



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy was from July 1, 2012 to July 1, 2013. Monthly rent was \$1,750.00, and it appears from the text of the translated tenancy agreement that a security deposit of \$1,750.00 was collected. Two tenants are named on the tenancy agreement, male tenant "ML," who is named in the landlord's application, and female tenant "PH" who is not named on the landlord's application.

On April 8, 2013 there was a blockage of some sort which resulted in water overflowing through the kitchen drain in the unit. It appears that a plumber was called and the blockage was remedied, but not before there had been significant water damage to this unit and perhaps another unit and / or common areas, it is not clear.

By letter dated May 7, 2013, the Strata informed the landlord that she owed \$6,438.56 for "emergency repairs," and that an additional amount of "approximately \$21,407.59 in final repairs" may later be due.

At the time, the landlord resided in another Province and on May 28, 2013 she flew to Vancouver to inspect the unit. Upon attending the unit on May 29, 2013, the landlord determined that the tenants had vacated several days earlier on May 19, 2013. The tenant had not apparently provided a forwarding address, however, during the hearing

he informed the landlord of his current address. It is not clear whether or not the tenant had been served with the landlord's application for dispute resolution, notice of hearing, and all related documentary evidence, or whether information related to participation in the telephone conference call hearing had been communicated by way of telephone, e-mail or text messaging. In any event, the tenant testified that he did not know what gave rise to the overflowing drain in the kitchen.

In her written submission the landlord claims that the cost of the final repairs was ultimately \$18,200.00, such that the total amount of her claim is \$24,638.56 (\$6,438.56 + \$18,200.00). The person assisting the landlord said that the landlord did not have insurance to cover such costs.

Evidence directly related to repair of the blockage is limited to two documents: one document is an "Invoice & Work Report" concerning a home visit on April 8, 2013 between 4:00 to 6:00 p.m. and dated April 25, 2013, in which it is stated as follows:

The main drain line of suite 01 in the building was blocked, water from kitchens above level [level?] 26th could not be drained out, which overflow from the kitchen of suite 2601. Using power drain clean machine with ½" snake cable going through about 20 feet to open the drainage.

The second document is undated but the writer, seemingly a certified plumber, claims he arrived at the unit during the afternoon of April 8, 2013. Further, in this document the writer claims, in part, as follows:

In my experience, the problem is not caused from this unit itself, it was caused from the units downstairs, when water running through the main drain pipe was stucked, water backed up to his unit which comes out from his kitchen sink. My opinion is the strata company should take responsibility of that. **[reproduced as written]**.

The respective names and addresses on the above two documents are different, leading me to query whether perhaps two different businesses were called to respond to the overflowing drain. Again, it is not clear.

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

First, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, as earlier noted, the tenant's current address was provided to the landlord during the hearing. Accordingly, in the result, the landlord will be deemed to have received this decision five (5) days after it is dated, and the landlord will have fifteen (15) days following that fifth (5th) day to deal with the security deposit pursuant to section 38 of the Act, as above. Should clarification or additional information be required, either party is at liberty to contact an Information Officer at the Residential Tenancy Branch.

In the meantime, I find that the evidence before me is variously either incomplete or insufficient for me to find that the tenant is responsible for the cost of emergency repairs and restoration assessed against the landlord by the Strata. The landlord may consider pursuing this matter further with the plumber(s) and the Strata.

In the particular circumstances of this dispute I am dismissing the landlord's application with leave to reapply. Should either the landlord reapply, or the tenant file an initial application, I encourage that a face-to-face hearing be requested.

Conclusion

The landlord's application is hereby dismissed with leave to reapply.

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: September 16, 2013

Residential Tenancy Branch

