

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act or tenancy agreement, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee for the claim. At the outset of the hearing the Agent for the Landlord explained all rent had been paid, and therefore, the claim for unpaid rent was not required.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

On March 15, 2009, there was a flood in the rental unit which also affected the unit below.

The Landlord alleges the Tenant is responsible for the damages, and is claiming for compensation from the Tenant in the amount of **\$3,833.51**. The Landlord has provided copies of invoices which detail the repairs made and the restorations required.

The Landlord further claims that it was a material term of the tenancy agreement that the Tenant carry insurance to pay for such losses. The Landlord claims the Tenant breached the tenancy agreement by not carrying insurance.

The Tenant, who was occupying the unit while completing his PhD in civil engineering, explained that the building where the rental unit is located had been having troubles with hot water for several days. He testified that he was in the shower and turned the faucet to get more hot water. In his written evidence the Tenant states, "It is nature that people turn the faucet more when the shower is cold. The faucet cracked right after it was turn to the very end. Evidently, the quality of the faucet provided by the landlord in this unit was not good." (Reproduced as written.)

The Landlord's Agent testified that the rental unit is located in a condo building and is about two and a half years old.

Analysis

Based on the testimony and evidence, and a balance of probabilities, I find that the Landlord has established the Tenant is responsible for the damages arising from the flood.

I find this is a circumstance where the event speaks for itself. I find the negligence of the Tenant should be presumed from the mere circumstances of this accident. The faucet was under the exclusive control of the Tenant and ordinarily, a faucet properly used does not malfunction and cause a flood.

This is a rebuttable presumption of course. However, the Tenant had insufficient evidence to show the faucet was broken through no fault of his own, or that its design was unsuitable for the use, or that it was of poor or diminished quality. Furthermore, at the time of the flood the Tenant was aware the building was experiencing problems with the hot water boilers. He should have realized that no amount of turning or forcing the faucet would increase the temperature of the water.

This is not to say the Tenant intentionally caused the flood. Nevertheless, his negligence in operating the faucet caused the Landlord to suffer losses.

Pursuant to section 67 of the Act, I find that the Landlord has established a total monetary claim of **\$3,883.51**, comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit and interest of **\$504.86** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$3,378.65**.

This order may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: October 20, 2009.

Dispute Resolution Officer