Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to return double her security deposit. Both parties participated in the conference call hearing.

The tenant had originally named her 4 year old daughter, I.R.B., as a co-tenant and co-applicant in this claim. At the hearing, I advised the tenant that as she was the only party who was contractually bound to the landlord, I would strike her daughter's name as an applicant for the purposes of this proceeding. The style of cause in this decision reflects that change.

In his evidence, the landlord submitted an outline of amounts which he believed he was owed by the tenant. At the hearing, I advised the landlord that as he had not made a formal application for dispute resolution, I could not consider his claim. The landlord is free to bring his monetary claim at a later date.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2012 at which time the tenant paid a total of $1,190.00 in deposits and that it ended on December 1, 2012. They further agreed that the tenant provided her forwarding address to the landlord in writing on November 30, 2012 and that the landlord returned $445.00 to the tenant.

The tenant provided a copy of the envelope in which the partial return of the security deposit was mailed. It is postmarked Tuesday, December 18, 2012. The landlord testified that he put the envelope in the mail on Saturday, December 15 and argued that

it was his responsibility to mail it by December 15 and that no consequences should flow from Canada Post having failed to post mark the letter on the date it was placed into the box.

The tenant seeks the return of double her deposit as well as the return of the rent paid for the month of November.

The parties agreed that in the evening of November 6, the tenant contacted the landlord to advise that the toilet was plugged. The landlord arranged for a plumber to attend the unit the next day and the plumber after some difficulty, discovered that the cause of the blockage was tampons which had been flushed down the toilet. The plumber's attempts to dislodge the blockage required the use of a "power snake" which damaged the drain pipe.

The landlord asked the tenant to use as little toilet paper as possible and allow nothing but fluids in the toilet until the drain pipe was repaired. The landlord then contacted various plumbers to assess the situation and retained a plumber who completed repairs by November 20. The landlord took the position that the toilet could have been used throughout the period in question, albeit very carefully, and was only unavailable in the evening of November 6 and morning of November 7 until it was unplugged. The landlord testified that because he was concerned that the toilet would become clogged again while the landlord was looking for a plumber who could do the work, he provided a portable toilet just outside the rental unit and placed a heater inside.

The tenant testified that repairs were not completed until November 22 and stated that the landlord told her not to use the toilet at all from November 12 – 22.

The landlord took the position that the problems with the toilet occurred as a result of the tenant's negligence in flushing tampons and therefore the tenant is not entitled to a rebate of rent. The tenant argued that the tampon box states that the tampons are flushable and therefore she should not be held responsible for any damage.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the end of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the security deposit in full or file a claim to retain the deposit. This obligation is placed upon the landlord regardless of whether he feels he has a legitimate claim against the deposit. In this case, the landlord did not file a claim and returned just a portion of the deposit.

Section 38(6) provides that a landlord who withholds monies from a deposit in contravention of section 38(1) is liable to pay the tenant double the amount of the deposit.

The landlord argued that before doubling the deposit, I should deduct the amount that was returned. Although the landlord claimed that he put his letter in the mailbox on Saturday, the last possible day on which he could return the deposit without penalty, I find insufficient evidence to prove that this is the case. Rather, the postmark on the envelope was stamped not on the business day following the weekend, but on Tuesday. Further, the Act does not provide specific direction to deduct whatever amount has been returned before calculating a penalty; it simply states that the landlord is obliged to pay double the amount of the security deposit. For this reason, I find it appropriate to first double the base amount ($1,190.00 x 2 = $2,380.00) of the security deposit and then subtract the amount which has been repaid ($445.00). I therefore award the tenant $1,935.00.

Turning to the question of whether the tenant is entitled to recover rent paid for the month of November, it would be unjust to permit her to recover rent because of losses resulting from a problem that she caused. While the tenant claimed that she did not know that flushing tampons would create an obstruction, there is no dispute that this was the sole cause of the obstruction. I find that the toilet clogged as a direct result of the tenant's actions and I find that the landlord acted quickly and reasonably to effect a repair. As the tenant caused the problem of which she complains, I find that the landlord cannot be held responsible for failing to provide a working toilet and I dismiss this part of the tenant's claim.

As the tenant has been just partially successful in her claim, I find that she is entitled to recover one half of the $50.00 filing fee paid to bring her claim and I award her $25.00.

Conclusion

The tenant has been awarded a total of $1,960.00 and I order the landlord to pay her this sum forthwith. I grant the tenant a monetary order under section 6 for $1,960.00. This order 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 *Residential Tenancy Act*.

Dated: April 03, 2013

Residential Tenancy Branch