



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

The parties agreed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*?

Background and Evidence

The parties agree that a fixed term tenancy began on April 30, 2012 and reverts to a month to month tenancy as of April 30, 2013. Monthly rent in the amount of \$995.00 is due on the first day of each month.

The landlord has claimed \$646.76 for a sump pump repair that he alleges was a result of the negligent actions of the tenants. The landlord testified that due to the female tenants flushing tampons down the toilet, the sump pump was damaged, resulting in a repair bill in the amount of \$647.76. The landlord submitted a receipt for \$652.96 which does not match the amount being claimed in his application.

The tenants stated that they were not advised by the landlord not to flush tampons down the toilet and were not advised by the landlord of the existence of the sump pump system until after it was damaged.

The landlord confirmed during the hearing that he had never advised the tenants in writing about the sump pump system or any special toilet flushing instructions. The landlord confirmed that he also had not included an addendum to the tenancy agreement addressing any special instructions related to a sump pump system.

The landlord alleges that he verbally advised the tenants about the sump pump system, however, the tenants disputed the testimony of the landlord. The landlord did not have any witnesses or other corroborating evidence to provide during the hearing in relation to his claim.

The tenants submitted instructions from the tampon box indicating that they are a flushable type of tampon. However, the tenants stated that after the sump pump system was repaired and they were advised of the sump pump system, they have not flushed tampons down the toilet again. The tenants state that they are sorry the sump pump system was damaged; however, they feel they are not responsible for the damage as they were never advised about the sump pump system or any related flushing instructions at the start of the tenancy.

Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find that the landlord has failed to meet the burden of proof as he has failed to prove that the tenants were aware of the sump pump system and any special flushing instructions related to the sump pump system. The tenants dispute the testimony of the landlord when he claimed he verbally told them about the sump pump system. The landlord provided no witnesses or other corroborating evidence to support his claim that the tenants were negligent and violated the *Act*, regulation or tenancy agreement.

Based on the above, **I find** the landlord has failed to prove that the tenants violated the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** the landlord's claim in full due to insufficient evidence, without leave to reapply.

As the landlord was not successful with his claim, **I do not** grant the landlord the recovery of the filing fee.

Conclusion

I dismiss the landlord's application due to insufficient evidence, without leave to reapply.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 28, 2012.

Residential Tenancy Branch