

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to the tenant's application seeking a monetary order as compensation for damage or loss in the sum of \$25,000.00. The tenant also seeks recovery of the \$100.00 filing fee paid for this application.

Both parties appeared and gave evidence under oath. A decision has been reached.

Issues(s) to be Decided

Is the tenant entitled to the monetary order claimed?

Background and Evidence

The tenant testified that this tenancy began on May 1, 2008 and ended on May 1, 2009. The tenant testified that a fire occurred in the suite above his suite on March 26, 2008. The building's sprinkler system engaged and as a result there was a flood of water in the tenant's suite. The tenant says this flood of water from the sprinklers caused damage to his suite and to his personal belongings. The tenant testified that he lost record albums valued at \$8,950.00 and books valued at \$1,000.00. Further, the tenant says that he had about 3-4 gallons of water in the bed bug sleeve surrounding his mattress. The tenant says he reported the matter to the landlord twice verbally and once in writing and nothing was done. The tenant testified that he believes that failing to take care of the matter is worth \$15,000.00.

The tenant says that the landlord did not cause the fire but it was the landlord's sprinklers that caused the water damage and therefore the landlord and/or his insurer should be responsible for covering the tenant's losses. The tenant says that he did not have insurance on his goods because he cannot afford insurance. The tenant says that

this is a slum rental unit. In support of his application the tenant supplied photographs of the rental unit and photographs of his damaged goods.

The landlord testified that when the tenant moved into the rental unit he signed a 1 year fixed term tenancy agreement in which he was advised in Clause 29 to

...carry adequate insurance coverage for fire, smoke and water damage and the and theft of their own possessions and may be held liable for accidental injury, accidental damage or accidental breakage arising from the Tenant's abusive, wilful or negligent act or omission or that of his guest in his use of the landlord's services and property.

The landlord agrees that there was an accident in the suite above this tenant's suite however the landlord says that this is not the fault of the landlord. The sprinklers operated as they should in the circumstances. The landlord says the landlord did not attend to repairs of the tenant's goods because they are not negligent in this matter and are therefore not responsible for repairing the tenant's property or paying compensation to him. The landlord testified that pursuant to Clause 29 of the Tenancy Agreement the tenant should have had his own insurance in place to cover these items. The landlord says that the tenant's entire security deposit and interest was returned to him at the end of the tenancy.

Analysis

A Dispute Resolution Officer may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Conclusion

The evidence shows that there was a fire in the rental unit above this tenant's rental unit. The rental building's sprinklers engaged to deal with the fire and water damage resulted from their engagement. Clause 29 of the tenant's Tenancy Agreement advised that he should carry insurance for such events, however, the evidence shows that the tenant did not purchase that insurance. The tenant says the rental unit is a "slum" and this is the reason the landlord should be responsible for his losses however the tenant supplied insufficient evidence to prove that statement. Overall I find that the tenant has failed to show that the landlord breached the care owed to him and that the tenant's losses were a foreseeable result of that breach.

The tenant's application is therefore dismissed.
