

DECISION

Dispute Codes

MND, FF

Introduction

This was an application by the landlord for a monetary order. The hearing was conducted face to face and was attended by both parties.

The landlord claims recovery of a building insurance deductible for water damage in the amount of \$2500. The landlord alleges that the water damage resulted from the tenant's actions or neglect

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed testimony is that the tenancy began in April 2008 and that the rent is \$340 per month. There was no start of tenancy inspection conducted by the parties.

The landlord testified that in the early hours of April 27, 2010 the building manager (the landlord) was alerted by the suite below the respondent's of water ingress from the ceiling. The landlord proceeded to ascertain that the water was emanating from the respondent's suite above. After some efforts the landlord gained access to the tenant's suite and, in their statement, stated that the "carpet in the hallway was wet . . . kitchen faucet was on, water running into the sink. . . the sink was full of dirty dishes and water . . . water was leaking on the countertop and floor. Water was also leaking under the sink into the cabinet. . . the kitchen floor was all wet". The landlord submits that the tenant, through their action or neglect caused the water to run into the sink, which overflowed, which resulted in the consequent water seepage into the lower suites. The landlord submits that as a result of the water damage the landlord was obligated to make repairs beyond simply drying out the water from the tenant's suite. The landlord submitted that testing of the water emanating from the tenant's suite contained fecal matter, and

therefore, more extensive repairs had to be conducted – thus invoking the provision of an insurance claim and the consequent deductible. The landlord submitted an e-mail from the restoration company involved stating their belief that tests came back with fecal indication, “because the water passed through the floor “in the tenant’s unit, “which is very unsanitary”. The landlord submits that they were held responsible for the building insurance deductible in the amount of \$2500, which they have paid, and for which the tenant should bear the cost.

The tenant testified that the kitchen faucet had an ongoing ‘fast drip’ problem since the outset of the tenancy; but, that at no time did they report the problem to the landlord. The tenant testified that he simply compensated by turning the faucet handle tighter over time. As well, as part of the water damage repairs, the sink plumbing directly below the sink within the sink cabinet was determined to be cracked or corroded, which allowed water from the sink to leak directly along the plumbing and downward. The tenant’s recollection is that when he was alerted to the water problem on April 27 there was no water discernable outside of the sink cabinet: no water on the kitchen floor, hallway or counter top. The tenant testified that in his determination, the fast drip from the faucet exited the sink via the drain and into the cabinet below via the compromised plumbing. However, the tenant testified he was not aware the plumbing under the sink was compromised until this incident.

Analysis

Section 7 of the Residential Tenancy Act states as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I have carefully considered all the evidence before me, by both parties. I find that in order to justify payment of damages under sections 67 of the *Act*, the landlord would be required to prove that the tenant did not comply with the *Act* and that this non-compliance resulted in costs to the landlord pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss,

in this case the landlord, bears the burden of proof on the balance of probabilities and the evidence furnished by the landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant in this case, in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I accept the landlord's testimony and documentary evidence submitted as establishing that they incurred a deductible of \$2500, and they have paid it.

I find that the contrasting testimony in respect to what actually occurred from the faucet downward: how long the faucet dripped, or flowed, and whether the faucet dripped or flowed unabated, or how long the plumbing was faulty, or if the fecal indicators came directly from the tenant's carpet, and so on, – is not conclusive to make a finding in this matter. What is certain from the evidence is that the water did not emanate from a burst supply line, but rather, from the sink faucet - which at all times was in the control of the tenant. I find that the tenant was aware that the faucet shutoff was faulty for some time and subject to a deteriorating drip or flow, and that it was available to the tenant to request that the landlord repair it but at no time did the tenant request the repair – choosing instead to compensate for the deficiency. The landlord cannot be held negligent for that they are not aware. In the same regard the tenant cannot be neglectful for that they were not aware. I accept the tenant's testimony that he was not aware the plumbing below the sink was compromised and therefore did not alert the landlord to its potential failure, although it was available to the landlord to conduct maintenance inspections to mitigate this risk.

I find that the damage or loss did not occur solely because of the actions or neglect of the tenant in this case, in violation of the *Act* or agreement.

As a result of all the above, on the balance of probabilities, I find that both parties contributed to the incurrance of the deductible. Therefore, I find the tenant must compensate the landlord the amount of \$1250 and I find in favour of the landlord for this amount. As the landlord was partially successful in this application, I further grant the landlord partial recovery of the filing fee in the amount of \$25, for a total award to the landlord in the amount of **\$1275**.

Conclusion

I grant the landlord an order under Section 67 of the Act for the amount of **\$1275**. The parties are at liberty to determine the course and method for settling this Order; however, if necessary, this order may be filed in the 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 *Residential Tenancy Act*.