



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and compensation for damages or loss under the Act.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary order for damages to the rental unit?
Is the landlord entitled to monetary order for compensation for loss under the Act?

Background and Evidence

The parties agree that tenancy occupies a rental unit owned by the landlords. The tenancy has not ended and the tenant continues to live in the rental unit.

The landlord claims as follows in their application:

a.	40% of insurance deductible	\$3,000.00
	Total claimed	\$3,050.00

The landlord's agent testified on February 15, 2012, they were called by an occupant in the building that there was a continuous stream of water dripping from the ceiling. The landlord stated they called a plumbing company and the plumber attended onsite to investigate the leak.

The landlord's agent testified that the plumber had to attend the tenant's rental unit and found a large amount of water underneath the kitchen sink inside the cabinet. The

landlord's agent stated the plumber found when he turned the water on, that the water poured out of the bottom of the garburator into the cabinet. Filed in evidence is an invoice from the plumbing company.

The landlord's agent testified the plumber believed the garburator had been leaking for a while, not just over night. The landlord's agent stated if the tenant had informed them of the leaky garburator earlier they would have been able to avoid the damage cause to the unit below.

The landlord's agent testified the restoration company attended to the tenant's unit and the sink cabinet and vinyl floor were wet. The landlord's agent stated the restoration believes the tenant must have known about the flood. Filed in evidence is a letter from the restoration company.

The tenant testified that he was not aware that the garburator was leaking and he never uses the cabinet below the sink.

The tenant testified on February 15, 2012, he woke up late and was late for school. The tenant stated he had not time to go into the kitchen that morning. The tenant stated he was not aware of the incident until he got back home later that day.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

The evidence of the landlord was if the tenant had told them earlier that the garburator was leaking they would have been able to have the garburator repaired and the flood in the lower unit would not have occurred. The evidence of the tenant was he was not aware the garburator was leaking and does not use the cabinet below the sink.

In this case, a tenant would not normally be held responsible for damages caused by a leaking pipe, unless the tenant knew a problem existed and failed to notify the landlord.

I find the landlord has failed to prove that the tenant has violated the Act. There is no evidence which proves the tenant was aware that a problem existed prior to this incident and failed to notify the landlord.

As a result, I dismiss the landlord's claim for damages to the rental unit and compensation under the Act. The landlord is not entitled to recover the cost of filing the application from the tenant.

Conclusion

The landlord's application 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: June 28, 2012.

Residential Tenancy Branch