



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 ENERGY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages to the rental unit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) and both Tenants attended the hearing. The Landlord and the Tenants were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlord testified that there had been two floods on the property, the first on March 13, 2020, and the second on July 29, 2020. The Landlord testified that during the clean-up and restoration of the March 13, 2020, flood, it had been discovered that someone had flushed wet wipes, female hygiene products and paper towels down the toilet. The Landlord testified that they covered the full restoration cost of the first flood and had

issued a written warning to the Tenants and the other renter living on the property to not flush wet wipes, female hygiene products and paper towels down the toilet in the future.

The Landlord testified that when the July 29, 2020, flood was investigated, it was found that more wet wipes had been flushed down the toilet. The Landlord testified that since the other renter had moved out sometime in mid-July 2020, and these Tenants were the only ones residing on the property at the time of the July 29, 2020, that it must have been these Tenants who flushed the wet wipes down the toilet, causing the second flood.

The Landlord testified that since the Tenants had been given notice to no longer flush wet wipes down the toilet and the second flood was caused by flushing wet wipes, then these Tenants should be responsible for the clean-up and repair costs for the second flood.

The Tenants testified that they did not flush wet wipes down the toilet, that they did not cause the first or second floods and should not be responsible for the cost of the clean-up and restoration. The Tenants testified that the second renter had been living on the property at least until July 17, 2020, and that they may have flushed the wet wipes down the toilet.

The Landlord testified that they are claiming for losses in the amount of \$4,027.75, comprised of \$203.12 in plumbing costs and \$3,824.63 in repairs. The Landlord submitted copies of the repair bills into documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord has claimed for compensation for the recovery of their cost for repairs due to a flood on the rental property. Section 7 of the Act provides for an award for compensation for damages or loss as a result of a landlord or tenant not complying with the Act, the regulations or their tenancy agreement.

The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides the following guidance:

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

In order to be awarded compensation, an applicant must first prove that there has been a breach of the *Act* by the Respondent. I accept the testimony for both parties that there have been two floods on the rental property during this tenancy. However, during these proceedings, I find that the parties to this dispute offered conflicting verbal testimony regarding who had caused the floods. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim, in this case, that is the Landlord.

After reviewing the documentary evidence submitted into these proceedings by the Landlord, I find that the Landlord has not provided sufficient documentary evidence to convince me that these Tenants had caused the flood on July 29, 2020.

In the absence of sufficient or compelling evidence to prove that the Tenants caused this flood, I find that the Landlord has not met the onus to establish their claim and that I must dismiss their claim for the recovery of their plumbing and repair costs in its entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that they are not entitled to the recovery of their filing fee for this application.

Conclusion

I dismiss the Landlord's application 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: January 20, 2021

Residential Tenancy Branch