



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 14, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 36 pages of evidence the Landlords submitted to the Residential Tenancy Branch on September 19, 2016 were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 21, 2017 the Landlords submitted 11 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were sent to the Tenants, via registered mail, on February 17, 2017. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on December 20, 2014;
- the tenancy ended on August 31, 2016;
- the Tenants paid a security deposit of \$550.00;
- a condition inspection report was completed at the beginning and the end of the tenancy;
- the Tenants provided a forwarding address, in writing, on September 01, 2016;
- the Tenants were not permitted to use a portable washing machine in the rental unit; and
- the Tenants used a portable washing machine in the rental unit.

The Landlord is seeking compensation, in the amount of \$740.25, for investigating and repairing water damage.

The Landlord stated that on September 19, 2015 water leaked from the bathroom of the rental unit into the suite below the rental unit. He stated that after this leak occurred he discovered that the Tenants had been using a portable washing machine in the rental unit. He stated that he told the Tenants to remove the washing machine and he was advised, in writing, that the machine had been removed.

The male Tenant stated that he was aware of the leak in September of 2015 but he does not think it was the washing machine that caused the leak in the bathroom. He stated that the Tenants were told that the leak could have been as a result of the bathtub leaking. He stated that the washing machine was removed from the rental unit at the request of the Landlords.

The Landlord stated that on March 18, 2016 water leaked from the bathroom of the rental unit into the suite below the rental unit. He stated that when the rental unit was inspected after this leak was discovered there was no washing machine in the unit, so he thought it may have been a plumbing problem.

The male Tenant stated that he was aware of the leak in March of 2016 but he was told by a "strata officer" that the leak could have been the result of water splashing out of the bathtub and that the washing machine was not in the unit at the time of this leak. He stated that the Landlords hired someone to caulk the bathtub after this leak, which he presumes remedied the problem.

The Landlord stated that on April 08, 2016 he hired a plumber to inspect the bathtub and that the plumber concluded the bathtub and shower in the bathroom were not leaking. He stated that the plumber told him that he believed that water had leaked into the lower rental unit because the bathroom floor had been "flooded". The Landlord submitted a copy of the plumber's invoice that indicates no leaks were located in the bathtub or shower.

The Landlord stated that he hired a contractor who worked with the plumber by cutting a hole in the ceiling unit to ensure no water was leaking into the ceiling while the plumber was completing his tests. The Landlord submitted a copy of the contractor's invoice.

The Landlord stated that on June 21, 2016 or June 22, 2016 water leaked from the bathroom of the rental unit into the suite below the rental unit. He stated that when the rental unit was inspected by security after this leak a portable washing machine was found in the rental unit.

The male Tenant stated that the portable washing machine was brought back into the rental unit on June 21, 2016 and that it leaked on that date.

The Tenant submitted no evidence to establish that there was a problem with the plumbing in the rental unit.

The Landlord stated that after the second leak he paid \$346.50 to repair and paint the ceiling in the suite below the rental unit, as it had been damaged by the leak(s). The Landlord submitted a copy of an invoice for repairing the ceiling, dated April 27, 2016.

The Landlord stated that the ceiling was damaged again in the lower suite after the third leak but the owner of the suite had the damage repaired by an insurance company and the Landlord is not seeking compensation for those repairs.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Act* stipulates that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

On the basis of the undisputed evidence I find that a portable washing machine used by the Tenants leaked in June of 2016, and damaged the ceiling of a lower unit.

I find, on the balance of probabilities, that the Tenant also caused the leaks that occurred in the unit in September of 2015 and March of 2016. In reaching this conclusion I was heavily influenced by the evidence that shows the plumbing in the washroom where the flood occurred and the ceiling of the suite below the rental unit were inspected by a plumber and a contractor, and that neither party could find a reason for the leaks. In the absence of an identified plumbing or structural problem, I find it reasonable to conclude that the water leaked as a result of the actions of the Tenants.

Although the male Tenant stated that he does not think the portable washing machine leaked in September of 2015, I find that is the most likely source of the leak, given that absence of a plumbing/structural problem. Even if the portable washing machine did not leak I find the leak must have been the result of the actions of the Tenants, such as allowing water from the bathtub/shower to accumulate on the floor.

Even if it is true that the portable washing machine was not in the unit when there was a leak in March of 2016, as the male Tenant alleges, I find that the leak must have been the result of the actions of the Tenants, such as allowing water from the bathtub to leak onto the floor.

In determining the leaks were likely the result of the Tenants' actions I was influenced, to some degree, by the absence of any evidence submitted by the Tenants that would cause me to conclude that the leaks were the result of a structural or plumbing problem.

In determining the leaks were likely the result of the Tenants' actions I was influenced, to some degree, by the fact that the leaks were highly sporadic. Had the leaks been the result of a structural or plumbing problem, I would expect that the leak would happen on a regular basis until such time as the problem was identified and repaired. I find the sporadic timing of the leaks is consistent with an occupant of the unit allowing water to accumulate or causing an accidental spill.

I find that the Tenants' failure to acknowledge that the leaks in September of 2015 and March of 2016 were the result of their actions resulted in the Landlords paying \$393.75 to have the area

inspected by a plumber and a contractor. I find that the Landlords would not have incurred these costs if the Tenants had acknowledged responsibilities for the leaks, and I find that the Tenants must compensate the Landlords for these costs.

As the leaks damaged the ceiling in the suite below the rental unit, I find the Tenants are responsible for repairing that damage. I therefore find that the Tenants must compensate the Landlord for the \$346.50 paid to repair that damage.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$840.25, which includes \$740.25 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenants' security deposit of \$550.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance \$290.25. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 14, 2017

Residential Tenancy Branch