Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation for monetary loss or other money owed in the amount of $1,856.18; and to recover the $100.00 cost of her Application filing fee.

An agent for the Landlord, M.Y. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on March 12, 2021. The Agent said that the Landlord's evidence was sent in a second registered mail package on June 17, 2021. The Agent provided Canada Post tracking numbers as evidence of service. The Agent said that the Tenant refused to take the first registered mail package, and so the Agent said he sent it to the Tenant via email, as well. The Agent said that the Tenant responded to this email, therefore, he knows about this hearing. I find that the Tenant

was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent had provided the Parties' email addresses in the Application and he confirmed these addresses in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent said that the fixed-term tenancy began on June 1, 2017, and ran to May 31, 2018. He said the Parties decided to renew the tenancy for another fixed-term, after which time, it operated on a month-to-month basis. The Agent confirmed that the Tenant pays the Landlord a current monthly rent of $1,414.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of $690.00, and no pet damage deposit, and that the Landlord still holds the security deposit in full.

The Agent said that this matter arose in November 2020:

> The Tenant accidentally broke the toilet tank, which caused a lot of water to flood and flow down to the unit below. The Landlord responded to it as an emergency. We had a contractor there to quickly stop the leak, and the downstairs residents – the owner contacted their insurance company and had a restoration company take a look. The damage to the unit blow was to the ceiling, exhaust fan and other parts of bathroom. The damage in our unit was to the toilet tank and from water on the floor.

The Agent submitted a photograph of a toilet with approximately three-quarters of the tank missing, which he indicated had been damaged by the Tenant. The Tenant does not dispute that he is responsible for the damage to the toilet tank in the email communications submitted by the Landlord.

The Agent said:

> Communication between us and the Tenant went on for awhile, until November. They agreed that the Tenant would reimburse the Landlord for repairing the toilet. See evidence in Exhibit E.
>
> The restoration company from the unit below – their insurance provider had [S.M.] get a quote for the damage, and they said that they aren't covering it, because their deductible is $10,000. The Tenant refused to pay for repairs downstairs. We gave him the opportunity to find his own contractor, but since he disagreed, we went with the downstairs' restoration company. We also gave him time to review the quote and scope of work. See the email in Exhibit E on page 5.
>
> On April 22 of this year, we negotiated with the Tenant to ask if he wanted to settle. The Landlord offered to split the cost with him 50/50, but he said it's not his fault, so refused. Therefore, we proceeded with the hearing today. The bill is for $1856, which the Landlord paid, so she is asking for reimbursement from the Tenant.

The Tenant paid the Landlord $420.00 for the cost of the toilet, as well as a $5.25 administration fee for issuing a cheque to the contractor. However, the Tenant did not accept responsibility for the damage caused to the unit below his, as a result of the toilet tank flooding.

The Agent submitted a detailed estimate from the restoration company that did the work in the lower unit of the proposed work flow. This estimate defined the work as follows:

> **Cause of Emergency: Water loss from unit above**.
>
> Please find attached our estimate for the **REPAIR** work to be completed as per scope at the same time as emergency work. [emphasis in original]

In an email to the property manager about this estimate from the lower unit owner's insurance company, they said:

> Attached is [S.M.'s] estimate for mitigation and repairs to our insured's unit [unit #]. This represents the total of the work to be done to repair damage caused by water coming down through the ceiling from unit [rental unit #] above. This occurred on October 31, 2020.

> [Insurance company] is unable to pay for the repair due to our insured having a $10,000 policy deductible.

The Agent submitted an invoice from the restoration company that did the repair work to the lower unit. This invoice noted the $928.09 deposit that had been paid, as well as the $928.09 owing for the balance due. These amounts equal the amount of reimbursement the Landlord seeks from the Tenant: $1,856.18.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Agent testified, I advised him of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16"), sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

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

("Test")

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher

> standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I find that the damage caused by the Tenant do not equate to normal wear and tear.

As set out in PG #16: “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

I find from the evidence before me that the Tenant caused a leak in the rental unit bathroom, which flowed down through a ceiling fan to the suite below the rental unit. The evidence before me is that the Tenant acknowledged that he broke the toilet tank, which caused the flood. As such, it is not clear why the Tenant does not accept responsibility for the damage that was caused to the unit below his, as a result of the broken toilet tank.

I find that the Landlord has established that the Tenant negligently damaged the toilet tank in his rental unit, which caused water to flood the rental unit floor, and to run through the ceiling of the unit below, causing damage to that suite. I find that the Landlord suffered monetary loss by having paid to repair the damage to the lower unit. I find that the Landlord established the value of the damage, which was set out in a detailed work flow estimate from the restoration company hired by the lower unit owner’s insurance company.

When the Tenant questioned the amount quoted, the Landlord offered him the opportunity to get his own quotes to save money. However, the Tenant did not accept this opportunity, but instead, stopped communicating with the Landlord. I note that the Landlord had even offered to split the cost with the Tenant. I find these efforts on the

Landlord's part were means of mitigating or minimizing the cost of the repair for the Tenant.

When I consider all the evidence before me overall, I find that the Landlord has met her burden of proof on a balance of probabilities in establishing the Tenant's responsibility for the damage to the lower unit. I find pursuant to sections 37 and 67 of the Act, that the Tenant owes the Landlord $1,856.18 for the repairs to the lower unit. I, therefore, award the Landlord with **$1,856.18** from the Tenant pursuant to section 67 of the Act.

Given the Landlord's success in this matter, I also award the Landlord with recovery of the **$100.00** Application filing fee, pursuant to section 72 of the Act.

Conclusion

The Landlord is successful in this Application, as she provided sufficient evidence to establish her claims on a balance of probabilities. The Landlord is awarded $1,856.18 in recovery of the cost to repair the suite below the Tenant's rental unit, which was damaged by a flood started by the Tenant. The Landlord is also awarded $100.00 for the recovery of her Application filing fee for this proceeding.

I grant the Landlord a Monetary Order of **$1,956.18** from the Tenant in this matter. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 23, 2021

Residential Tenancy Branch