



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNDC, MNSD and FF
Tenant: MNDC, MNSD and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of October 9, 2012, the landlord's agents, herein after referred to as the landlord, sought a monetary award to recover the cost of remediating damage to the commercial site below as a result of water intrusion originating in the rental unit. The landlord also sought authorization to retain the security deposit in set off against the balance owed and recovery of the filing fee for this proceeding.

By application of October 15, 2012, the tenant sought return of his security deposit in double on the grounds that the landlord retained it without consent. The tenant also seeks to recover his filing fee.

Issue(s) to be Decided

Is the tenant responsible for the water intrusion into the commercial office below the rental unit?

Is the tenant entitled to return of his security deposit in double?

Background, Evidence and Analysis

This tenancy ran from October 1, 2011 to September 30, 2012. Rent was \$1,200 per month and the landlord held a security deposit of \$600 paid at the beginning of the tenancy.

Tenant's Claim

As to the tenant's claim, the parties concur that the tenancy ended on September 30, 2012. I note that the landlord's application for a monetary award including authorization to retain the security deposit in set off was made on October 9, 2012.

This is well within the 15 days within which a landlord may return a deposit or make application for authorization to retain all or part of it under section 38(1) of the *Act* and a tenant may only make application for double under section 38(6) of the *Act* when the landlord has failed to do either.

As the landlord's application was made within 15 days of the end of the tenancy, the tenant's request for double the deposit is dismissed and the tenant may only now qualify for return of the bare deposit or remaining portion of it depending on the success of the landlord's claim.

Landlord's Claims

The landlord makes claim for \$593, the cost of remediating damage to the ceiling of a commercial office below the rental unit, a claim made by the commercial office through the buildings strata corporation to the landlord and to the tenants through their various agents.

In brief, the landlord's agent was initially made aware of the problem when the tenant advised by email of June 20, 2012 that an official from the office below had reported staining of their ceiling tiles, suspected it originated in the subject rental unit's washroom/laundry room, and cautioned it could lead to a claim.

The tenant advised the landlord that when cleaning the filter of the washing machine about two litres of water had spilled on to the floor and had been cleaned up immediately. The tenant had suggested that it would not have been enough water to have caused the intrusion under normal circumstances and that he suspected there might be a crack in the floor under the washing machine.

The tenant stated that he delivers appliances for a living and is thoroughly familiar with the proper operation of the washer. The landlord stated that the co-tenant had advised that she “floods” the floor when washing it, but the tenant stated that it was washed with a normal amount of water using a sponge mop.

He stated that after hearing from the commercial tenant downstairs, the co-tenant had cautiously tested the washer, checking with the commercial tenant and had been assured that there was no further leaking before resuming normal use.

The landlord had written to the tenant on August 15, 2012 stating that an appliance specialist, the strata representative and the insurance company had concluded that the leak was due to faulty use by the tenants.

However, the parties concurred that at no time had the stacked washer/dryer been pulled out to check for a crack under the appliances.

In a claim for damages, the burden of proof lies with the claimant.

In the present matter, I find that the tenant acted responsibly by reporting the issue to the landlord in a timely manner, by acknowledging the small spillage when changing the filter and by co-operating with the commercial tenant below in resuming use of the washer to ensure there was no further damage.

I further accept the submission of the tenant that he is more familiar with the operation of washers than average because of his employment and that operator error is unlikely.

Given the weight and vibration of the stacked washer/dryer combination, I find it is not unreasonable to consider that there could be a crack under the units and that the onus would have been on the landlord to show that there was no such structural defect.

Therefore, I find that the landlord has not proven the leak was due to negligent operation by the tenant and the claim is dismissed without leave to reapply.

Therefore, taking into account that the landlord has returned \$57 of the security and key deposits, \$50 of which was key deposit, I find that accounts now balance as follows:

Security deposit	\$600.00
Key deposit	50.00
Sub total	\$650.00
Less amount previously returned to tenant	- 57.00
TOTAL amount remaining to be returned to tenant	\$593.00

Conclusion

The tenant's claim for double the security deposit is dismissed.

The landlord's claim for the cost of remediating the commercial tenants ceiling is dismissed and the landlord must return the balance of the tenant's security deposit.

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$593.00** for service on the landlord if payment is not made within a reasonable time..

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: January 04, 2013.

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca