



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD

Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$3185.00 and recovery of the \$50.00 filing fee. The applicant is also requesting an order to keep the full security/pet deposit of \$1300.00 towards the claim.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary claim against the respondent's, and if so in what amount.

Background and Evidence

Landlord's agent testified that it is their belief that negligence on the part of the tenants resulted in two substantial floods at the rental property, and therefore they believe the tenant should be paying the \$2000.00 in total insurance deductible fees that the landlord paid.

The landlord's agent is alleging that the tenants were negligent in the first flood for failing to inform the landlord when they vacated the rental unit to go to Vancouver, and for failing to have a competent person do regular inspections.

The landlord's agent further argues that since the original damage was caused by flexing and twisting when the faucet was rotated on top of the sink there was also negligence on the part of the tenants for not reporting the fact that the faucet was rotating and flexing and twisting the fitting.

The landlord's agent is also arguing that the second flood is a result of negligence on the part of the tenants because the tenants went away on their honeymoon for an extended period of time without informing the landlord of their absence and again without informing of the landlord of any competent person inspecting the rental property.

The landlords agent also argues that the plumber turned off the taps when the first repair was done, and the tenants turned them on again before checking to see if the repair had been completed.

The agent for the landlord also stated that after the tenants vacated, one of the toilets was not functioning properly and therefore a plumber was brought in, and a jar lid was found lodged in the toilet.

The agent for the landlord also testified that the tenants left garbage on the property including a car bumper and the shed on the property had a key broken off in the deadbolt and therefore the deadbolt had to be replaced.

The landlord's agent further testified that at the end of the tenancy one of the drawer panels was broken, and there were some fresh scratches on the stairs obviously, caused by dogs, that needed to be repaired.

The landlord is therefore requesting a reduced claim as follows:

Insurance deductible fees	\$2000.00
Plumbing costs to remove jar lid	\$82.95
Garbage removal and deadbolt replacement	\$93.57
Repair drawer and refinish stairs	\$198.33
Filing fee	\$50.00
Total	\$2424.85

In response to the landlord's agents testimony the tenant testified that there was no negligence on their part with regards to either of the floods.

The tenants testified that when the first flood occurred they were only gone for two days, and the clause in the tenancy agreement states that they must only notify the landlord if they are gone for four days or more.

The tenants further testified that the second flood was the result of negligence on the part of the landlord because they had informed the landlord of the plumber's recommendation to replace the kitchen tap and the landlord failed to do so stating in her e-mail that perhaps she would look at it in August when she was back.

The tenants further testified that they did inform the landlord when they went away on their honeymoon, and they also got permission to have their bridesmaid live in the rental unit to take care of the property. The landlord was fully aware of both these situations.

The tenant further stated that the second flood occurred while her bridesmaid was living there, but was out for the day, and when the bridesmaid returned it was the bridesmaid that turn off the tap saving, the building from even further damage.

The tenant also stated that the toilet in the rental property was working fine when they moved out, and has provided witness letters that corroborate that, and that the landlord had people working in the rental property after they moved out and before the move out inspection was done and therefore the problem with the toilet could have been caused after they moved out.

The tenant also stated that they did not leave any garbage behind and in fact the bumper that was left on the property was a bumper that belong to the neighbor and not to them, and that the keys for the shed were returned to the landlord and therefore could not have been broken off in the shed deadbolt.

The tenant further testified that there was no damage to the drawer front when they vacated and they have pictures to prove that, and the scratches on the stairs were the same as when they moved in, as noted on the move-in inspection report.

The tenants therefore believe that the landlord's full claim should be dismissed and their full security/pet deposit should be returned.

In response to the tenants testimony the landlord's agent testified that he has not been given any information by the landlord, nor has he found any information in any of the e-mails to show that the tenants informed the landlord when they went on their honeymoon.

The landlord's agent also stated that he finds it unlikely that the tenants were only gone for two days at the time of the first flood, as they had to go all the way from Nelson to Vancouver and back and although that is possible he finds it improbable.

The landlord's agent also stated that there was an electrician working in the rental unit after the tenants vacated, and he finds it unlikely the electrician would have put a jar lid in the toilet.

The landlord's agent also stated that the car bumper that was on the property did not belong to the neighbor, as the neighbor does not have that type of car.

In a final response to the landlord, the tenants also stated that they don't have the type of car that matches the car bumper that was on the property either.

Analysis

It is my finding that the landlord has not met the burden of proving that there was any negligence on the part of the tenants with regards to the two floods.

In the tenancy agreement section 57 states that if the tenant is absent from the property for a period of four consecutive days or longer the tenant will arrange for regular inspections by competent person, however in the case of the first flood the tenants testified that they were only gone for two days and although the landlord finds that improbable, the landlord has provided no evidence to show that the tenants were away from the property for any more than two days.

With regards to the second flood, the tenants testified that the landlord was informed that they were going on their honeymoon, and in fact they had to get permission from the landlord to allow the bridesmaid to live in the rental property, and although the landlord's agent states that he has not been given any information about that, the landlord's agent does not have any direct evidence to refute the tenants claims.

Further, on June 20, 2014 in an e-mail sent to the landlords the tenants had stated "*The plumber recommended that you should have a different kitchen tap put in or it will flood again*", and in the landlord's response e-mail on June 21, 2014 the landlord

technology is that information and states " *Thank you for the information on the taps and hose. Perhaps when I'm back in August I'll look at having that taken care of.*" Therefore it's my finding that the tenants had taken reasonable steps to avoid any further flooding, and it was most likely the landlord's lack of action that led to the second flood.

I therefore deny the landlords claim for recovery of any insurance deductible fees.

I also deny the landlords claim for plumbing fees to remove a lid from the toilet, because there is no evidence to show that the toilet was plugged when the tenants vacated and since there were people in the rental unit after the tenants vacated this problem could well have occurred after they moved out.

I also deny the claim for garbage removal as the landlords agent has not shown that the bumper left of the rental property belong to that tenants, and I deny the claim for new deadbolt because again since there were people at the property after the tenant vacated this issue could have occurred after they moved out.

I also deny the claim for repairing a drawer because again there is no evidence that the drawer was damaged when the tenants vacated, and I deny the claim for repairing scratched stairs, because the move-in inspection report clearly states that the stairs were scratched and there is insufficient evidence to show that there were any further scratches on move out, than existed at the beginning of the tenancy.

It is my decision therefore, that this full claim is dismissed.

Conclusion

This application is dismissed in full without leave to reapply and I have issued an order for the landlord to return the full security/pet deposit totaling \$1300.00 to the tenants.

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 23, 2015

Residential Tenancy Branch

