



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

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

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

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

RE gave the following testimony on behalf of both landlords. RE testified that the tenancy began in April 2019 and ended in April 2020. RE testified that in January 2020 he was notified by the strata there was a serious water leak in the common area of the building that originated from his unit. RE testified that he was informed by the restoration company and the insurance company that the leak was due to the tenant tampering with the plumbing in his bathroom.

RE testified that because of the tenants tampering, the landlord's insurance company advised him that he wasn't covered and had to pay out of his own pocket. RE testified that he negotiated with the strata for a reduced amount of \$13,500.00 which he wants the tenant to pay for. RE testified that he is also looking for an additional \$1500.00 to cover the costs to bring the unit back up to a reasonable condition. RE testified that he spent \$3000.00 to do various repairs in the unit and that he and the tenant agreed to split the cost. RE testified that since the restoration company and insurance company emailed him to advise the leak resulted from the tenants tampering of the plumbing, he now wants the tenant to pay the additional \$1500.00.

The tenant gave the following testimony. SS testified that he had a clogged drain several months prior to the leak where he unscrewed one pipe but immediately screwed it back on. SS testified that the clog was resolved and that he didn't have any further issues. SS testified that the leak was caused by a large broken pipe inside the drywall of his unit and not the pipe that he had unscrewed. SS testified that the building had numerous water and leak issues during his one year of tenancy. SS testified that he agreed to split the \$3000.00 bill with the landlord and that there was never any further discussion about additional charges.

Counsel for the tenant made the following submissions. Counsel submits that the landlord provided hearsay and double hearsay evidence but failed to provide clear and relevant documentation from either the strata, the insurance company or the restoration company. Counsel submits that the landlord has only provided invoices and a

spreadsheet that falls significantly short of meeting the requirements under section 67 of the Act to be granted a monetary order and that his claim should be dismissed.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Unit repair invoice - \$1500.00

The landlord testified that the parties agreed to each pay \$1500.00 towards the \$3000.00 bill to repair issues in the unit. The landlord then said he had a change of heart and wants the tenant to pay the entire amount. The landlord has failed to provide sufficient evidence that the tenant was responsible for the full amount or if there was any agreement of such, accordingly; I dismiss this portion of the landlords claim.

Strata Owner chargeback – \$13,500.00

The landlord continually referred to emails from the restoration company and strata that stated the damage was due to the tenants tampering of the plumbing, however, those emails were not submitted as evidence. Based on the insufficient documentary evidence before me and the landlord's failure to show that the tenant was reckless or negligent, I dismiss this portion of the landlords claim.

Conclusion

The landlord's application is dismissed in its entirety 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: July 27, 2021

Residential Tenancy Branch