damaged toilet and the installation of the new one. The landlord stated that the repair was done on a Saturday and the labour charge was considered lower than average for an emergency repair.

The tenants dispute the landlord's claims arguing that they are not responsible for the damaged toilet and that they do not know how it was caused. The tenants argue that the damaged toilet was most likely due to normal wear and tear as it was an old toilet.

The landlord disputes the tenants' claim stating that toilets have a normally 50 year life expectancy, the toilet was not damaged and was working fine until the tenants reported a clogged toilet. The landlord stated that the toilet was fine at the start of the tenancy and that it was fine until the tenants notified her of the damage. The tenants further argue that the condition inspection report for the move-in does not specify a toilet at all. The tenants also argued that a condition inspection report for the move-out was not completed.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. During the hearing both parties confirmed that although there was no mention of the toilet in the condition inspection report for the move-in that both parties confirmed that the toilet was in satisfactory working order and that there were no apparent cracks in the bowl. Although the tenants have alleged that the toilet became damaged due to normal wear and tear, the tenants were unable to provide sufficient evidence of how the damaged area of the bowl would suffer from wear and tear as the only movement would be on the underside of the bowl where the water would run. A review of the photograph submitted by the bowl leads me to infer that something struck the top rim of the bowl causing a crack in the toilet. I find in the absence of any evidence of wear and tear that it is more likely than not that something struck the edge of the bowl. I refer to the middle of the picture where the peak of the crack appears to be pointed in shape and that a normal crack would only appear if this section was to receive an impact. As such, I find that the landlord has provided sufficient evidence to establish her claim on a balance of probabilities for \$530.71 which includes recovery of the filing fee.

Conclusion

The landlord is granted a monetary order for \$530.71.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 19, 2020

Residential Tenancy Branch