



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, to respond to the submissions of the other party and to cross examine the other party and witness.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit or residential property?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced May 1, 2008 and the tenant paid a \$487.50 security deposit on April 18, 2008. The rental unit is a basement suite located on the lower floor and the landlord and the landlord's family resided on the upper floors of the residential property. The tenant vacated the rental unit on August 31, 2010 and the parties completed a move-out inspection report together.

The landlord submitted that the tenant is responsible for flushing a large amount of debris in the toilet and the landlord is seeking to recover the cost of the repair costs, including a new pump, from the tenant.

The landlord submitted that on August 13, 2010 the landlord received an email from the tenant informing the landlord that the toilet in the rental unit was not flushing. The landlord had Mr. Rooter Plumbing (the plumbers) attend the rental unit on August 14, 2010. The landlord incurred a cost of \$2,732.80 to have the plumbers clear the sewer system of large amount of debris and replace the sewer pump.

During the hearing the landlord's agent submitted that after the landlord informed the tenant that the landlord was selling the property the tenant became upset and making accusations against the landlord, the landlord's wife and landlord's realtors. The landlord's agent pointed to email communications from the tenant where the tenant accuses the landlord of lying to her and expressing anger towards the landlord's realtors.

Upon enquiry, the landlord testified that the rental unit was constructed, with permits, in 2004 and the sewer pump was likely six years old at the end of the tenancy. The pump servicing the rental unit does not service other plumbing lines in the residential property and there had been no previous issues with the pump. The landlord testified that the plumbers tried snaking the toilet but when they were unsuccessful in clearing the blockage the plumbers called the field supervisor and the sewer pump chamber was disassembled. Upon opening up the sewer pump chamber the plumbers showed the landlord the debris found in the pump.

The landlord provided written statements signed by two of the plumbers who attended the property on August 14, 2010. The plumbers stated, in writing, that the sump pump had to be replaced because of garbage found in the pump. The plumbers further stated, in writing, that debris found in the pump originated from the basement unit and included reading material, duct tape, grease, huge clumps of black hair and metal.

The supervising plumber was called as a witness during the hearing. The plumber confirmed verbally that reading material, balls of duct tape, grease, huge clumps of black hair and metal was found in the pump chamber. Upon enquiry, the plumber stated it is very unusual to find such materials in a sewer system. The plumber explained that the garbage in the pump could only originate from the basement suite since the rest of the residential property is serviced by gravity feed to the sewer main but since the basement suite is below grade, the waste water must be pumped up to the street level. Upon enquiry, the plumber stated that the excess garbage "choked off" the pump causing it to prematurely fail and that a pump has an average useful life of 10 to 12 years under normal use.

After hearing the above testimony from the plumber the plumber's telephone unexpectedly disconnected. I offered to reconnect the plumber and asked the parties if they wished to ask any questions of the plumber. Neither party indicated they had any questions to ask of the plumber.

The tenant did not dispute the materials found in the sewer pump but denied that she placed such items in the toilet. The tenant submitted that she did not have motivation to clog the toilet and explained that a clogged toilet would restrict use of the tenant's only toilet and would be a great inconvenience to the tenant.

The tenant did not dispute that the sewer pump was approximately six years old and pointed to the fact that the pump had been in use approximately four years before her tenancy commenced. The tenant submitted that she should not be responsible for the cost of the plumbing call and replacement of the sewer pump when other people used the toilet over several years causing items to build up in the system over time.

The tenant pointed to the use of the rental unit by the landlord's parents for two weeks during the 2010 Winter Olympics and visitations by realtors and prospective purchasers in July 2010. The landlord's agent responded to these assertions by stating the landlord's parents are bald and have red hair, not black hair as was found in the pump. Also, the tenant had expressly requested the realtors not permit prospective purchasers to use the toilet.

The tenant referred to the move-out inspection report which indicates there is no damage in the rental unit and no request for compensation was made by the landlord at the time of completing the move-out inspection report. The landlord responded to this point by explaining that at the time of the move-out inspection there was no damage to the rental unit since the damage had been repaired. Further, the landlord did not seek authorization for compensation at the time of the move-out inspection as the landlord was of the belief this would be a contentious issue so the landlord made the Application for Dispute Resolution within the time limit required by the Act.

The tenant pointed to the plumber's invoice which indicates the replacement of the pump was at the "customer's request". The landlord responded by stating the entire service call was at the customer's request as the landlord had reported a toilet was not flushing and the plumbers took necessary action to correct the problem.

Finally, the tenant expressed how upset she was that the landlord did not invite her to use their toilet when they knew she did not have a functional toilet in her unit. The

landlord's agent was of the position that they responded to the tenant's request for repairs as quickly as possible.

Documentary evidence included copies of the tenancy agreement, condition inspection report, plumber's invoice, written statement from plumbers, various email communication between the parties.

