



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenants attended the hearing and they were assisted by an insurance adjuster who acted as their representative at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for the cost of repairs to the rental unit and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on January 1, 2012 for a one year fixed term and thereafter month to month. The tenancy is ongoing. In the application for dispute resolution filed on October 17, 2014, the landlord has claimed payment of the sum of \$4,048.27, being the cost to repair damage caused when the washing machine in the rental unit overflowed.

There is no dispute that on or about July 7 or 8, 2014 the tenant was washing a duvet in the washing machine in the rental unit when the washing machine overflowed. The landlord was notified and a restoration company was retained to remediate and repair the damage. The necessary repairs included the replacement of laminate flooring, baseboards and drywall in the rental unit. The landlord submitted invoices from the restoration company setting out the details of the work performed and the costs for the work and materials. The restoration company's invoices noted: "CAUSE OF LOSS: WASHING MACHINE OVERFLOW IN UNIT # (rental unit)".

The landlord's representative testified that the washing machine was inspected after the incident and was found to be working properly. He said that the washing machine is still in service at the rental unit. The landlord's representative submitted that the flood was due to the tenant's negligence because she overfilled the washing machine and thereby caused the flood.

The tenant testified that she washed a queen size duvet in the washing machine. She said that the manufacturer of the duvet provided information that the duvet was machine washable. The tenants' representative referred to documentation concerning the washing machine, but she failed to provide copies of any reports or other documentation to the Residential Tenancy Branch or to the landlord and I declined to receive oral testimony with respect to the content of documents that were not submitted as evidence.

The tenant submitted that the fact that the flooding problem has not recurred, or that there is no reported defect to the washing machine does not establish that the tenants were at fault or liable for the damage caused by the flood. The tenants submitted that the act of washing the duvet in the machine does not of itself constitute evidence of negligence.

Analysis

The landlord bears the burden of proving, on a balance of probabilities, that the tenants' action, neglect or failure was the cause of the washer overflow and the damage that resulted. The landlord has not provided any expert report or other evidence with respect to the overflow and its cause. The landlord has not provided any specifications or particulars with respect to the washing machine and there is no information concerning its operating instructions or its capacities or limitations. The landlord has submitted that I should find the tenants responsible for the damage because they overloaded the washing machine. He submitted that there is no evidence of a fault in the machine and in the absence of any fault on the part of the landlord, the tenants should be responsible for the loss, this being a matter that should be covered by the tenants' insurance.

The landlord's representative said that the overloading likely caused the washing machine's water level sensor to malfunction and he submitted that this was the tenants' responsibility. Even if it is the case that the duvet washed in the machine exceeded its capacity (and I do not have evidence to permit me to make this finding), it is not a natural inference that the overloading of the machine will necessarily cause the machine to overflow. The landlord has advanced a conjectural cause for the overflow, but that is

not sufficient to establish that the tenants were negligent or to find that the tenants are liable for what may have been a transient anomalous malfunction of the washing machine.

Conclusion

I find that the landlord has failed to prove on a balance of probabilities that the tenants' negligence was the cause of the washing machine overflow and I dismiss the landlord's claim for the cost of remediation and repairs without 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: May 20, 2015

Residential Tenancy Branch

