



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from May 1, 2011 to May 30, 2012. The tenancy agreement provides that the tenancy may continue on a month-to-month basis or another fixed length of time at the end of the original fixed term. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month. A security deposit of \$600.00 was collected, as well as a \$50.00 move-in / move-out fee. Evidence includes a copy of the move-in condition inspection report which was completed with the participation of both parties.

Tenancy ended on August 31, 2012. The parties testified that a move-out condition inspection report was completed with the participation of both parties, however, a copy of same is not in evidence. The tenants testified that they provided the landlord with their forwarding address sometime prior to the end of tenancy. The landlord's application for dispute resolution was filed on September 12, 2012.

It is understood that on July 15, 2011, unit # 208 which is located immediately below the subject unit, # 308, sustained water damage to the bathroom ceiling. It is further understood that the source of the water was an overflowing toilet in unit # 308. There are conflicting views around whether the toilet overflow was caused by the actions or

neglect of the tenants, or whether the overflow was the result of a back up in the common pipes within the building. There is no conclusive evidence of a blockage in the toilet. Further, while the tenants acknowledge that they were aware of the overflowing toilet, they claim that the overflow was spontaneous, that it corrected itself, and that the overflow was not the result of any actions or neglect on their part. The tenants also claim that, after the overflow, they mopped up the water on their bathroom floor and that there were no other incidents of an overflowing toilet in their unit during the tenancy.

In view of the inconclusive diagnosis of reason(s) for the overflow, the building strata paid ½ of the cost of repairs to unit # 208. The landlord seeks to recover the balance of the cost from the tenants. The landlord's agent was unable to confirm details around the nature of contact / outcomes that may have occurred between the landlord and any insurance provider in regard to coverage for the repair costs.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The onus or burden of proof is on the party making a claim to prove the claim. Having considered the documentary evidence and testimony, I find that the landlord has failed

to meet the burden of proving, on a balance of probabilities, that the toilet overflow in unit # 308 which appears to have led to water damage in unit # 208, was the result of any deliberate or negligent act or omission on the part of the tenants. At best, the reason(s) for the overflow is / are inconclusive. Further, there is no determinative evidence in relation to efforts that may or may not have been undertaken by the landlord to mitigate the loss by, for example, making an insurance claim for the cost of repairs to damage. In the result, the landlord's application must be dismissed.

Finally, the landlord is ordered to repay the tenants' security deposit of \$600.00.

Conclusion

The landlord's application is hereby dismissed.

The landlord is hereby ordered to repay the tenants' security deposit in the full amount of \$600.00.

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: November 27, 2012.

Residential Tenancy Branch