



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to the landlord's application seeking a monetary order for damage and compensation for loss and recovery of the filing fee paid for this application. In total the landlord seeks \$10,300.00.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

Background and Evidence

This tenancy began in April 2011 and will end in April 2012. Rent is \$2,100.00 per month and the tenants' paid a security deposit of \$1,050.00 at the start of this tenancy.

The landlord says that on November 17, 2011 there was a plumbing problem in the rental unit. The landlord received an email from Mr. Schmidt but no report from the tenants regarding the problem. The landlord learned that the toilet had overflowed causing damage to two suites below. The landlord says the plumber's report states that the toilet overflowed due to improper usage. The landlord says he does not know what that improper usage involved. The landlord did not submit the plumber's report or any other documentation with respect to the incident. The landlord agreed that he had not served any of his documentary evidence on the Residential Tenancy Branch or on the tenants. The landlord says that he now has some of the evidence but it was not available at the time he filed this claim.

The tenant, AW states that that he woke up on November 17, 2011 at approximately 9:30 a.m. and when he entered the washroom he discovered a puddle of water on the floor. The tenant testified that he was in the process of cleaning the puddle up when there was a knock at his door. The woman at the door stated that she was a representative of the building strata council and she questioned the tenant as to

whether he was aware that there was water leaking from his suite into the suites below. The tenant states that he informed the woman that he had just discovered a puddle on the washroom floor and she asked to come in to inspect the area. The tenant allowed her to come into the suite and inspect the area at which time she advised that she would be sending another representative from the strata corporation to inspect the area as well. The tenant testified that shortly after her departure the other representative attended and took photographs of the area. By 10:30 the building manager arrived as well and he advised that a plumber and restoration contractor had been contacted and would be attending shortly. The tenant decided to remain home for the day to allow for the contractors to come in.

The tenant testified that by 2 pm that same day the restoration contractor and plumber had attended. The tenant testified that he spoke with the plumber and confirmed that the toilet had overflowed previously but they had no idea why it overflowed and they simply cleaned the water up nor were they ever aware that the overflow was so significant that it was causing damage to any of the suites below. The tenants state that they did not call the landlord to report the incident because they believed the strata corporation was already taking care of the matter and that they or the building manager had likely already informed the landlord. Further, the tenants say they have no contact information for the landlord. The tenants agree that the landlord had appointed an agent to act for the landlord but they did not contact him because he does not speak English very well and communication is very difficult. Further, as the building manager, the strata corporation and plumber had already attended the tenants believed that the matter was being attended to and that the building manager and/or strata representative would notify the landlord.

The tenants say that repairs were commenced and that a 2 foot high section of drywall was removed from the lower part of the bathroom wall to gain access to pipes inside the walls. The tenants say their sink was removed and they were left without a sink and in a state of disrepair for approximately 4 months.

The landlord responded that the repairs took 4 months because the repairs had to begin with the suites below this suite which is on the third floor.

Analysis

The landlord bears the burden of proving this claim. His burden includes proving that the tenants were negligent in their actions and that this negligence caused the damage which resulted in the \$10,300.00 in costs the landlord now claims. The landlord states the incident occurred as a result of improper use of the toilet but he has not supplied

any documentary evidence whatsoever to support that testimony or to support the costs he says he incurred.

The landlord also states that the tenants should be held responsible for the damage because they did not report the incident to him. The tenants have supplied undisputed testimony that the matter was attended to by the strata corporation and building manager as soon as they learned there was water leaking into the suites below. Indeed their evidence is that the strata representative, building manager and plumber had attended the suite on the same day the issue was discovered. Not only do I find it reasonable for the tenants to assume that the building manger and/or strata corporation may have already contacted the landlord, I also find that the landlord has failed to supply sufficient evidence to show how having the tenants contact him would have changed the outcome of the situation.

Overall I find that the landlord has failed in his burden of proving that the tenants were negligent in this situation. The landlord's claim is therefore dismissed.

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: April 11, 2012.

Residential Tenancy Branch