Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and both tenants named in the application attended the conference call hearing but the parties had indicated that neither party had provided or exchanged any evidence. The landlord stated that the tenant was served, but the landlord wrote the wrong number on the Registered Mail and it was returned to the landlord. The landlord re-served the tenant and the tenant received the Landlord's Application for Dispute Resolution and notice of hearing documents on November 16, 2012. The tenant did not oppose an adjournment of the hearing, and the matter was adjourned.

Both landlords and one of the tenants appeared on the adjourned date, and the parties provided evidence to each other and to the Residential Tenancy Branch prior to re-commencing the hearing. One landlord and one tenant gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?

- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2010 and was to expire on November 30, 2012, but the tenancy actually ended on August 29, 2012 when the rental unit caught on fire.

Rent in the amount of $1,475.00 was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $725.00 which is still held in trust by the landlord.

The landlord further testified that a tenancy agreement was signed by the parties, and a new one was prepared after the first fixed term expired. A copy of that tenancy agreement was provided for this hearing and it contains an error in that it shows that it was signed by the landlord on December 1, 2012, but was actually signed December 1, 2011.

The landlord also testified that a fire chief had called the landlord to advise that the rental house had burned down; the tenant had been working on a car in the attached garage and the vehicle caught fire by a trouble light near the fuel filter and fuel line. The front half of the house was burned to the trusses and completely gutted. The back of the house mostly suffered smoke and water damage. The rental house is half of a duplex and only the rented half is owned by the landlord; the other half is owned by someone else not related to the tenancy.

The landlord further testified that although the fixed term of the tenancy expired on November 30, 2012, the landlord is not able to re-rent because the house has to be almost re-built from the bottom up, and the landlord claims loss of rental revenue as against the tenants to the end of February, 2013. The repairs and re-building are not yet completed and won't be prior to that date. The landlord claims rental loss in the amount of $1,475.00 per month from September 1, 2012 to February 28, 2013, for a total of $8,850.00 as well as $1,000.00 deductible that the landlord had to pay to the insurance company, due to the tenant's neglectful actions in starting the fire.

During cross examination the landlord stated that the landlords' insurance broker did not offer rental insurance, and the small print of the landlords' insurance policy deemed loss of rental income un-claimable, although the landlord knew such insurance is available for rental units. The landlord was under the impression that such coverage was included and is still attempting to have the claim of loss of rental revenue covered.

The landlord also testified that the fire report, which states no evidence of neglect on behalf of the tenants, contains facts, not opinions. Those facts are to show that arson has been ruled out. The landlord stated, “We know it was an accident, but you’re responsible.”

The landlord also provided the following evidentiary material:

- Email correspondence with the contractor showing that the house will likely be finished January 7, 2013 or sooner;
- Insurance document showing a deductible paid by the landlords in the amount of $1,000.00;
- Fire Investigation Report containing the dispute address and the date of August 29, 2012 as a date of the incident. The Report states that upon arrival, the fire fighters witnessed heavy fire and smoke from the south side of the duplex and a vehicle burning in the driveway. It states that the point of origin was a trouble light wherein a 60 watt light bulb had ignited gasoline. The Cause Determination is stated to be:
    - No evidence of electrical malfunction;
    - No evidence of foul play;
    - Evidence of accelerants;
    - No evidence of smoking materials found in area of origin.
- Copies of repair manuals with highlighted portions regarding precautions for a mechanic to take;
- A copy of another publication with a high-lighted portion stating that a trouble light is not vapour-proof (commonly referred to as “explosive proof.”)”

The landlord stated that as a licensed mechanic the tenant had a duty to adhere to such precautions.

The tenant testified to being a licensed mechanic, and provided evidence of such, and was working on a vehicle in the garage with a CSA approved trouble light, which was placed under the car below the front seat. The light was brand new and contained a shield. The garage door was open. The fuel filter had already been removed and was outside the garage, and fuel had been drained into a jerry can. The tenant was following Mercedes procedures while removing the fuel pump when something hit the tenant’s hand causing the tenant to jump.

