



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services BC
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MND, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repair to a sump pump and for the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agents. The tenant was accompanied by his advocate.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and stated that he did not file any of his own. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenancy has not yet ended. Therefore, I dismiss the landlord's application to retain the security deposit with leave to reply, at the end of tenancy.

Issues to be decided

Has the landlord established a monetary claim for the cost of repairs to the pump? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 01, 2019. The monthly rent is \$1,690.00 due on the first of each month.

The rental unit consists of a suite located in the basement of a two-level home. The upper level is rented out separately. The basement contains two washrooms. The tenants in the upper level have the use of some storage space and one washroom in the basement. The tenant occupies a self-contained suite in the basement and has the use of the other washroom.

The landlord testified that a sump pump services both the washrooms in the basement. In October 2019, the pump failed. The landlord had it repaired, and the cause of the failure was determined to be a few cloth wipes that were clogging up the pump. Since the pump services both washrooms in the basement, the landlord found that the wipes came from the tenants in the basement.

The tenant denied using wipes in the washroom and stated that he occupies the basement along with his spouse and one teenager while the tenants on the upper floor had two young children aged 3 and 5 years. The landlord testified that she had asked the upper tenants who have since moved out and they denied having used the washroom in the basement.

Analysis

The testimony of the tenant and the landlord is conflicting with regard to the use of wipes which damaged the sump pump.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord is claiming that the tenant caused damage to the pump while the tenant argues that the damage was caused by the other tenants who had the use of the second washroom.

Based on the testimony of both parties, I find that the landlord has not proven that the tenant caused the damage. While there is a chance that the tenant may have flushed wipes down the toilet, I must give the tenant the benefit of the doubt because the pump serviced two toilets in the basement and the other users of the second washroom had two young children. Therefore, the landlord's claim for the cost to replace the pump is dismissed.

Since the landlord has not been successful in proving her claim, she must bear the cost of filing this application.

Conclusion

The landlord's application for the cost of repairs and the filing fee 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 26, 2020

Residential Tenancy Branch