



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing, both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on April 3, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2006. The tenancy ended on May 23, 2014 after the landlord obtained an order for the early termination of the tenancy. The tenant failed to attend that hearing. The rent at the time the tenancy ended was \$1966 per month.

payable in advance on the first day of each month. The tenant paid a security deposit of \$874.50 at the start of the tenancy.

The landlord seeks a monetary order in the sum of \$5000 plus the \$50 filing fee alleging the tenant's negligence caused the sprinkler system to start causing water damage to the rental unit, neighboring rental unit and the common hallway.

The landlord relies on the following evidence:

- On March 12, 2013 the fire sprinkler was set off in the tenant's rental unit.
- The On site Manager of the landlord and the fire department were called to the rental unit. He testified that he noticed a blow torch on the kitchen counter. The blow torch was approximately 20 inches in length.
- He further testified the tenant acknowledged responsibility saying they were attempting to caramelize crème brulee desert.
- The On site manager testified the sprinkler system is set to be triggered at 118 degrees. He has not experienced a sprinkler malfunction while he was employed by the landlord (for the last 5 months). The Property Manager testified she has been employed by the landlord for 18 years and has had this rental property in her portfolio since its construction approximately 11 years ago. There have been no sprinkler malfunctions. (The tenancy agreement provided that the tenant(s) would pay rent of \$1000 per month payable on the first day of each month.
- The tenant initially offered to pay for the damage. However after hearing the extensive cost involved he stated he is not responsible.

The tenant denied responsibility based on the following:

- He testified the cause of the problem was fire sprinkler malfunction. He testified that this was confirmed by a recent conversation with Vancouver Fire Investigator. The tenant failed to produce a report or evidence of any sort from the Vancouver Fire Investigator who allegedly stated it was a fire sprinkler malfunction.

- The tenant testified the problem occurred when he was using a large oversized cigarette lighter to caramelize the crème brûlée. He denied using a blow torch. He testified that at all material times the lighter was at least 2 meters away from the sprinkler head and pointed in a different direction.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

After carefully considering all of the evidence I determined the landlord has proven on a balance of probabilities that the activation of the sprinkler system was caused by the tenant's negligence and not by a malfunctioning sprinkler system. The tenant alleged

the fire inspector told him it was a sprinkler malfunction but failed to produce evidence of any support to corroborate this allegation. The explanation of the landlord is reasonable. I am satisfied the tenant breached a duty of care and was negligent whether he used a blow torch or a cigarette lighter. I accept the evidence of the landlord there has been no incidents of sprinkler malfunctioning in the building. The explanation of the tenant alleging the sprinkler system malfunctioned does not have any basis in the evidence. I determined this explanation is not credible.

I further determined the damage caused by the sprinkler activation exceeds \$5000. However, the landlord limited their claim to \$5000 in order to reduce the cost of the filing to \$50 rather than the \$100 that would have been charged. I order that the tenant pay to the landlord the sum of \$5000 plus \$50 for the cost of the filing fee for a total of \$5050.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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.

Dated: June 17, 2014

Residential Tenancy Branch