The trouble light was 6 or 8 feet away from the fuel source, not in a confined space. The door was open and the garage was well ventilated. The tenant also disputes the

landlords' evidentiary material about mechanical procedures indicating that the material applies to heavy duty equipment, not automotive mechanics. The tenant testified that nothing out of the ordinary was done, the procedure was carried out properly with clamps on hoses, etc., and it was simply an accident. There was no negligence on the part of the tenant.

The tenant also testified to researching insurance policies for rentals and stated that if the landlords had purchased the correct insurance policy, the landlords would be covered for loss of rental revenue because it was deemed by the fire reports to be an accident. The tenant provided a copy of an email received from an insurance company stating that a landlord's insurance always offers rental income coverage in the event that a tenant has to vacate the premises due to a loss/claim. It goes on to say that for the monthly rent of about $1,450.00 the premium would be about $63.00 per year above the premium already paid. The insurance would pay the landlord the monthly rent until repairs were completed and the unit is suitable for tenancy, for a maximum of one year.

The tenant further testified that there is nothing in the tenancy agreement preventing such work. The tenant did not have the landlord's phone number, and the fire chief told the tenant that he had already contacted the landlord.

The tenant was burned and bandaged to the elbows, staying at a motel when both landlords jumped out of the bushes to the parking lot and demanded money. The tenant called 911 and was told to get back into the motel. The landlords had demanded money for rent and damages and told the tenant that if not paid, the tenant would be charged with theft, break and enter for taking belongings from the rental unit. The tenant heard the motel manager have the landlords removed after they had demanded the tenant's room number and the desk clerk refused to provide the information. The tenants were not hiding; it was all over the news, which also reported where they were staying, and the landlord was verbally given the tenants' address and phone number on September 2, 2012.

The tenant testified that the behaviour of the landlords have made it clear that they are angry at the tenants and the claim amounts to punitive damages, which this tribunal has no authority to award. Further, the landlord is also going after the insurance company for the same claim, and filed the Residential Tenancy Branch claim prior to having any evidence.

The tenant further testified that the landlord was sent an email on October 24, 2012 after the tenant found out about the landlord's application for dispute resolution, wherein the tenant asked for the security deposit to be returned. The insurance adjuster had told the tenant in September that since it was an accidental fire, the tenant should get

back the security deposit. The adjuster also advised that the landlord had admitted being inside the rental unit on September 2, 2012 in the absence of the tenants. A banker box of files that the tenants had left in the rental unit had been removed. The tenants had secured the rental unit at 5:30 p.m. on August 29, 2012.

Analysis

The *Residential Tenancy Act* states that anyone who makes a claim against another must do whatever is reasonable to mitigate, or reduce any loss or damages. Also, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to reduce such damage or loss.

In this case, I am satisfied that the loss exists, and I am satisfied with respect to the amount of the landlords' loss, being the loss of rental revenue and the $1,000.00 deductible. However, I find that the landlord has failed to establish the other 2 elements in the test for damages. Firstly, the *Act* requires a tenant to:

- maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; and
- must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The landlords are not claiming repairs to the rental unit; that is being covered by the insurance company. The landlords are claiming loss of rental revenue, and must establish that the tenants caused the damage by failing to comply with the *Act* or the tenancy agreement. I have reviewed the fire report and there is no evidence before me that the house was damaged as a result of any neglect or wrong-doing by the tenants.

With respect to element 4 in the test for damages, sometimes the mitigation must occur prior to the incident that caused the damage or loss; the landlords had an obligation to ensure that proper insurance for rental property was in place.

In summary, I find that the landlords have failed to establish that the tenants caused the landlords any loss as a result of the tenants' failure to comply with the *Act* or the

tenancy agreement, and the landlords have failed to establish that the landlords did whatever was reasonable to mitigate the loss suffered.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed without leave to reapply.

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: January 11, 2013.

Residential Tenancy Branch