



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing convened to consider the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant; and
- recovery of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed prior to the start of the hearing that recording of the Residential Tenancy Branch (RTB) hearings were prohibited.

The parties confirmed receipt of the other's evidence.

Thereafter both parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue –

The landlord claimed against the tenant's security deposit and pet damage deposit in their application made on July 18, 2021. The landlord said that the residential property was sold, and another landlord took ownership in September 2021. It was not made clear if the landlord still retains the two deposits, or they transferred to the new owner as part of the purchase as is standard in the sale of a tenanted property. As a result, I will not deal with the landlord's request to keep the tenant's security deposit and pet damage deposit to offset any monetary award.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage to the rental unit and to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and/or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began with another landlord on April 15, 2011. The landlord took ownership of the residential property 3-4 years prior, according to the landlord.

The monthly rent began at \$750 and the tenant paid a security deposit of \$350 and a pet damage deposit of \$200.

In support of her application, the landlord submitted that the tenant caused the toilet to become plugged, which required her to engage the services of a plumber. The landlord submitted the plumber could not unplug the toilet with an auger, that they had to remove the toilet and replace it with a brand new one. The landlord submitted that the plumber sent the photos and described a "large wad of paper towels and what appeared to be a pill bottle" stuck in the toilet.

The landlord submitted that the tenant caused a blockage in the toilet two years ago, when it was plugged with baby wipes.

Filed in evidence as a plumber's invoice and a previous plumber's invoice.

On the invoice dated July 3, 2021, which was on an official company letterhead, was a statement of work done and stating what they found to be the issue with the malfunctioning toilet. The plumber wrote they uninstalled the toilet to test it, installed a "new American standard toilet". The plumber stated that they tested the new toilet and disposed of the other toilet. After taking the toilet to the shop, the plumber states that they smashed the bowl to find the issue, finding a wad of paper towel and a pill bottle.

The charge was \$189 for dispatch during emergency/after hours and \$904 for "Water Saver Fixture Rejuvenation" for \$904. With taxes, the total was \$1,116.15.

Tenant's response –

The tenant said that she did not agree with the claim for the reason that the plumber agreed there was nothing showing. The tenant said that the plumber flushed 5 gallons of water in the tank and it overflowed. The tenant said that plumber and his boss were baffled as to why the toilet overflowed, took the toilet back to the shop, and noticed that there was a design flaw. The tenant said that the toilet was 30 years old and that she has been having issues with the toilet for 11 years.

The tenant submitted that every second time she flushes, she has had to use a plunger.

The tenant denied putting anything in the toilet to cause the blockage.

The tenant asserted that the plumber had to smash the toilet to even find out the problem.

Filed evidence by the tenant were videos of the landlord and plumber attending the rental unit, a witness statement, and text message communication.

The witness in their statement stated that the tenant's toilet never flushed properly. The witness wrote that they lived next door to the tenant for 6 years and "basically every time you use the toilet you have to use a plunger. It has always been that way since I've known her. She finally dealt with it when she came home and on its own it backed up into her house flooding the entire apartment". The witness wrote that the tenant had to use their bathroom for two days.

Analysis

After reviewing the relevant oral, documentary, and digital evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove their claim with a balance of probabilities, or it is more likely than not the events happened as described. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. It is up to the claimant to verify the value of the loss or damage.

A tenant must maintain reasonable, health, cleanliness and sanitary standards in the rental unit. Damage to a landlord's property or other losses are not the responsibility of the tenant unless the tenant has been negligent in the duty owed to the landlord or have breached the Act.

In this case, the tenant had the exclusive use and possession of the rental unit for 11 years when the pill bottle and wad of paper towels were discovered in the toilet. The tenant asserted that the blockage by a pill bottle and wad of paper towels was from a design flaw and could have been the cause of the malfunctioning plumbing for 11 years. I find this argument is not reasonable and does not make sense to me. Apart from that, I relied upon the statement of a professional plumber, who removed the toilet, found the wad of paper towels and pill bottle inside the toilet, and said that these items caused the issue.

I therefore find that the tenant more likely than not caused the blockage in the toilet and the toilet was required to be replaced.

Under the Residential Tenancy Policy Guideline 40, the useful life span of toilets is 20 years and, in this case, as the evidence showed the toilet was 30 years old, it had been fully depreciated at the time.

I have reviewed the plumber's invoice. The plumber listed \$189 for the call-out to the rental unit. The other listed service item was \$904, described as a "Water Saver Fixture Rejuvenation" and "Performance and safety testing". I find this invoice confusing and not descriptive of the work or service performed. For instance, the invoice did not specify what part of the \$904 was for labour and what part was for the toilet. Overall, I find the landlord's evidence insufficient.

Tenancy Policy Guideline 16 notes, "an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...*nominal damages* are a minimal award [that may be granted] where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right."

In light of the fact that I find the tenant responsible for the blockage, I find it reasonable to award the landlord a nominal amount of \$200 to reflect the damage the tenant did to the toilet, as I find the blockage to be beyond normal wear and tear. I also award nominal damages to reflect the tenant's breach of section 37 of the Act, which requires the tenant not to damage anything in the rental unit, beyond normal wear and tear.

I dismiss any amount of the landlord's claim higher than the nominal amount of \$200 due to insufficient evidence and the fact the toilet had been fully depreciated at the time.

I also grant the landlord recovery of the filing fee of \$100.

Conclusion

The landlord has established a total monetary claim of \$300, comprised of the nominal damages of \$200 as described above and the filing fee of \$100.

I grant the landlord a monetary order in the amount of \$300.

In the event the tenant does not voluntarily comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant is cautioned that costs of enforcement are recoverable from the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 18, 2022

Residential Tenancy Branch