



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened to address a claim by the landlord for a monetary order.

The hearing was originally scheduled for January 30, 2013. The landlord and the tenant's counsel appeared at that hearing and counsel requested an adjournment and asked that third parties be added and the tenant's counsel be struck as named respondents. In an interim decision issued on February 1, 2013, I ordered that the moving company (the "Movers") be added as a third party and I struck the tenant's counsel as respondents. I directed the tenant to serve the Movers with the application for dispute resolution, the interim decision, the notice of hearing, the tenant's evidence and several fact sheets published by the Residential Tenancy Branch.

The hearing was reconvened on March 4, 2013 with just the landlord and the tenant's counsel in attendance. Counsel provided evidence that the Movers were served with the aforementioned documents via registered mail, which they signed for on February 15, 2013. I found that the Movers had notice of the claim against them and the hearing proceeded in their absence.

Background and Facts

The facts are not in dispute. The tenant vacated the rental unit on January 27, 2013 and hired the Movers to remove her belongings from the unit. The Movers caused damage to the wallpaper in the common hallway on the 11th floor of the building and acknowledged liability for that damage.

Repair estimates were obtained for the cost of replacing the wallpaper throughout the 11th floor (\$6,384.00) and for replacing the wallpaper just in the area which was damaged (\$3,722.88). The Strata discovered that matching wallpaper was not available and decided to replace the wallpaper on the entire floor. The Movers' insurer reviewed the claim and apparently accepted that all of the wallpaper needed to be replaced, but arrived at a different estimate of the cost of that replacement. While the insurer did not identify the cost of replacement, in an email dated August 3, 2012, the claims adjuster applied a 50% depreciation factor and offered \$2,850.00 to settle the claim.

The landlord testified that he advised the Strata not to accept the offer of the Movers' insurer as he did not want to be responsible for the balance of the charges.

The tenant took the position that the Movers should be wholly liable for any damages.

Analysis

There is no question in this case that the Movers caused damage to the wallpaper in the common hallway. Although the tenant is the party in a contractual relationship with the landlord, she has joined the Movers as a Third Party and seeks to be indemnified by them. I find that the Movers should be held wholly liable for the award resulting from this decision.

While I had indicated at the hearing that I did not believe that all of the wallpaper should be replaced, I find that the Mover's insurer, having inspected the damage, was in a better position than I to assess what was required and I defer to their opinion. I find that the Strata was justified in replacing all of the wallpaper.

The Mover's insurer appears to have believed that the replacement of the wallpaper could be effected at a lower rate than what was quoted to the Strata. However, I have no information before me showing how the insurer arrived at this conclusion and in the absence of such evidence, I find it appropriate to use the Strata's actual \$6,384.00 cost of replacing the wallpaper.

The landlord based the quantum of his claim on the amount being charged by the Strata. It is a general principle of damages that the aggrieved party is entitled to recover actual losses. In this case, the loss was 11 year old wallpaper. Although the Residential Tenancy Branch has a Policy Guideline listing the useful life of building elements, that guideline does not include wallpaper. As the Mover's insurer applied a 50% depreciation to the wallpaper and as the guideline was taken from standard depreciation tables used by insurance companies, I find that a 50% depreciation is appropriate to apply in this case.

I therefore award the landlord \$3,192.00 which represents one half of the cost of replacing the wallpaper.

The landlord also applied to recover the \$100.00 filing fee paid to bring this application. As the landlord has been only partially successful, I find it appropriate to award him \$50.00, which is the fee he would have paid for a claim under \$5,000.00.

Conclusion

The landlord is granted a monetary order for \$3,242.00 against the Movers.

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: March 4, 2013

Residential Tenancy Branch

