



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD, O

Introduction

This is an application for a Monetary Order for \$10,000.00 and recovery of the \$100.00 filing fee, and a request to retain the full security deposit of \$750.00 towards the claim.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Have the applicants established a monetary claim against the respondents, and if so in what amount.

Background and Evidence

On January 20, 2014 the rental property was flooded through three floors of the building, due to a plugged toilet overflowing in the tenant's rental unit.

The tenants admitted that they found the toilet overflowing in the morning and immediately shut off the water and cleaned up what they thought was a small spill in their rental unit. They did not realize that the toilet had been overflowing all night and had caused extensive damage to the rental property.

It wasn't until later on in the day that the tenants realize the extent of the problem when the landlord contacted them to inform them of what had happened.

The tenants stated that they believe the toilet was clogged when a friend of theirs used the toilet, and as a result had overflowed all night unbeknownst to them.

As a result of this flooding the Strata Corporation had to do significant repairs to the rental property, in excess of \$10,000.00.

The Strata Corporations deductible on their insurance is \$10,000.00, and therefore the Strata Corporation is billing the owner/landlords of this rental unit for the cost of the deductible on the insurance.

The landlord is therefore requesting an order that the tenants be held liable for this \$10,000.00 deductible charge.

Analysis

It is my finding that the tenants are liable for the cost of the \$10,000.00 insurance deductible charge that is being billed to the landlord, as this damage was caused by an overflowing toilet that was clogged by an invited guest of theirs.

It is obvious that this was not willful damage; however this damage was not caused by any negligence on the part of the landlord, and therefore the landlord cannot be held liable for the insurance deductible cost.

The negligence in this case was that of the tenant's guest who failed to ensure that the toilet was draining properly after using it; however, tenants are liable for damages caused by or resulting from the negligence of their invited guests.

This type of cost is an item that would normally be covered by tenants insurance if the tenants hold such insurance.

I therefore allow the landlords full claim for \$10,000.00 insurance deductible cost and the \$100.00 filing fee for a total of \$10,100.00.

Conclusion

I have allowed the landlords full claim of \$10,100.00, and I therefore Order pursuant to section 38 of the Residential Tenancy Act, that the landlords may retain the full security

deposit of \$750.00 and I have issued a Monetary Order pursuant to section 67 of the Residential Tenancy Act, for the tenant's to pay \$9350.00 to the landlords

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, 2014

Residential Tenancy Branch

