



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND and FF

Introduction

This hearing was convened on the landlord's application of November 26, 2012 seeking a Monetary Order for \$2,527.20 plus filing fee for damage to the rental unit arising from the bathtub having been left running and overflowing.

As the commencement of the hearing, the landlord advise that he wished to reduce the claim to \$1,000 in recognition of the tenants having been fully cooperative in acknowledging the damage and expressing their intention to settle the claim.

Despite having been served with the Notice of Hearing in person on November 29, 2012 and having been reminded of the hearing by the landlord recently, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order as requested.

Background and Evidence

This tenancy began on November 20, 2008, although the tenants have since relocated to another unit in the same residential building.

This claim arises from events beginning in the late hours of September 29, 2012 and continuing through the night, according to staff and tenant reports submitted by the landlord.

In brief, the male tenant arrived home from a concert and had gone to sleep on the couch. The female tenant came home later and went to bed, forgetting to lock the door.

According to the written submission of the tenants, sometime after 3 a.m., the next door tenant, apparently under the influence, mistook the rental unit as her own, entered and began an extended scene when she discovered the female tenant in what the neighbour mistakenly took to be her bed.

The tenants reported that they had initially called for police assistance, but cancelled when they believed they had the situation under control after they took the neighbour home. They stayed with her for two or three hours.

According to the tenants, at some time during the intrusion, the neighbour had turned on the bath taps, unnoticed by the tenants because of the loud and unsettling behaviour of the intruder.

The incident was reported to the building manager around 6 a.m., and subsequently required the attention of a restoration company to remove the water, lift the carpets and replace the underlay at a cost of \$2,587.20 as verified by receipt, an amount less than the landlord's \$5,000 insurance deductible.

Analysis

Section 32(3) of the Act states that: "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 67 of the *Act* empowers the director's delegate to determine an amount owed by one party to the other for breach of the legislation or rental agreement and to order such payment.

In the present matter, whether the tenants or the neighbour turned on the bath tap, I find that the tenants must compensate the landlord for the reduced claim due to the negligence of causing or permitting the tub to overflow and/or in leaving the door unlocked and allowing the neighbour to do so.

If the tenants believe the neighbour caused the damage, they might have a cause of action against her in the Provincial Court of British Columbia, but they alone are obliged to satisfy the landlord's present \$1,000 claim.

I further find that the landlord is entitled to recover the \$50 filing fee for this proceeding.

Thus, I find that the tenants owe to the landlord \$1,050.00.

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$1,050.00 for service on the tenants.

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: March 01, 2013

Residential Tenancy Branch

