



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting him to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The rental unit is on the third floor of a multi-level apartment building. The parties agreed that on March 21, 2010 there was a leak from the washing machine in the rental unit which leaked into the unit below.

The landlord's agent testified that the washing machine was purchased in 2009 and was used without complaint or report of any difficulties until the day of the leak. After the leak, the tenants continued to use the machine without incident until the tenancy ended on or about December 1. The agent testified that the leak caused damage to the unit below resulting in clean up fees costing \$2,255.95 and repair costs of \$5,060.40. The strata paid those fees on behalf of the landlord and invoiced the landlord who now seeks to recover these costs from the tenant. The agent testified that he has not yet had the opportunity to inspect the washing machine but is certain that the leak was caused by the tenant's negligence.

The tenant's witness, G.D., testified that on the day in question he loaded the washing machine, left the room for approximately 5 minutes and when he returned, found water on the floor in front of the machine. G.D. stated that he cleaned up the water and spoke with the occupant of the unit below who reported that while water had been leaking into the unit, it had stopped.

The tenant submitted printouts of an internet forum discussing this model of washing machine in which owners of that machine complained that the machines leak on the floor.

Analysis

The landlord bears the burden of proving that the leak was caused by the tenant's deliberate action or by her negligence. There is no suggestion that the tenant deliberately caused water to leak onto the floor and into the lower unit.

The landlord has concluded that the tenant must have been negligent because the washing machine had not had difficulty before or since. I find that this theory is insufficient to establish the landlord's claim. There are any number of reasons why a machine may malfunction once and not a second time and such an occurrence does not lead to a presumption of negligence on the part of the machine's operator. I find that the landlord has failed to prove his claim on the balance of probabilities and I therefore dismiss the claim.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit,
- or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that the tenant has extinguished her right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$525.00 security deposit together with the \$4.60 in interest which has accrued to the date of this judgment. I grant the tenant a monetary order under section 67 for \$529.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's claim is dismissed. The tenant is granted a monetary order for \$529.60.

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: March 11, 2011

Residential Tenancy Branch