



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFL

Introduction

On July 17, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that he received the Landlord’s documentary evidence that I have before 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 money owed or damage or loss?
- Is the Landlord entitled to keep the security deposit towards his claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2018, as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,350.00 was to be paid to the Landlord by the first day of each

month. The Tenant paid the Landlord a security deposit in the amount of \$675.00 and a pet damage deposit in the amount of \$675.00. The Landlord testified that the Tenant moved out of the rental unit on September 9, 2019. The Tenant testified that the tenancy ended when he moved out on August 28, 2019.

The Landlord is seeking to recover the cost of an insurance deductible and the cost of a plumbing bill. The Landlord is seeking a monetary order in the amount of \$1,350.00.

The Landlord testified that the rental unit is below grade, so all water must be pumped up using a sump pump. The Landlord testified that the Tenant signed an agreement regarding use of the sump pump and that only human waste can be flushed down the toilet. The Landlord provided a copy of the tenancy agreement addendum that provides *“any damage or repair costs required to sump pump are the responsibility of the tenant if caused by flushing of inappropriate materials”*. The Landlord submitted that the sump pump has an alarm that sounds and flashes when there is a problem with its operation.

The Landlord testified that on May 22, 2019, the Tenants informed him that the sump pump had sounded an alarm. The Landlord testified that when he arrived downstairs, he observed that the alarm was flashing but the sound had been silenced. The Landlord testified that the Tenant had tried to plunge the toilet. The Landlord testified that water had seeped under the flooring in the bathroom, bedroom and hall and needed to be remediated. The Landlord testified that the majority of the work involved replacing the vinyl planking.

The Landlord called a plumber who attended and removed the obstruction. The Landlord indicated that the obstruction appeared to be dryer sheets, ropes and soap residue. The Landlord testified that the cost of the plumber was \$270.90. The Landlord provided a copy of a plumbing bill dated May 23, 2019 in the amount of \$270.90.

The Landlord testified that there was a previous tenant living in the rental for four months. The Landlord testified that the plumber said that items in drains/pipes can stay there a long time, and the Landlord accepts that to be true; however, he feels that the Tenants are responsible to pay compensation to him because there was delay in reporting the issue and the Tenants continued to use water when they plunged the toilet.

The Landlord testified that it cost \$8,036.00 for repairs. The Landlord testified that he submitted an insurance claim and paid a deductible of \$1,000.00. The Landlord provided documents regarding the repair of the rental unit; however, the Landlord did not provide any documentary proof that he paid an insurance deductible.

In reply, the Tenant provided testimony that they were diligent by immediately informing the Landlord about the pump alarm. The Tenant testified that his partner called him and said that the alarm was going off, so he called the Landlord right away. The Tenant testified that the Landlord caused a flood a few months earlier when the Landlord's toilet overflowed and flooded the basement. The Tenant submitted that the plumber advised them that the blockage could have been in the line for months.

The Tenant testified that his girlfriend tried to plunge the toilet and there was a small amount of water on the floor by the water heater drain hole and in the spare bedroom. The Tenant testified that the water could be cleaned up using a couple of towels.

The Tenant testified that he agreed that the Landlord could keep the amount of \$220.00 from the security deposit for damage to walls and cleaning.

Security Deposit and Pet Damage Deposit

The Landlord is seeking to keep the security deposit of \$675.00 and pet damage deposit of \$675.00 in satisfaction of the claim.

The Tenant testified that he agreed that the Landlord could keep the amount of \$220.00 from the security deposit for damage to walls and cleaning.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with

respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the evidence is clear that the damage exists; however, there is insufficient evidence from the Landlord that the damage or loss occurred due to the actions or neglect of the Tenants. The Landlord accepted that the blockage could have been present for months. The tenancy addendum provides that “*any damage or repair costs required to sump pump are the responsibility of the tenant if caused by flushing of inappropriate materials*”. The Landlord has not proven that the Tenants are responsible for the blockage by flushing inappropriate materials.

I accept that the Tenants were diligent by immediately informing the Landlord of a problem with the sump pump. I find that there was no unreasonable delay on the part of the Tenants. I also find that it is reasonable that the Tenant would have tried to plunge the toilet to attempt to clear the blockage; and to attempt to prevent the toilet from overflowing. There is insufficient evidence from the Landlord that the Tenants contributed to the problem by silencing the sump pump alarm prior to the blockage occurring. The Tenant testified that his partner called him and reported that the alarm was going off.

In addition, the Landlord has provided insufficient evidence of proof of the actual amount required for compensation. The Landlord did not provide any documentary proof that he paid an insurance deductible.

The Landlord’s claims to recover the cost of a plumber and to recover the cost of an insurance deductible are not successful and are dismissed.

Security Deposit

The Landlord applied to keep all or part of the security deposit and pet damage deposit.

I find that the parties agreed that the Landlord could keep \$220.00 from the security deposit. I find that the Landlord is holding deposits in the amount of \$1,130.00.

I order the Landlord to repay to the Tenant, the amount of \$1,130.00 from the security deposit and pet damage deposit.

I find that the Tenant is entitled to a monetary order for the balance of \$1,130.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was not successful with his claim for money owed or compensation for damage or loss.

I order the Landlord to repay the Tenant the amount of \$1,130.00 and I grant the Tenant a monetary order in the amount of \$1,130.00.

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: November 13, 2019

Residential Tenancy Branch