Analysis

It is undisputed that near the end of this tenancy the pump that services the rental unit became clogged with a significant amount of debris including balls of duct tape, reading material, and metal (herein referred to as the debris). It is undisputed that the landlord incurred a cost of \$2,732.80 to have the debris cleared and removal and replacement of the sump pump. At issue is whether the landlord has established an entitlement to recover all or a portion of this cost from the tenant under the Act.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities meaning it is more likely than not that the event occurred. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 of the Act provides that a tenant must repair damage to the rental unit or common areas that is caused by the actions of the tenant or a person permitted on the property by the tenant; however, a tenant is not required to make repairs for reasonable wear and tear. Items that require repair due to normal wear and tear is the responsibility of the landlord.

Based upon the evidence before me, I find as follows. The materials found in the sump pump resulted in the pump failing prematurely and that the pump would likely have had a useful life of 10 – 12 years in total.

I also find that the move-out inspection report is designed and intended to capture the condition of the rental unit at a certain point in time after the tenant has vacated the unit. Where damage has been repaired during the tenancy the damage would not appear on the move-out inspection report. While the landlord is at liberty to request the tenant's authorization for deductions from the security deposit at the time of the move-out inspection, this is not requirement under the Act. Rather, the Act provides that a landlord may seek deductions from the security deposit by obtaining the tenant's consent or making an Application for Dispute Resolution within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing. Therefore, I find the move-out inspection report complied with the requirements of the Act and Residential Tenancy Regulations and the landlord complied with the Act by seeking authorization for deductions from the security deposit within 15 days of the tenancy ending.

Based on the balance of probabilities, I find the debris accumulated in the pump during the tenancy. Since this tenancy was over two years in duration and considering the type and quantity of the debris found in the pump I find it is unlikely the debris was in the pump before this tenancy commenced and was able to function for more than two years without failure. Therefore, I reject the tenant's position that the original invasion of the debris occurred before her tenancy began.

The tenant is responsible for damage caused to the property during her tenancy whether the damage is caused by her or persons permitted on the property by her. The tenant raised the point that the landlord's parents stayed in the rental unit for a couple of weeks with the tenant's consent. Thus, the landlord's parents are persons permitted in the rental unit by the tenant. Nonetheless, I highly doubt the landlord's parents would be motivated flush large amounts of debris in the toilet during their two week stay in the rental unit and the clumps of black hair found in the system is inconsistent with the description of the landlord's parents. Therefore, I do not find the landlord's parent's temporary use of the unit relieves the tenant from an obligation to repair damages caused during her tenancy.

I find the only evidence that other persons would be in the unit without the consent of the tenant was by way of the landlord giving notice of entry to permit the landlord's realtor and prospective purchasers to view the unit. However, the tenant had expressly communicated to the realtor that no person was to use her toilet and the realtor responded, in writing, to confirm the realtor would oblige by that request. I do not find evidence that prospective purchasers or realtors used the tenant's toilet. Nor do I find it feasible that a prospective purchaser or realtors would be motivated or have ample time and opportunity to flush the type and quantity of debris found in the sump pump.

Accordingly, I find that I have insufficient evidence that a realtor or someone permitted in the unit by the realtor used the toilet and flushed debris in the toilet.

In light of the above, I am satisfied, based on a balance of probabilities, that the tenant is responsible for the debris found in the sump pump during her tenancy. I find the flushing of such debris to constitute wilful abuse or negligence on part of the tenant and that a reasonable person would not think flushing such items would be appropriate or harmless to the plumbing system.

I hold the tenant responsible for the service call and the depreciated value of the pump. While I appreciate the landlord had to incur a replacement cost for the pump and then sold the property shortly thereafter, the new pump extended the usefulness of the system and that benefit runs with the land. The landlord's decision to sell the property and convey that benefit to the new owners does not entitle the landlord to full replacement value of a depreciated item.

As the landlord was successful in establishing an entitlement to recover costs from the tenant I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of my award to the landlord. I also award the filing fee to the landlord. The landlord is provided a Monetary Order calculated as follows:

Plumber's service call			
Use of auger and plunger	\$ 135.00		
Removal and reset of toilet	210.00		
Cable and camera inspection	<u>485.00</u>	\$	830.00
New pump			
\$1,600.00 x 6/12 years			800.00
Fuel Surcharge			10.00
Tax			<u>196.80</u>
Portion of plumber's invoice awarded to landlord		\$	1,836.80
Plus: filing fee			50.00
Less: security deposit and interest			<u>(492.65)</u>
Monetary Order for landlord		\$	1,394.15

The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord was successful in establishing the tenant caused damage to the rental unit's sewer system. The landlord has been authorized to retain the tenant's security and interest and the landlord has been provided a Monetary Order for the balance of \$1,394.15 to serve upon 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*.

Dated: February 4, 2011.

Residential Tenancy Branch