

Residential Tenancies Tribunal

Application 2023-0756-NL

Decision 23-0756-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 19-December-2023.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, also attended by teleconference.

Issues before the Tribunal

4. Should the landlord be granted damages and other costs caused by the flood?
5. Should the landlord be granted damages related to the tenant's move out?
6. What is the disposition of the security deposit?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: The Flood

Landlord's Position

8. The landlord claims for \$20,331.87 in damages and \$800 for lost rent all in relation to a flood that damaged the premises and the basement unit where another tenant resided. The landlord submits that this flooding is the result of the tenant's failure to monitor a sump pump. She further submits the tenant was obligated to monitor this pump by the rental agreement.

Tenant's Position

9. The tenant submits that he was not responsible for the pump. He also does not concede that the flood was caused purely by human error and a failure to monitor and suggested that the pump may have failed due to flaws in the installation.

Analysis

10. A copy of the rental agreement was provided (exhibit 3a). Page five of the agreement is titled "Reasonable Rules and Regulations" and says that the tenant agrees to comply with any additional obligations set out below the heading. There are 14 additional obligations included, labeled a through n. A states "the tenant promises to comply with any rules concerning the tenant's use, occupancy of the residential premises or building or use of services and facilities provided by the landlord provided that the rules are in writing, are reasonable in all circumstances and the tenant is given a copy of the rules at the time of entering into the rental agreement and is given a copy of any amendments."
11. Exhibit 4b is an email from the landlord to the tenant with two attachments, one of which is the rental agreement and the other is labeled "welcome document." The body of the email says "please review the attached agreement. I will have the agreement in duplicate with me when we meet on the 27th. As well review the welcome letter which outline a few thing to care for the home."
12. A copy of this welcome letter was also provided (exhibit 4a). It is a two-page document which welcomes the recipient and then says "Here are a few things to keep in mind for return of your damage deposit" followed by a list of minor instructions related to issues such as hanging pictures, the use of refrigerator magnets, the use of cutting boards, etc. Some of these instructions are also part of the rental agreement. Several of them use bold text and/or italics and/or all capital letters to draw the eye. The second page begins with a section called "expected maintenance," entirely in bold, detailing lawn-mowing and snow-clearing obligations. In regular text below this, it says "An ounce of prevention is worth a pound of cure. However, sometimes things happen! If you need assistance, please don't hesitate to contact us!"
13. Halfway down the second page in bold and all capitals is the following section, emphasis from the original:

IMPORTANT:

Sump Pump: With severe weather event occurring more regularly, the house is equipped with a sump pump in the laundry room under the stairs. **Please check regularly to ensure the pump is working.** This is especially important when there is heavy rain or snowfall expected.

Water Shut-off to the home is located next to the window in the basement rec room.

Fire Extinguisher: A fire extinguisher is provided and should be kept in or close to the kitchen.

