Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of $302.60 for damage to the unit, site or property, and to recover the cost of the filing fee.

An agent for the landlord ED (agent) and the tenants appeared at the teleconference hearing and gave affirmed testimony. The hearing process was explained to the parties and during the hearing the parties were given the opportunity to provide their testimony and present their documentary evidence. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. As a result, I find the parties were sufficiently served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 10, 2019 and reverted to a month to month tenancy after April 30, 2020.

Monthly rent in the amount of $1,765.00 was due on the first day of each month. The tenants continue to occupy the rental unit.

The landlord's monetary claim of $302.60 is comprised of a request for the tenants to pay a plumber invoice related to the unclogging of the tenants' shower/bathtub drain, plus the filing fee. The landlord submitted copies of email communication between the landlord and tenants. In the email exchange, on November 23, 2019 the tenants request help to unclog their shower drain or to provide a tool they can use. On November 25, 2019, an agent responds to the email and writes in part:

> Under the drain stopper is a little set screw that holds the stopper in place on the rod. Loosen the screw slightly with a screwdriver until the stopper pops of rod; being careful not to over loosen and as a result have the screw fall away and down the drain. Once removed, you can easily clear the drain.
>
> I've attached a readme below for your reference.

The tenants respond within minutes and write in part:

> Thanks,
>
> We have removed this stopper already. The issue is lower down the drain.
> I have tried using long sticks but it did not help. Please advise further.

An agent for the landlord responds by email five minutes later and thanks the tenants for the response and offers Thursday November 28, 2019 between 9:00 p.m. and 5:00 p.m. to "have a look" and to advise the agent if this works for the tenants to have access to the suite. The tenants respond five minutes later and confirm the day and access. On November 28, 2019 the agent sent an email to the tenants, which reads in part:

> I have had a look at your bathtub drain and this will require further drain work. I have scheduled a service technician to come by tomorrow, Nov. 29th, 9:00 – 5:00pm.
>
> Please let me know if this works for you to have access to your Suite.

One minute later, the tenants respond and write "sure, that works for us" and the tenants thank the agent. The next email is dated December 18, 2019 and states "Please see the attached invoice." with no further explanation.

A few minutes later, the tenants respond to the email and write in part:

> No one ever told us this will be a charged service, if we knew that we would have bought our own tool.
>
> Also, it was not our issue water system is not designed properly.
>
> Considering all these points, please revoke the invoice.

On December 20, 2019, an agent for the landlord sends an email to the tenants which states in part:

> Thank you for your email.
>
> When our service team requires the assistance of a third-party technician for repairs, it is typically communicated at that point that should the issue be a result of tenant neglect or damage, the charge would be billed back. If it is an issue that is out of your control, the Landlord would cover the cost. Our apologies if this wasn't clearly explained to you at that time. However, this information is also noted in your contract under clause 10. Repairs, for your reference.
>
> A third-party technician was only needed in this scenario as you had told the building caretaker that your had used a long stick to try and remove the clog, however this caused the clog to be pushed further into the drain beyond clearing any other way but with a professional snaking performed by a plumber. This occurred before our caretaker was able to try to attend to the clog therefore requiring the assistance of a third-party technician. Please note as well that the building caretaker asked to lower the cost of the service for you and received a notable discount on this invoice which is reflected…

The tenants responded on December 21, 2019 by email and write in part:

> Thank you for bringing up clause 10 of the contract.
> Under clause 10. section 3, subsection d, item ii it is clearly stated plumbing fixtures are considered an emergency repairs that are necessary for health of tenants.
> Under same section 3, subsection c, it is stated Tenant may ask Landlord for reimbursement in case of plumbing issues. This sets a clear tone regarding whose responsibility this issue should be under.

Moreover, false accusation of us pushing the clog further into the drain is highly unprofessional and unlawful. We have merely tried to reach the clog, but tool we used did not touch anything except pure air.

