



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing was convened to address a claim by the tenants for a monetary order and an order for the return of their security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in or about October 2004 and that the tenant paid a \$375.00 security deposit at the outset of the tenancy. They further agreed that the tenancy ended abruptly in mid-January 2014 as a result of flooding in the rental unit, which is in the basement of the home in which the landlord resides on the upper floor.

The parties agreed that on January 14, 2014 the rental unit flooded. The tenant claimed that there was 6" of water in the basement while the landlord said there was no more than 2" of water. The tenant did not allege that the landlord should have known that there would be a flood or that the landlord or some defect in the house caused the flooding.

The tenants claimed that their belongings which were on the floor of the rental unit and most of their furniture was irreparably damaged by the flooding. They claimed that they had planned to move their belongings from the unit, but the landlord repeatedly told them not to move anything as his house insurance would cover the damage to their property. The landlord denied having made this statement.

The tenants claimed that they twice telephoned the City of Vancouver to shut off the water in the early morning of January 15, but when the City contacted the landlord for permission, the landlord cancelled the request. The landlord denied having cancelled the request for an emergency water shut-off and provided an invoice showing that he paid to have the water shut off. The billing date of the invoice is January 23 and indicates a service date of January 16. The landlord insisted that the service date is incorrect and that the service occurred on January 14.

The landlord testified that there was a floor drain in the boiler room of the rental unit and that while the water reached a minimal depth, the floor drain was able to drain most of the water away. The parties agreed that the landlord arranged for a restoration company to attend at the rental unit in the morning of January 15 and that the company removed the toilet in order to allow more drainage to take place.

The tenants seek in excess of \$20,000 for the replacement value of their goods which they claim were damaged by the flood. They also claim \$4,375.00 as the cost of emergency shelter as they had to rent alternative accommodation at a significantly higher rental rate as they did not have time to secure a comparable unit. They also claim the return of the rent paid for the month of January and the return of their security deposit.

The landlord disputes that he is responsible for the damage to the tenants' goods but agreed that the tenants are entitled to recover \$425.00 in rent for the last half of the month of January and the \$375.00 security deposit. The landlord maintained that he has always been willing to give the tenants this money but the tenants refused to accept it as they believed they were entitled to significant compensation.

Analysis

Pursuant to section 7 of the Act, the landlord is only responsible for losses resulting from his failure to comply with the Act, regulations or tenancy agreement. Under a claim in negligence, the landlord would only be liable for the tenants' losses if he owed a duty of care to the tenants, he failed to meet that duty of care through his action or inaction and foreseeable losses resulted from that failure.

There is no evidence before me that the landlord failed to comply with the Act, regulations or tenancy agreement. The parties are still unsure what caused the flooding, but the tenants did not allege that the landlord's failure to maintain the property or some other action of his was responsible for the flood. I find that the tenants have failed to prove that the landlord failed to comply with the Act, regulations or tenancy agreement.

Turning to the question of whether a claim founded in negligence can succeed, I accept that the landlord owed a duty of care to the tenants. However, I again am unable to find that through his action or inaction he failed to meet that duty of care. The cause of the flooding is uncertain and I am not persuaded on the balance of probabilities that the landlord unreasonably delayed in addressing the flooding. The landlord denied having canceled the tenants' request that the City shut off the water and in the absence of corroborating evidence, I find that the landlord did not cancel this request. The rental unit had a floor drain and as the tenants did not dispute that the floor drain was operational during the flood, I find it more likely than not that the drain kept the water accumulation to a minimum. I find that the landlord acted reasonably in retaining the services of a restoration company which, although unable to locate the source of the flooding, alleviated the pooling of water by removing the toilet.

I find that the landlord met his duty of care to the tenants by acting reasonably to address the flooding when it occurred. For this reason, I find that the tenants have failed to prove that the landlord was negligent and I dismiss their claim for recovery of the cost of their damaged goods.

The tenants claimed that the landlord said that his insurance would cover the tenants' losses. I find this unlikely and note that even if this were the case, the landlord has no legal obligation to insure the tenants' belongings. The tenants are responsible to obtain content insurance.

As the landlord agreed to repay \$425.00 which represents rent for the last half of January and to repay the \$375.00 security deposit, on which \$13.27 in interest has accrued.

The tenants requested recovery of their filing fee, but I decline to award that fee as the landlord had offered to repay rent and the security deposit.

Conclusion

I award the tenants \$813.27 which represents \$425.00 in rent for January and \$388.27 as the security deposit and interest. I grant the tenants a monetary order under section 67 for this sum which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The balance of the tenants' claim is dismissed.

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: May 06, 2014

Residential Tenancy Branch