14. The letter then finishes with a few courteous words encouraging the tenant to reach out if they have any questions or need assistance.
15. For the landlord's claim to succeed, it must be determined that on a balance of probabilities that the damage from the flood would not have occurred but for the tenant failing to monitor the sump pump. It must also be determined that the tenant had a legal duty to monitor the pump, which he breached.
16. The tenant made the point that page 5, entry a, specifies that rules are only binding on the tenant if they are "reasonable in all circumstances," and argues that the level of care the landlord was evidently expecting of him in relation to the pump is unreasonable. A review of the circumstances is warranted.
17. The flood occurred on 24-January-2023. The landlord made the point that this was not a freak weather event, but the natural result of a forecasted snowstorm with heavy expected accumulation followed by temperatures above freezing (exhibits 5 a through 5c). The landlord messaged the tenant at 9:39 AM on the day of the flood, saying there was flooding in the downstairs apartment (exhibit 1, page 52). It soon came out that the tenant was, at the time, out of the province.
18. While the landlord provided evidence that the flood was foreseeable, she did not give any indication she had foreseen it. She did not message the tenant beforehand to ensure someone would be watching the pump. Evidently, she understood the rental agreement, to place on the tenant, the sole responsibility for monitoring the sump pump and the effects of any inclement weather. The tenant clearly did not share this understanding. At 3:25 PM the landlord sent the tenant a text saying "We had a significant snow event followed by significant thaw. I called you in the fall when there was significant rain forecasted and you told me not to worry." The tenant replied at 3:27 PM, "Yes, that day I was able to confirm. If it is expected that I am home every time it rains to ensure the pump works, or power hasn't gone, or it hasn't been plugged in, that is an expectation a busy person like myself will struggle to commit to."
19. In matters of contractual interpretation, where the language is unambiguous, effect should be given to the clear language reading the contract as a whole. In the circumstances, I find page 5, entry a, of the rental agreement to be unambiguous as to the intent of the agreement to bind the tenant to the rules in the welcome letter, so long as they are reasonable.
20. Paragraph 13, above, shows the exact wording of the welcome letter in relation to the pump. One sentence is in the imperative tense, denoting an instruction or command, and that is "please check regularly to ensure the pump is working." We have testimony from the tenant that he did check regularly, but he did not and could not have checked on or about 24-January-2023 because he was not in the province. This clause in no way unambiguously states that the tenant has a duty to monitor for predicted inclement weather and ensure someone is on hand to check the pump at such times. It simply says "check regularly." No time frame is given, though inclement weather is mentioned.

21. Requiring a tenant to monitor for upcoming weather and plan travel accordingly to ensure a piece of equipment like a pump is functioning properly is an unusual and onerous requirement. If a landlord wishes such a clause to be enforceable, they would be well-advised to make it explicit and unambiguous to ensure the tenant understands precisely what is being asked of them. That is not the case here.
22. I do not find that the text of the welcome letter makes it a rule that the client has a duty to monitor the pump in the event of inclement weather. Even if it did, I find that such a rule would not be "reasonable in all circumstances" within the meaning of clause a on page 5 of the rental agreement.
23. As I have determined that the tenant did not have a legal duty to monitor the pump during the time leading up to and including the 24-January-2023 flood, it is irrelevant as to whether the flood was caused by the failure of the pump, and so I decline to consider this issue.
24. Part of the landlord's claim was \$800 in rent lost from an adjoining unit, as the flooding caused the downstairs tenant's apartment to become unusable. As the tenant is not responsible for the flood, he is not responsible for this result.

Issue 2: Move Out Damages

25. The landlord submits that the tenant failed to meet his contractual obligation to return the unit to its pre-rental condition and this caused her \$1137.79 in damages as she needed to do the work herself. The tenant agrees that he failed to meet these obligations and admits responsibility.
26. The landlord says she has thus far been unable to find someone to do repairs on a damaged stairwell wall (see exhibit MO-08) but estimates it will cost \$640.00. I find this to be a reasonable estimate. She asks for \$147.00 for the labour she put in painting the main area and bathrooms for 7 hours at \$21 an hour. I find this to be a reasonable rate and a reasonable amount of time. She seeks another \$147.00 for 7 hours of cleaning, and I find this reasonable. She seeks \$103.48 for paints and supplies, and \$87.37 for replacements keys and a deadbolt, and \$12.94 for shelf liners, and has provided receipts for all of these items.

Issue 3: Security Deposit

27. As the tenant owes the landlord moneys, the landlord is entitled to apply the security deposit to the amount owed. The security deposit in this case was \$1087.50.

Decision

28. The landlord's claim for damages partially succeeds in the amount of \$1137.79.
29. The landlord's claim for lost rent fails.
30. The landlord may apply the security deposit against the amount owed.

Summary of Decision

31. The tenant shall pay to the landlord \$50.29 as follows:

Damages.....\$1137.79
Less Security Deposit....(\$1087.50)

Total.....\$50.29

12-January-2024

Date

[Redacted]
Seren Cahill
Residential Tenancies Office