



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 14, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

Issues(s) to be Decided

1. Are there damages to the unit and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?

Background and Evidence

This tenancy started on April 1, 2013 as a fixed term tenancy with an expiry date of March 31, 2014. Rent was \$995.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$497.50 on March 12, 2013. The tenancy is still in effect.

The Landlord said that the Tenants had a stove fire in the rental unit on October 6, 2013 that set off the sprinkler system. As a result of the sprinkler system being activated there was water damage to the Tenants’ rental unit, 2 units below the Tenants’ unit and some damage to the hallway below the Tenants’ rental unit. The Landlord continued to say that they made an insurance claim to repair the water damage and the Landlord said their deductible on the insurance claim is \$25,000.00. Consequently the Landlord is seeking damages of \$25,000.00 from the Tenants to cover the deductible on their

insurance policy. The Landlord said she did not submit any evidence from the insurance company documents that confirm the Landlord's insurance coverage or the amount of the deductible on the policy. The Landlord said she told the Tenant the deductible was \$25,000.00 and the Landlord submitted a bill from the restoration company for \$25,000.00 which the Landlord said the insurance company paid. The Landlord said she did not know that she had to send in documentation that would prove the amount of the insurance claim and the amount of the deductible on the insurance policy.

The Landlord did submit the monetary worksheet, the tenancy agreement, a number of reports about the fire and invoices for work done to repair the fire and water damage. It should be noted the bills submitted are invoices and they are not marked paid, but the Landlord said the insurance company paid the invoices from the sprinkler company and the restoration company.

The Tenant's counsel said they have requested copies of the insurance policy, the insurance claim and the repair invoices and to date they have not received the information from the Landlord; therefore they do not know what the insurance claim was for and what the deductible is. The Tenants' Counsel said if they do not have the information then they could not prepare a defence.

The Tenant said the fire did happen and he tried to act responsibly by telling the reserve manager of the rental unit about the fire and sprinklers. The Tenant said the reserve manager did not appear to know how to turn the sprinkler system off and as a result the water ran for about 40 minutes. The Tenant said the Landlord has to take some responsibility for the delay in turning the water off.

The Landlord said there was a delay in turning the water off, but they found out later that the fire department is the one that is suppose to turn the sprinklers off.

In closing the Tenants' counsel said the Landlord has not provided the evidence required to support the Landlord's claims and that the Tenant cannot present a defence because they do not have the Landlord's evidence regarding the amount of claim and the amount of the deductible in the insurance policy.

The Landlord said she does not have all the evidence but she could get it from her head office.

Analysis

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

Further section 7 of the Act says:

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.**

In this situation it is the Landlord's obligation to make an insurance claim to minimize the loss or damage to the Landlord and then after the claim is finalized make arrangements with the tenant to pay any amount that the Tenant may be responsible for. Further the Landlord is responsible to provide information and evidence to support the Landlord's claim. The crucial evidence in this situation is the amount of the insurance claim and the amount of the deductible in the insurance policy. The Landlord did not provide this information to the Tenants nor did the Landlord provide this evidence for the hearing. In addition the invoices submitted by the Landlord are not marked paid therefore it is not known if the invoices were paid and who paid the invoices. The Landlord said the insurance company paid the invoices and if this is the case then the Landlord has not paid for the repairs and therefore the Landlord has not proven an actual loss to the Landlord. Consequently I dismiss the Landlord's application with leave to reapply due to lack of evidence.

As the Landlord has been unsuccessful in this matter, the Landlord is ordered to bear the cost of the filing fee of \$100.00, which the Landlord has already paid.

Conclusion

The Landlord's application is dismissed with 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: April 28, 2014

Residential Tenancy Branch

