



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

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

1. A Monetary Order for damage to the unit - Section 67; and
2. 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.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on February 15, 2021. The Tenant moved out of the unit in August 2021 after the Landlord’s application was made. During the tenancy rent of \$2,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,200.00 as a security deposit.

The Landlord states that between April 28 and June 30, 2021 the Tenant caused the main sewer line to back up on three occasions due to the Tenant placing wet wipes down the toilet. The Landlord states that a plumber attended on each occasion and

used a snake to clear the line. The Landlord states that only wipes and toilet paper was removed each time. The Landlord states that the plumber did not use a camera to determine that the line was fully cleared each time. The Landlord states that on the first occasion of May 28, 2021 the Landlord did not inform the Tenant about the discovery of the wipes in the line as they did not know that the Tenant was responsible for the wipes. The Landlord states that on the second occasion of May 12, 2021 the Tenant informed the Landlord that they were using wet wipes and the Landlord informed the Tenants not to use the wipes any longer. On May 13, 2021 the Tenants told the Landlord that they are not using the wipes because the Tenant was not sure if they were dissolvable wipes. The Landlord states that at this time the Tenant was informed that the Tenant would be responsible for the costs from the first occasion.

The Tenant states that two day after they moved into the unit the kitchen sink was not draining properly and the Landlord was informed. On the same date the Landlord used herbal medicine in the toilet but that this got stuck and the toilet would not flush. The Tenant states that prior to April 28, 2021 the Landlord came several times to check the system. The Tenant states that prior to this date the Tenant usually put the wipes in the garbage and only flushed disposable wipes down the toilet. The Tenant states that they do not recall the Landlord saying anything about the use of wipes until after May 2021. The Tenant states that at this point the Tenant did not flush any wipes.

The Landlord states that they recall the Tenant's initial complaint about the kitchen sink made in February 2021 and that a plumber repaired this issue at the end of February 2021. The Landlord states that this plumber was not the same plumber who made plumbing repairs after this date. The Landlord indicated that the plumber who made the plumbing repairs between April and June 2021 was available to provide witness testimony however the Landlord declined to call this person as a witness during the proceedings. The Landlord claims plumbing, cleaning and reconstruction costs. The Landlord states that although only an estimate was provided for the reconstruction costs these repairs have since been made. The Landlord confirms that they did not provide

evidence of these costs incurred. The Landlord states that they did not seek to have their insurance cover the costs as they were not sure that their insurance would cover the costs.

Analysis

Section 32(3) of the Act provides that 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.

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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the undisputed evidence that the unit was having drainage problems from the onset of the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the main line to be blocked. Further there is no evidence of the kind of plumbing work done at the onset of the tenancy and the Landlord's evidence is that the subsequent plumber never used anything such as a camera to ensure the main sewer line was completely unblocked on any of the repair occasions. Finally, the Landlord has not provided evidence that its insurance would cover any of the costs being claimed thereby providing evidence of mitigation efforts by the Landlord. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the plumbing problems, that the plumbing costs incurred after the February 2021 repairs were not as a result of inadequate plumbing repairs then or after, that the total costs claimed were incurred, or that the Landlord took reasonable steps to minimize the costs claimed. I therefore dismiss the Landlord's claims for damages. As the Landlord's claims have not been successful, I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: January 26, 2022

Residential Tenancy Branch