



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; MND; FF

Introduction

This is the Landlords' application for a monetary award for damage to the rental unit and compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was confirmed that the Tenant received the Notice of Hearing documents by registered mail sent December 28, 2012, and that the Tenant received copies of the Landlords' documentary evidence by registered mail sent March 7, 2013.

The Tenant provide the Landlords with copies of her documentary evidence by priority mail sent on March 8, 2013.

Preliminary Matter

The Landlords had applied to recover a strata fine in the amount of \$200.00 from the Tenants; however, at the beginning of the Hearing it was established that the fine had been recovered from the Tenants in December, 2012. Therefore, this portion of the Landlords' application was dismissed.

Issues to be Decided

- Are the Landlords entitled to a monetary award for damages caused by a flood at the rental property?
- May the Landlords set off the security deposit against their monetary award?

Background and Evidence

Although neither party provided a copy of the tenancy agreement in evidence, the parties agreed that the corporate Tenant MSRS ("MSRS") and the Landlords entered

into a tenancy agreement in December, 2011. The rental unit is located in a building administered by a strata corporation (the "Strata Corporation"). The Landlords are owners of one of the strata units, which is the rental unit.

The Tenant PR ("PR") is the owner of the corporate Tenant. MSRS provided the rental unit to corporate clients, for their use. The tenancy ended by mutual agreement on December 1, 2012.

On May 15, 2012, there was a flood which originated in the rental unit and caused considerable damage to the rental unit and other areas in the strata property. The Landlords provided documentary evidence that the Strata insurance deductible in the amount of \$10,000.00 was charged back to them, as owners of the rental unit where the damage originated. The Landlords seek to recover that cost from the Tenants. The Landlords submitted that the flood occurred as a result of MSRS's guests actions and that the Tenants should therefore be responsible for paying the deductible.

PR acknowledged that the damage was due to an accident, caused by a corporate client. She submitted that the owners' insurance should cover the Strata insurance deductible and that she should be responsible only for the owner's insurance deductible. She stated that she believed the typical amount for the owner's insurance deductible was in the \$300.00 to \$1,000.00 range and that she was prepared to pay the Landlords' home insurance deductible. PR stated that she has liability insurance, but that she cannot insure against the Landlords' property.

PR provided a copy of the Strata Corporation's Minutes of the Annual General Meeting dated February 24, 2012, which includes the following statement:

The Owners were reminded of the importance of getting home insurance.

PR also provided a copy of the Strata Corporation's Minutes of a general Meeting dated April 12, 2012, which includes the following statement:

As per the Act, Owners are required to have insurance for their contents, improvements and betterments, liability, and insurance deductible. Owners should consult an insurance agent to ensure that they have proper coverage.

PR provided a copy of the Strata Corporation's Bylaws. Division 11 – Hazards and Insurance, Section 32(1) states:

All Owners must also purchase insurance for their strata lot to protect themselves against a Strata insurance deductible chargeback, personal content (if Owner-Occupier), rental loss (if Investor-Owner), or costs incurred by the Strata Corporation to repair common property for any losses.

The Landlords stated that they did not have insurance, as required by the Bylaws and as advised in the Strata Corporation minutes.

Analysis

This is the Landlords' claim for damage and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

Tenants are responsible for damages done by their guests. I find that the Landlords have suffered a loss as a result of the Tenants' guest's actions in causing the flood. However, I find that the Landlords did not mitigate or minimize the damage or loss because they did not carry the required insurance. However, had the Landlords had the required insurance, there would have been a deductible on that insurance. In the absence of any evidence from the Landlords, I accept PR's submission that the Landlords' deductible would have been up to \$1,000.00. I find that the Tenants are responsible for paying the amount equivalent to the Landlords' insurance deductible and fix that amount of compensation at **\$1,000.00**.

The Landlords have been partially successful in their Application and I find that they are entitled to recover half of the filing fee from the Tenants, in the amount of **\$50.00**.

I hereby provide the Landlords a Monetary Order in the amount of **\$1,050.00**. Neither party gave evidence with respect to the amount of the security deposit that was paid. Therefore, I order that the Landlords set off any amount of the security deposit up to \$1,050.00 and to return the balance, if any, to the Tenants within 15 days of receipt of this Decision. If there is any amount still owed to the Landlord after setting off the security deposit, the Landlord may file the Monetary Order in the Provincial Court of

British Columbia (Small Claims) for enforcement as an Order of that Court for the amount still owed.

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$1,050.00** for service upon the Tenants.

I order that the Landlords **set off any amount of the security deposit up to \$1,050.00 and to return the balance, if any, to the Tenants within 15 days of receipt of this Decision.** If there is any amount still owed to the Landlord after setting off the security deposit, the Landlord may file the Monetary Order in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court **for the remaining amount that is owed.**

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: April 08, 2013

Residential Tenancy Branch

