



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for loss or damage under the Act or tenancy agreement pursuant to section 67 and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit pursuant to section 38(1)(d) of the *Act*.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenants by registered mail on April 27, 2009. The tenants confirmed they had received them. The landlord has some issues with evidence being sent in late. As this evidence has been received by the other party and myself I will allow it and the hearing can continue today. A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord provided sufficient evidence that the damage was caused by the negligence of the tenant?
- If so is the landlord entitled to a Monetary Order to compensate him for the damage?
- Is the landlord entitled to retain any of the tenant's security deposit?
- Is the landlord entitled to recover his filing fee for his application?

Background and Evidence

This tenancy started on October 01, 2008 and ended on March 31, 2009. The tenants paid a security deposit of \$600.00. Of this \$500.00 was paid on August 18, 2008 and \$100.00 was paid on August 29, 2009.

The landlord claims that the tenant caused a washing machine to flood by her negligent actions. The carpets in the basement had to be replaced due to this and the landlord is claiming a 50% share of the replacement costs from the tenant.

The landlord claims that on January 07, 2009 the tenant was using the washing machine and it flooded a portion of the basement level of the rental property. The landlord contacted his handy man who attended the property and helped to clean up some of the water. The tenant also called her husband and he came home with a friend and they took part in the clean up. The landlord came later with a wet and dry vacuum to help with the cleanup.

The landlord confirms a conversation he had with the tenants that if the fault was with the machine he would pay for the carpets and if the fault was with the tenants actions then both parties would pay half the costs each. The landlord feels the tenant was negligent as to the way she filled the machine when doing her washing. The landlord suggests that the tenant let the machine fill first before adding clothes to it which could result in overfilling the machine. The landlord also suggests that the tenant turns off the machine and then restarts it resulting in it filling twice. The landlord claims that the tenant used the machine again before the technician came to check it and suggests that this shows that she knew the machine was not at fault. On January 08, 2009 the technician came to check the machine and ran it through two cycles. He could not find a fault but changed the fill valve as a precaution.

The tenants dispute the landlords claim. The tenant states that she starts the machine and adds her detergent then adds the clothes. She does on occasion turn the machine off and restarts it but this would not cause the machine to fill twice as the machine has a stop valve. The tenant states that she put on her washing and went back to it after an hour to finish off. When she arrived in the laundry room the basement was flooded with water reaching to the other rooms. She states that the machine was still running water and had not emptied at the end of its cycle. The tenant states that she turned off the water and set the dial to spin to try to get rid of the water in the machine. When the handy man came they turned on the machine again and it ran through a normal cycle.

The tenants testify that when the technician came he thought it was a problem with the fill valve and replaced it. The tenant states that the technician told them it was not the fault of the operator. The technician has provided a letter in evidence to this effect. The tenant's claim that the amount of water that flooded into the basement could not have been caused from an over fill of the machine but from the machine not turning off the water when it had reached its level.

Analysis

TEST FOR DAMAGE AND LOSS CLAIMS

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or Act on the part of

the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has been able to provide sufficient evidence that the damage was caused by the washing machine and verification of the amount required to replace the damaged carpets. The landlord took all necessary steps to minimize the damage at the time by promptly sending him a handy man and by taking part in the water extraction from the carpets. However, the landlord is not able to provide sufficient evidence that the damage was caused solely by the actions or neglect of the tenants.

Most of the landlord evidence in this respect is based on assumptions that the tenant filled the machine in a way which would cause it to over fill or that she left a tap running at the adjacent sink. The technician who was called out has provided a letter to confirm his assessment of the situation that the fault was not due to the operator.

Conclusion

Based on the testimony, evidence and balance of probabilities, I find that the landlord has not fully established his claim for compensation for loss or damage under the Act.

Therefore I dismiss the landlords claim in its entirety.

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: June 16, 2009.

Dispute Resolution Officer