To summarise, omissions from your side:

- Not providing a hair protection system
- Not notifying us this is a chargeable repair
- Not stating a copy of repair in advance
- Misinterpreting the contract
- Treat this as a neglect of regular wear and tear
- Writing false accusations

While, from our side the only thing we could have not differently is not to shower.

Based on the contract you have signed, we are asking you to annul the invoice.

The parties continued to email back and forth until December 24, 2019 according to the emails provided for my consideration. In the last email from the tenants, the tenants advise the landlord that they would be happy to participate in arbitration.

The tenants stated that they are never late with their rent and feel they have taken care of the rental unit as best as they can. The tenants stated that they received documentation on other items in the rental unit such has what detergent to use in the laundry, etc., but were not provided instructions on a clogged drain and that they made an effort to follow the landlord's instructions but could not reach the clog. The tenants also stated that if they knew in advance that they would be charged for a plumber, they would have purchased a tool to unclog the drain themselves, in an effort to reduce the cost. The tenants also stated that if they were made aware of the charge in advance, they could have at least made a decision on the amount before they agreed to the charge.

The agent stated that it is pretty common knowledge that long hair will lead to clogged drains in the shower/bathtub and that the tenants were advised that someone would have to be brought in. The tenants responded by stating that hair build up should be considered reasonable wear and tear for which they are not responsible.

Section 10 of the tenancy agreement indicates that the landlord must provide and maintain the unit and property in a reasonable state of decoration and repair, suitable for occupation by the tenants and that the landlord will comply with health, safety, and

housing standards required by law. Section 10 of the tenancy agreement also states that the tenants' obligations are to maintain reasonable health, cleanliness and sanitary standards throughout the unit, and the other portions of the property the tenant has access to. Drains are not specifically mentioned.

The invoice from the plumber states "Cabled bathtub drain and removed lots of hair. Tested okay."

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Based on the evidence presented and the testimony of the parties, I find that the landlord has not met the burden of proof to prove that the tenants violated the Act or the tenancy agreement and that the tenants had the right to rely on the email communication between the parties, which did not indicate they would be charged in advance of the plumber being called. I find that the landlord is responsible for the plumbing costs in this matter specifically due to the fact that the landlord failed to advise

the tenants in advance that the tenants could or would be charged for the plumber. Although an agent apologizes to the tenants if that wasn't made clear, I find that based on the email communication that the tenants had the right to rely on the plumber being called at the landlord's expense and that in the future, the landlord needs to very clear in their written communication about the possible expense to the tenants.

In addition, I find that the agent provided insufficient evidence to support the landlord's statement that the tenants pushed the hair clog further down the drain, which required the plumber to intervene, as I find the invoice does not indicate that information and simply indicates, "Cabled bathtub drain and removed lots of hair. Tested okay." While the landlord could have obtained a statement from the plumber stating such, or called the plumber as a witness, the landlord did not, and I find the allegation that the tenant pushed the clog further down the drain is an allegation without supporting evidence.

As a result of the above, I find the landlord has failed to meet part four of the four-part test for damage or loss described above, which is to minimize the damage or loss as I find that if the tenants were advised that they would be charged for the cost of the plumber, the tenants more likely than not would have purchased their own tool to unclog the drain themselves for much less than the $202.60 plumbing bill, and without the filing fee being added to bring the total to $302.60. Furthermore, the tenants would have had the benefit of owning a drain clearing tool after the fact with a lesser expense but were denied that opportunity when the landlord arranged for the plumber without first asking the tenants if they wanted to proceed. Also, there was no written agreement or email response from the tenants that they accepted responsibility for the plumber chargeback.

Finally, I have also considered that the tenants do not have the onus of proof in this matter, the landlord does as this application was brought forth by the landlord. As a result, I dismiss the landlord's application due to insufficient evidence, without leave to reapply.

I do not grant the filing fee as the application has been dismissed.

Conclusion

The landlord's application is dismissed due to insufficient evidence, without leave to reapply.

The filing fee is not granted.

The decision will be emailed to both parties.

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: June 17, 2020

Residential Tenancy Branch