



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MIDWEST PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

*MNDC, MNSD, MND, FF.*

### **Introduction**

This hearing dealt with an application by the landlord, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order in the amount of the deductible of an insurance claim, the filing fee and to retain the security deposit in satisfaction of the claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Both parties provided extensive documentary evidence. All parties' testimonies, witnesses and evidence have been considered in the making of this decision. As this matter was conducted over two separate days and almost two hours of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Did the tenant cause damage to the fire sprinkler? Is the landlord entitled to a monetary order to cover the insurance deductible?

### **Background and Evidence**

The tenancy started on February 01, 2013 and ended on March 11, 2014. The monthly rent was \$1,705.35 due on the first of the month and the tenants paid a security deposit of \$811.00. The rental unit consists of an apartment located on third floor. Three brothers (referred to as HK, NK and MK) occupied the rental unit.

Both parties agreed that the tenants were in the process of moving out on March 11, 2014, when the incident occurred. The tenants along with their parents and a friend (referred to as AA) were moving their belongings to a rented moving truck, using a dolly.

Tenant HK testified that he, NK and their friend AA, moved two mattresses outside to the moving truck, shortly before 6:00 pm. While they were outside the building by the truck, they heard the fire alarm go off. HK stated that the occupants of the building were leaving the building and he continued to stay outside along with NK and AA.

The tenants stated that the building manager TD approached them while they were outside and asked them to accompany her to her office. HK went to the office. NK stated that he and AA stayed by the truck for approximately four hours from 6:00 pm to 10:00 pm, to watch over the loaded truck. NK stated that he went upstairs at 10:00 pm to check on his parents and brother MK.

The manager TD, stated that upon receiving a call regarding the incident, she attended the building at approximately 6:00 pm on March 11, 2014. The fire sprinkler on the third floor was broken and spraying water. TD stated that the tenants were the only tenants that were moving out of their apartment on the third floor, that day.

TD spoke with the HK in her office and he wrote a statement which reads:

*"While we are moving out, maybe it happened accidentally that we hit the fire alarm (water sprinkler)"*

The note is signed by HK and dated March 11, 2014, 5:00 pm.

TD went up to the third floor along with HK. Later a worker from the restoration company attended the site, to fix the sprinkler. His statement was also filed into evidence by the landlord and reads:

*"When the M worker came to fix the sprinkle head, H, the resident of unit #332 said that it's his fault and he broke the spring head by accidentally. The sprinkler heat to activat – water dumped to 3<sup>d</sup> floor, 2<sup>nd</sup> floor and some units and commercial area with water damage" (reproduced as written).*

This note is signed by the worker and dated March 11, 2014 at 20:45 hours.

This same worker also wrote a more detailed report regarding his interaction with the tenant. In this report he states that the tenant came up to him while he was repairing the sprinkler head and asked why it went off. The worker explained that physical damage was done to the sprinkler to set it off.

The end of the note reads as follows:

*"the tenant finally said ok, it was us when moving mattress or large lether couch out of their unit. The tenant told me he was sorry and continued with his move"*

The landlord also filed a copy of the report signed by the chief of the local fire department. The report states *"#322 accidently broke the sprinkler head in 3<sup>d</sup> hallway ceiling"*

The tenants denied the allegations that they had caused physical damage to the sprinkler which resulted in the water damage. The tenant stated that there was no eye witness or security camera to verify exactly how the damage was done and by whom.

The tenant filed an affidavit from the friend AA who helped with the move. He states that neither he nor anyone in his presence made contact with the sprinkler head. AA also states *"At or about 6:00PM, HK, MK and myself were outside near the truck loading it with furniture when the fire alarm in the building began to sound. We then proceeded to enter the Building and saw that a third floor sprinkler had been activated. I recall that we were instructed by the building manager who soon attended to wait outside until the fire department arrived"*.

AA's account of events contradicts the testimony of NK and HK. According to AA, he was outside at 6:00 pm with HK and MK when he heard the alarm. HK's note regarding the incident was written at 5:00pm. NK stated that he was outside with AA and HK which contradicts AA's statement that he was outside with HK and MK. Finally, AA states that he entered the building and noticed the activated sprinkler while NK states that AA was outside for four hours before they both re entered the building.

The parents of the tenants filed an affidavit confirming that they assisted the tenants in their move and used trolleys to move the furniture. They also stated that at no time did they or anyone in their presence make contact with the sprinkler head. The affidavit also states that they were inside the apartment along with NK and remained inside until the building manager instructed them to wait outside until the fire department arrived. This contradicts NK's testimony that he was outside the building when the alarm sounded.

The landlord filed a claim with his insurance company and the restoration work commenced. The landlord filed a copy of his insurance policy which stated that a deductible of \$10,000.00 was applicable. The landlord also filed proof of having paid this amount on May 23, 2014 towards the claim made on March 11, 2014 for the dispute rental property.

### **Analysis**

Based on the testimony of both parties and after reviewing the documents filed into evidence, I make the following findings:

1. The sprinkler was set off at approximately 5:00 pm on March 11, 2014
2. The damage to the sprinkler was caused by physical contact with the sprinkler
3. The sprinkler is located in the ceiling
4. The tenants HK, NK and MK were the only tenants that were in the process of moving out at the time of the incident
5. HK indicated in writing, that he may have accidentally hit the sprinkler while moving out
6. The verbal testimony of NK and HK contradicted the sworn statements of the parents of the tenants and their friend AA

7. The statements of the restoration worker and the fire department indicate that the tenant was responsible for the damage to the sprinkler head
8. The landlord provided proof of having paid an insurance deductible of \$10,000.00

Based on the above findings, I accept that the damage to the sprinkler was caused by physical contact with the sprinkler. Since the sprinkler is located in the ceiling and the tenants were the only persons moving furniture and mattresses out that day at the time of the incident, I find on a balance of probabilities that it is more likely than not that the tenants accidentally made physical contact with the sprinkler and caused enough damage to set it off.

The extent of the water damage was far in excess of \$10,000.00 and therefore the landlord made a claim through his insurance provider and was required to pay the deductible. Since I find on a balance of probabilities that the damage to the sprinkler was caused by the tenants, I find that they are responsible for the payment of the deductible. Accordingly, I award the landlord \$10,000.00.

Since the landlord has proven his case he is also entitled to the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$10,100.00. I order that the landlord retain the security deposit of \$811.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$9,289.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$9,289.00**.

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: October 03, 2014

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Residential Tenancy Branch

