



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The applicants applied for:

- a monetary order for compensation for damage or loss under the *Act*, Residential Tenancy Regulation ("Regulation") or tenancy agreement, pursuant to section 67 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 1:56 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Applicant BP (the applicant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the applicant and I were the only ones who had called into this teleconference.

I accept the applicant's testimony that the tenant was served with the application and evidence (the materials) by registered mail on April 17, 2020, in accordance with section 89(1)(c) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on April 22, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Are the applicants entitled to:

1. a monetary order for compensation for damage or loss?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the applicant's claims and my findings are set out below.

The applicant affirmed the periodic tenancy started on February 01, 2020, the rental unit was sold on March 31, 2020 and the tenant was still residing at the rental unit on that date. Monthly rent is \$1,400.00, due on the first of the month. At the outset of the tenancy a security deposit of \$700.00 was collected by the applicant. When the unit was sold the applicant transferred the deposit to the rental unit's buyer. A copy of the tenancy agreement was submitted into evidence.

The applicant argued on March 30, 2020 the tenant contacted her and informed the toilet was clogged. A plumber visited the rental unit around noon on the same day, removed the toilet and found a large, teeth marked, dog bone blocking the toilet. The tenant lives alone with two dogs in the rental unit and her 3-year-old granddaughter visits her from time to time. The applicant paid \$366.05 to the plumber. The toilet did not have any issues before March 30, 2020.

A copy of the plumber's invoice dated March 30, 2020 was submitted into evidence. It states:

Blocked toilet, drove to location and angled toilet repeatedly without success. Also plunged unit but blockage was significant. Since blockage could not be clear mechanically it was necessary to [unclear] toilet. Once removed I found what appeared to be the end of a dog bone blocking the trap. With some effort I was eventually able to [unclear] the bone. Re-install toilet with new seal – tested ok.

On March 30, 2020, around 5:00 P.M., the applicant delivered in person the hand-written letter (submitted into evidence) requesting the tenant to reimburse her for the plumbing expenses, along with a copy of the invoice. The letter states:

I am hopeful that this reimbursement will be completed by two weeks time, April 13, 2020. If not I have the right to apply for dispute resolution through the residential tenancy branch, for monetary compensation.

The applicant said the tenant informed her she will not pay for the repair. The applicant provided a monetary order worksheet for a total amount of \$366.05.

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The testimony provided by the applicant during the hearing was cohesive and convincing.

Section 32(2) and (3) of the Act states:

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In accordance with sections 32(2) and (3) of the Act the tenant must be careful in order to avoid that objects clog the toilet.

Based on the applicant's testimony and the plumber invoice, I find the tenant is responsible for the object stuck in the toilet that caused it to clog. Thus, the tenant is responsible for the cost of the plumbing service and must reimburse the applicant.

As such, I award the applicant \$366.05 for this loss.

As the applicants were successful in this application, I find the applicants are entitled to recover the \$100.00 filing fee.

In summary:

Plumbing service	\$366.05
Filing fee	\$100.00
Total monetary award	\$466.05

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the applicants a monetary order in the amount of **\$466.05**.

The applicants are provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this

order, this 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: August 14, 2020

Residential Tenancy Branch