



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD
O

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement (\$25,000.00) / and retention of the security deposit (\$1,000.00); and ii) by the tenant for "Other" (\$3,324.44).

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on September 23, 2011. Monthly rent of \$2,000.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,000.00 was collected.

Following water damage to the subject unit and a number of other units within the building on or about November 25, 2012, by way of e-mail dated November 27, 2012, the tenant gave notice to end tenancy effective December 31, 2012. Thereafter, in response to the landlord's application for dispute resolution a hearing was convened on March 13, 2013. Both parties appeared and a decision was issued by that same date. In part, the decision documents as follows:

The landlord, agent for the owners of this two bedroom strata titled apartment, applies to recover the amount of an insurance deductible that might be charged against the owners as a result of water damage the landlord says the tenant or her invitees caused by leaving a tap running.

As of the date of this hearing the total damage has not been repaired, the ultimate cost has not been determined and no actual amount has been officially charged against the owners or paid by them.

In the result, the landlord's application was dismissed with leave to reapply.

Further to the above, in the Decision the Arbitrator also documents as follows:

The landlord continues to hold the tenant's \$1000.00 security deposit. I authorize him to continue to hold it without penalty but I direct that if the landlord has not re-applied on or before July 1, 2013, then the landlord must repay the deposit within the fifteen day period prescribed by s.38 of the *Residential Tenancy Act* or suffer the doubling penalty it imposes.

The present hearing was scheduled following the landlord's filing of a second application on May 23, 2013. The tenant's application was later filed on June 28, 2013.

The landlord takes the position that the tenant is responsible for the flooding, the resulting damage and the related cost of repairs. Through legal counsel the tenant disputes the landlord's application on the basis, in part, that there were drainage issues in the subject unit / building which had not been addressed, and which resulted in the flooding and related damage.

During the hearing the tenant testified that the thrust of her application for "Other," is to formally document the impact of cost she has incurred as a result of the landlord's first application. In particular she claims to have paid legal counsel a total of \$3,324.44 "for nothing" as a result of the landlord's initial application and the hearing held on March 13, 2013. In the presence of legal counsel during the present hearing, however, the tenant acknowledged that there was no provision under the Act for recovery of these costs, and she therefore withdrew her application.

During the hearing, a review of documentary evidence submitted by the landlord to the Branch, led to the tenant's claim that one particular page of evidence had not been included in the package provided to the tenant. Specifically, this page is a "Statement of Account" dated July 9, 2013 which appears to have been provided to the landlord by the Strata. The landlord testified to his understanding which is that a copy of all documents submitted to the Branch had also been provided to the tenant.

I inquired of the landlord around the existence of additional, more detailed documentary evidence in support of the application. A discussion around the options of adjournment, or dismissal, or another dismissal with leave to reapply ensued. The tenant and her legal counsel argued that the landlord's application should be dismissed, as one opportunity had already been made available to the landlord to address his claim without any substantive result, and at significant cost to the tenant. The tenant noted

that additional cost would be incurred as a result of this second hearing, and that yet a third hearing would lead to even more legal fees for her. As well, tenant's legal counsel claimed that the Arbitrator in the first hearing had suggested to the landlord that consideration might be given to obtaining the services of legal counsel in this matter.

For his part, the landlord made no request for adjournment before withdrawing from the hearing several minutes prior to its conclusion.

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

Documentary evidence submitted by the landlord to the Branch includes the following:

- three (3) page hand written summary of circumstances surrounding the dispute;
- letter to the unit owners from the Strata Manager on behalf of the Strata Council dated November 26, 2012;
- Arbitrator's decision dated March 13, 2013;
- "Statement of Account" dated July 9, 2013; and
- the subject Residential Tenancy Agreement

Despite the landlord's claim, I find that evidentiary documents provided by him to the tenant for the purposes of this hearing do not include a copy of the "Statement of Account."

In the letter dated November 26, 2012, as above, the Strata Manager informs the unit owners, in part, as follows:

An assessment of the damage will be made to determine if this is an insurable claim covered by the Strata Corporation's insurance policy and the amount of the water damage deductible (\$25,000.00) will then be charged back to your strata lot.

Subsequent to the above, the one page "Statement of Account" dated July 9, 2013 reflects a "Balance Forward" of \$24,719.93 on May 1, 2013, with various charges and one payment after that time which result in an outstanding balance of \$25,754.89 owed by the owners effective July 1, 2013.

However, further to the Strata Manager's letter of November 26, 2012, and the "Statement of Account" dated July 9, 2013, I find there is insufficient documentary evidence to support the landlord's application to recover \$25,000.00 from the tenant and to retain her security deposit. Specifically, there is no conclusive documentary evidence that an assessment of the water damage led to a determination that there was an insurable claim, and that the Strata Corporation's deductible of \$25,000.00 was charged back to the owner. If indeed the cost of damage was assessed to be less than \$25,000.00, there is no detailed documentary evidence of the actual costs incurred. Neither is there any documentary evidence pertinent to the existence or nature of any insurance coverage the owner(s) may have.

I find that the landlord has had a fair opportunity to be heard, and that a further delay in proceedings would serve as an injustice to the tenant. In consideration of all the foregoing, I find that the landlord's application must be dismissed, and the landlord is ordered to repay the tenant's full security deposit of \$1,000.00.

Conclusion

The tenant's application is withdrawn.

The landlord's application is hereby dismissed.

The landlord is ordered to repay the tenant's security deposit in the full amount of \$1,000.00.

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: July 31, 2013

Residential Tenancy Branch