



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord under the *Residential Tenancy Act* (the Act) for a monetary order for damage and loss.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Both parties acknowledged receiving the evidence of the other. The tenant had benefit of assistance by a law student. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The tenancy has ended. The dispute address is a condominium unit of a Strata residential property (Strata Corporation). The undisputed relevant testimony and document evidence in this matter is that on or about June 27, 2014 the tenant left their 3 year old daughter to play in the bathtub and unbeknownst to the tenant the child turned the water tap on, *“which led to the bathtub filling up and the water overflowing the rest of the bathroom. The water went under the sink and from there led down the walls into the apartment downstairs” – K.A. (tenant).* The Strata Corporation was invoiced by the restoration entity for the remedial costs resulting from damages of the water escape.

The evidence is that the Strata Corporation paid the costs and then requested by demand letter for the landlord to satisfy the Strata's deductible portion of their insurance claim - stated to be in the amount of \$10,000.00. In turn the landlord now seeks for the tenant to satisfy this cost placed on the landlord. The landlord provided into evidence the demand letter from the Strata Corporation dated August 25, 2014 as well as the invoices for the restoration work dated in later July and early August 2014 in the sum amount of \$15,939.00. The parties discussed that they had agreed the landlord retained the tenant's security deposit of \$547.50 toward the damages of this matter – to which the landlord orally amended their claim as \$9,452.50.

The tenant does not dispute the course of events and that the bathtub incident caused water to overflow. The tenant also does not dispute that they did not have tenant's insurance – claiming the landlord did not sufficiently or adequately stress the prudence of obtaining such insurance. The landlord highlighted the tenancy agreement states the tenant shall carry sufficient insurance.

The tenant disputes they are responsible for the cost placed on the landlord, as the landlord has not proven the tenant was sufficiently negligent in and by the course of events respecting the bathtub overflow. The tenant also claims the landlord has not sufficiently mitigated their claim by securing additional insurance given the bathtub incident was *not an unforeseeable event*. The landlord testified they did not occupy the rental unit and relied on the Strata's insurance policy of which they are a beneficiary through their Strata fees – which in this case paid all remedial costs beyond the policy deductible.

Analysis

Under **Section 7** of the *Act*, the party claiming the damage or loss bears the burden of proof and moreover the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party (the tenant). Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on their determination that the tenant caused the claimed damage and is responsible for the resulting loss to the landlord not covered by insurance. The tenant relies on their argument that the landlord has not established the tenant's conduct caused the ultimate loss to the landlord; and, even if so, the landlord ought to have secured insurance to cover the loss.

Section 32 of the *Act* and the corresponding Residential Tenancy Act *Regulation* states that the tenant is responsible for damage caused by them. On the face of the evidence, it is clear that the tenant is responsible for their conduct and that of their child, which in this matter resulted in the water escape and the remedial cost assignment to the landlord – the owner of the unit. I do not accept the tenant's argument the bathtub event was foreseeable and therefore the landlord should have secured against it. The same could be argued for the tenant. What is clear in this matter is the Strata Corporation secured against it and mitigated the larger financial obligation by the tenant.

I find that the landlord has met the above test for loss, and I find the landlord has provided sufficient evidence to verify the amount required to compensate for the claimed loss. As a result, I grant the landlord their orally amended claim of \$9,452.50. The landlord is further entitled to recover the \$50.00 filing fee for this application, for a total monetary award to the landlord in the amount of **\$9,502.50**.

Conclusion

The landlord's application is granted. The landlord is given a Monetary Order under Section 67 of the Act for the amount of **\$9,502.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 30, 2015

Residential Tenancy Branch