



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on December 2, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act; and,
- to recover the cost of the filing fee.

The Landlord (agent of) attended the hearing. The Tenant was also present at the hearing along with her daughter (collectively referred to as the Tenant). The Tenant confirmed receipt of the Landlord's application, and evidence, and took no issue with the service of these documents. The Tenant provided a couple pages of evidence to the branch, but stated she did not serve the Landlord with this evidence. As stated in the hearing, the Tenant was required to serve her evidence to the other party, in accordance with the Rules of Procedure, in order for it to be admissible. Since this was not done, I will not consider the Tenant's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord stated that on July 1, 2018, the Tenant fell in her bathroom, and the toilet tank broke. The Landlord explained that this caused significant flooding, and water penetrated the floors, the walls, and the ceiling of the unit below. The Landlord provided a couple of photos of the toilet tank, showing that it split in half. The Landlord explained that this is a new building (2016), which means the toilet is only a couple of years old. The Landlord further explained and pointed to the condition inspection reports (from the last tenancy, as well as the current tenancy) for this rental unit to show that there was no issue with the toilet. The Landlord stated that this goes well beyond what would be considered reasonably wear and tear.

The Landlord stated that there is no evidence to support that there was any pre-existing damage to the toilet, in fact there is evidence to show that the toilet was functioning correctly, prior to the Tenant's accident (as per the condition inspection reports). The Landlord provided copies of invoices, which they had to pay out of pocket in order to contain and remediate the flooded areas. There are two invoices for the repairs that needed to happen ($\$393.75 + \$5,750.99 = \$6,144.74$) which correspond to item #1 from the Monetary Order Worksheet (MOW). The Landlord stated that this item is for restoration costs to repair the drywall, flooring, ceiling below, and all affected areas. The Landlord explained that the flood was serious enough that water flooded through the ceiling into the unit below and into the hallway.

The Landlord also is seeking to recover \$5,349.61 for the emergency services portion of the flood expenses (dehumidifiers, anti-microbial treatment, fans etc). This amount is reflected on the invoice provided into evidence and corresponds to item #2 on the MOW. The total amount the Landlord is seeking is \$11,494.35.

The Tenant stated that she lost her balance while she was in the washroom, and fell backwards into the toilet. The Tenant explained that at this time, the tank split open, and the flooding started. The Tenant stated she immediately tried to contain the water, and did her best to minimize the losses. The Tenant feels the tank should have been

stronger than this, and should have been able to withstand her falling into it. The Tenant alleges that there must have been a manufacturing defect which caused the tank to break.

Analysis

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the evidence (condition inspection, photos, and invoices) and the testimony provided at the hearing, I find as follows:

I find no evidence to support that there was a manufacturing defect which caused the toilet to break in half. I find the Tenant's assertion on this matter is unsupported by the evidence. The undisputed evidence is that the Tenant lost her balance while she was in the bathroom, and fell backwards into the toilet. I note that, although the toilet is new, it is still only made of porcelain. This material is not only hollow, but also can be brittle. This type of material is not designed to absorb or withstand large forces (such as a person falling into it). I find it more likely than not that the toilet was functioning correctly at the time of the accident, and it cracked due to the Tenant's fall. Although this was an accident, I find the flooding was directly caused by the Tenant's actions, and is not the responsibility of the Landlord. I find the Landlord has sufficiently demonstrated that the Tenant is responsible for the claimed damages, and is responsible, in full, for the amounts sought. I award the Landlord the full amount of their costs to restore and remediate the flooded areas, totalling \$11,494.35.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

In summary, I find the Landlord is entitled to a monetary order in the amount of \$11,594.35.

Conclusion

The Landlord is granted a monetary order in the amount of \$11,594.35, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: December 02, 2019

Residential Tenancy Branch