



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Axis Family Resources Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application made May 15, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that its email address as provided in the Landlord’s application is correct.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started December 15, 2018 on a fixed term to end December 15, 2019. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. Rent of \$1,735.00 was payable on the first day of each month. The rent is noted as including \$189.00 for

insurance. At the outset of the tenancy the Landlord collected a security deposit of \$775.00. The Landlord received the Tenant's forwarding address on November 21, 2019.

The Landlord states that on July 18, 2019 a flood occurred in the unit and the Tenants moved out with plans to return after repairs to the unit. The Landlord states that the Tenant ended the tenancy on November 21, 2019. The Landlord states that it made an initial verbal offer for a move-out inspection on November 21, 2019 for as soon as possible but that the Tenant did not respond. The Landlord states that on or about November 24, 2019 the Tenant was given a second offer for an inspection over the phone without any date or time. The Landlord states that it made this offer on the basis that the tenancy term was over on December 15, 2019. The Tenant states that no offers for a move-out inspection were made by the Landlord.

The Landlord states that at 6:00 a.m. on the morning of the flood he was informed that a plugged toilet caused an overflow. The Landlord states that the Tenant was informed to call someone else to remedy the problem. The Landlord states that he believed the Tenant caused the problem. The Landlord states that the repairs from the flood were covered by its insurance and claims \$20,000.00 as the expected increase in insurance costs for the unit. The Landlord states that it has not incurred this loss but expects this as a future loss. The Landlord confirms that it has not provided any supporting evidence of an increase in insurance costs.

The Tenant states that the flood was caused by a defective flapper valve that kept the water tank filling after it was plugged and that as the water shut off valve was inoperable due to rust the Tenant was unable to stop the water from the continuous filling. The Tenant states that the toilet was very old and defective. The Tenant provides a copy of a report from the plumber who attended the unit setting out the damaged valve in the tank.

The Landlord states that it does not agree with this plumber's report and that the toilet was only 2 years old at the start of the tenancy. The Landlord states that the plumber never changed any parts in the toilet, there was no mention of any problem with any toilet parts from the restoration company and that it was re-installed back in the unit after the repairs. The Landlord states that it only spoke with the plumber when the Landlord attended the unit after the toilet was emptied and the water was cleaned. The Landlord states that it checked the toilet, and all was fine.

The Tenant provides a photo of the toilet and states that this photo shows a manufactured date stamp for March 2000. The Tenant states that the photo also shows the age and brittleness of the flapper. The Tenant states that the restoration company would have put the toilet back as there was no damage to the toilet itself. The Tenant states that the plumber was hired by the insurance company and that it finds it curious that the Landlord chose not to replace the toilet.

The Landlord claims lost rental income of \$1,735.00 for the period December 1, 2019 to April 30, 2020. The Landlord states that the restoration company informed the Landlord that all the repairs were done by December 1, 2019 but that there are still repairs outstanding. The Landlord states it has contacted the company about these repairs but has not received a response.

The Landlord claims its insurance deductible of \$5,000.00 paid in relation to the Landlord's claim and coverage for lost rent for August, September, October and November 2019. The Landlord argues that since the Tenant caused the flood the Tenant is responsible for this cost.

The Tenant states that the Landlord's evidence is confusing and that it is most concerned about the copy of the written tenancy agreement that was provided by the Landlord as evidence for this hearing. The Tenant states that it was altered to remove the reference to the insurance being paid to the Landlord from the Tenant. The Tenant

provides a copy of the tenancy agreement with the notation about the insurance included. The Tenant states that the Tenant is insured under the Landlord's insurance policy. The Tenant states that the document was modified both for these proceedings and for the insurance company with an attempt to mislead. The Landlord states that it does not know who altered the tenancy agreement and that it was given to the Landlord from the Tenant. The Tenant states that it did not alter the tenancy agreement and did not give any altered copy of the agreement to the Landlord.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. The Landlord's evidence that the copy of the tenancy agreement provided as supporting evidence by the Landlord was not altered by the Landlord did not hold a ring of truth. This tends to indicate that the Landlord has sought to deceive these proceedings and leads me to consider that the Landlord's overall evidence is therefore not credible. While there is no dispute that the toilet was plugged by the Tenant, the Landlord provided no supporting evidence that the ensuing flood was caused by the plug. For these reasons and as the Tenant has provided evidence from the plumber hired by the insurance company that the flood was caused by a defective flapper, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the flood. As all of the Landlord's monetary claims are based on the Tenant causing the flood, I dismiss all of the Landlord's monetary claims. As the Landlord has not been successful, I find that the Landlord is not entitled to recovery of the filing fee and this claim is dismissed. As the Landlord has not been successful, I find that the Landlord is not entitled to retain the security deposit and this claim is dismissed. In effect the Landlord's application is dismissed in its entirety.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Residential Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Given the evidence that the tenancy was over at least by the end of the fixed term of December 15, 2019 I find that the Landlord had 15 days from this date to make its application to claim the retention of the security deposit. As the Landlord made its application on May 15, 2020, I find that the Landlord did not make its application within the time required and must now pay the Tenant double the security deposit plus zero interest of **\$1,550.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,550.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: September 22, 2020

Residential Tenancy Branch