



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 29, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Agent for the Landlord (the “Agent”) and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Agent was originally named as the landlord in the Application; however, it was determined during the hearing that the Landlord is the owner of the rental unit and should be named which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$11,710.87 in compensation for loss relating to a water leak from the toilet in the rental unit.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 20, 2021 and was a month-to-month tenancy. Rent was \$1,000.00 due on the 20th day of each month. The Tenant paid a \$500.00 security deposit.

The parties agreed the tenancy ended July 19, 2021.

The Tenant testified that they provided their forwarding address to the Landlord by registered mail on October 13, 2021 and by email. The Agent denied that the Tenant provided their forwarding address and testified that the Agent obtained the address from filed court documents.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The parties agreed the Tenant did not agree to the Landlord keeping the security deposit.

The parties agreed no move-in inspection was completed and the Tenant was not provided two opportunities, one on the RTB form, to do an inspection.

The Agent testified that a move-out inspection was done but no Condition Inspection Report was completed. The Tenant testified that no move-out inspection was done.

The Agent provided the following relevant testimony and submissions.

The Landlord is seeking \$6,956.60 for one month of rent in relation to the unit below the rental unit and \$4,754.27 for the cost of work done to repair damage to the rental unit caused by a water leak from the toilet.

On May 26, 2021, C.Y., the owner of the unit below the rental unit, notified the Landlord of a water leak coming from the rental unit. The building manager discovered that the water was coming from the toilet in the rental unit which was clogged and overflowing. The Tenant said they found the toilet clogged at 10:00 p.m. on May 25, 2021.

In relation to the \$6,956.60 for one month of rent in relation to the unit below the rental unit, water was leaking into the unit for eight to nine hours and caused extensive water damage such that the floor had to be replaced. C.Y. has filed a claim in Small Claims Court against the Landlord for the cost of repairing their unit due to the water damage. The matter has not yet proceeded in Small Claims Court and the Landlord has not yet been ordered to pay anything to C.Y.

In relation to the \$4,754.27 for the cost of work done to repair the damage to the rental unit, the strata completed repairs in the rental unit and billed the Landlord for this.

The Landlord submitted a copy of the bill received from strata for \$4,754.27 along with a letter from strata. The Landlord submitted email correspondence which states that the issue with the toilet was that the toilet water tank valve could not stop the water and the toilet was clogged.

The Tenant provided the following relevant testimony and submissions. They are not responsible to pay for the damage resulting from the toilet leak. The toilet leak occurred two days after they moved into the rental unit. The toilet was not in working condition before the Tenant moved in. The documentary evidence shows that the water valve of the toilet was leaking which caused the toilet to overflow.

The Tenant submitted a Notice of Claim filed in Small Claims Court by the Landlord against the Tenant. The Notice of Claim states that the water leak was caused by a faulty toilet water valve and clogged toilet. It states, "the Building Manager unclogged the toilet and stopped the flow of water."

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and

Residential Tenancy Regulation (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I accept that the tenancy ended July 19, 2021.

The parties disagreed about whether the Tenant provided the Landlord with their forwarding address. The Tenant testified that they provided their forwarding address by registered mail and email; however, there is no documentary evidence of this before me. In the absence of documentary evidence showing the Tenant sent their forwarding address to the Landlord, I am not satisfied they did.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant’s forwarding address in writing to repay the security deposit or file a claim against it. I accept that the Tenant has not provided the Landlord a forwarding address and therefore find section 38(1) of the *Act* was not yet triggered when the Application was filed. I find the Landlord has complied with section 38(1) of the *Act* and was entitled to claim against the security deposit.

Compensation

Section 7 of the *Act* states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 32 of the *Act* states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

I find based on the testimony of the parties and documentary evidence submitted that there were two causes of the water leak on May 26, 2021, a faulty water valve and the clogged toilet. I find the Landlord is responsible for the faulty water valve and the Tenant is responsible for the clogged toilet pursuant to section 32 of the *Act*.

I find the Tenant breached section 32 of the *Act* by contributing to the water leak and not contributing to the cost of repairing the resulting damage to the rental unit.

In relation to the loss and amount of loss suffered by the Landlord because of the water leak, I do not accept that the Landlord has lost \$6,956.60 due to the claim filed against them by C.Y. because the claim has not yet proceeded or been decided. I find the Landlord has not yet lost any monies due to the claim filed against them and I dismiss this aspect of the Application without leave to re-apply.

In relation to the loss and amount of loss suffered by the Landlord because of the water leak, I do accept that the Landlord has lost \$4,754.27 based on the letter and bill from strata in evidence. I find the amount of the bill reasonable based on the description of the water damage set out in the documentary evidence. Further, the Tenant has not provided compelling evidence calling into question the reasonableness of the amount. I award the Landlord \$2,377.00 being half of the strata bill amount because I am satisfied the Tenant clogged the toilet which was one of two issues that contributed to the water leak. I find the Landlord is responsible for paying for the remaining amount because the water leak was also caused by the faulty water valve which was the responsibility of the Landlord to maintain.

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$2,477.00. The Landlord can keep the \$500.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,977.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$2,477.00. The Landlord can keep the \$500.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$1,977.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: February 16, 2022

Residential Tenancy Branch