



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

At the outset of the hearing, the parties confirmed that the tenants vacated the rental unit. I accordingly dismissed the portion of the landlord's application regarding an order of possession.

The tenant confirmed that he received the landlord's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

Undisputed Facts

The tenancy began on June 1, 2010. The rental unit in question is a condo in a strata building. On April 28, 2010, the landlord collected a security deposit from the tenants in the amount of \$697.50.

On September 30, 2011, the water in the building was shut off so that plumbing work could be carried out. The kitchen faucet in the rental unit was turned on, and after the water in the building was turned back on, the tenants' kitchen sink overflowed and the flooding cause damage to 12 other units in the building.

On March 6 and 7, 2012, a plumber attended at the rental unit and carried out repairs in the tenants' bathroom. The tenants opened the bathroom faucet and caused damage to the unit below theirs.

Landlord's Evidence

The tenants were advised not to open any faucets while repairs were being conducted on September 30, 2011. However, the tenants negligently left their kitchen faucet open and are therefore responsible for the damage caused when their kitchen sink overflowed. The strata paid for the repairs through their insurance, but they paid a deductible of \$500 and then charged that deductible to the landlord. The landlord has claimed \$500 from the tenants for their negligence in this instance.

On March 6 to 7, 2012, the plumber who carried out repairs in the rental unit bathroom advised the tenants not to open the faucet. However, the tenants disregarded the advisory and opened the faucet. As the cost of this damage was less than the strata's deductible, the full repair costs were charged back to the landlord. The landlord was able to claim these costs under his insurance policy, and the landlord claims the amount of the insurance deductible from the tenants.

In support of their claim, the landlord submitted a copy of a letter from the strata which indicates that the strata sought reimbursement of \$1,848.49 from the landlord for the March 2012 incident, as well as an attached invoice in the amount of \$1,848.49.

Tenants' Response

In regard to the first flooding incident in September 2011, the tenant did not remember opening the faucet in the kitchen.

In regard to the second flooding incident in March 2012, the plumber only verbally advised the tenants' twelve-year-old daughter that they were not to use the faucet in the bathroom. There was no written advisory, and the tenant's daughter did not inform the tenant that he could not use the bathroom until it was too late.

Analysis

I find that the landlord is not entitled to the monetary compensation claimed.

The landlord did not provide sufficient evidence to establish that the tenant was properly informed in writing of the need to keep the faucets off during repairs during either incident. The landlord did not provide copies of any written notice served on the tenants during the water repairs on either date; I find it is also insufficient for the landlord to rely on the plumber to verbally advise the tenants through communication with the tenants' twelve-year-old daughter. The landlord cannot establish that the tenants negligently caused damage resulting from the flooding on either occasion, as they failed to show that the tenants were aware of the need to not turn on the faucets.

As the landlord's claim not successful, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed.

The tenants are entitled to the return of their security deposit. Accordingly, I grant the tenants an order under section 67 for the balance due of \$697.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 31, 2012.

Residential Tenancy Branch