



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on October 28, 2014 the Application for Dispute Resolution, the Notice of Hearing, and 34 pages of evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 10, 2015 the Tenant submitted three pages of evidence to the Residential Tenancy Branch, although the Residential Tenancy Branch noted the evidence was received from the Landlord. Legal Counsel for the Tenant stated that this evidence was not served to the Landlord and it was, therefore, not accepted as evidence for these proceedings.

On June 16, 2015 the Tenant submitted nine pages of evidence to the Residential Tenancy Branch. These documents were not before me at the time of the hearing and the Tenant did not inform me that they had been submitted. I therefore did not consider, or accept, these documents as evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

At the outset of the hearing the Tenant indicated that they had a witness available to provide testimony however they did not call this witness at the end of the hearing when they were given several opportunities to present evidence that had not yet been presented.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on January 01, 2012;
- the parties had a written tenancy agreement;
- the Tenant agreed to pay rent of \$1,050.00 by the first day of each month;
- there was a flood the rental unit on October 27, 2013;
- the flood was the result of a sprinkler head activating inside the rental unit; and
- the rental unit was vacated on October 28, 2013 or October 29, 2013 as a result of water damage in the unit.

The Landlord is seeking compensation, in the amount of \$25,000.00, for the insurance deductible that he paid for the damage caused by the flood. The Tenant does not dispute that there was extensive damage as a result of the flood or that a \$25,000.00 deductible was paid.

The Landlord contends the Tenant was responsible for activating the sprinkler. The Landlord basis this argument on a fire incident report, which was submitted in evidence. The report, dated October 27, 2013, indicates, in part, that:

- the fire department responded to an alarm;
- responding crews determined that a single sprinkler head had been activated in the rental unit;
- minor damage was found around the sprinkler head “as if it had been struck by an object”;
- evidence indicates “a possibility that the occupant threw a glass mug at the sprinkler head”;
- the sprinkler head was “bent downwards and there was a small circular dent in the drywall next to the head”;
- there was broken glass on the floor below the head.

Legal Counsel for the Landlord argued that the fire incident report is a reliable document and that it can be relied upon to determine the cause of the sprinkler head activation. She stated that the Landlord asked if the person who wrote the report would attend the hearing and the Landlord was advised that they were not willing to participate.

The Tenant stated that:

- he was sitting in his living room when the sprinkler head activated for no apparent reason;
- the water exited the sprinkler with considerable pressure;
- the water pressure broke several glasses that were on the kitchen counter;
- the water pressure spread the broken glass around the rental unit; and

- he has never noticed a dent in the drywall beside the sprinkler head.

Legal Counsel for the Tenant argued that:

- the author of the report did not interview the Tenant so his determination that the damage was the result of a glass being thrown is highly speculative;
- the use of the word “possibility” in the report is not definitive and implies that there are other equally possible explanations for the sprinkler activating;
- the report should be given limited weight, as the author of the report did not attend the hearing and the Tenant was unable to question the author regarding his conclusions and/or observations;
- it was open to the Landlord to call an expert witness to determine why the sprinkler head activated in the event the fire department was not willing/able to attend the hearing;
- water was flowing from the sprinkler head with significant force, which could explain the damage observed by fire department personnel; and
- an expert witness or member of the fire department was not present at the hearing to explain whether the water from the sprinkler head could have bent the sprinkler head or damaged the drywall next to the sprinkler head.

The Tenant Legal Counsel for the Tenant stated that on February 10, 2015 he sent documents to the Residential Tenancy Branch in which he requested a summons requiring the Landlord to produce documents relating to past problems with the sprinkler system and water damage generally. At the hearing he stated that he is no longer seeking those documents.

The Landlord submitted a copy of an email from the Tenant, dated October 28, 2013. In the email the Tenant wrote that the restoration company had informed him that “this has happen multiple times in this building, prior to last nights incident, and that this is a common issue” (sic). Legal Counsel argued that this is another possible explanation for the sprinkler activating without cause, as the Tenant contends.

The Landlord stated that he is only aware of one incident with the sprinkler system in the past, which occurred when a sprinkler head was damaged by people working in the complex.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Act* requires a tenant to 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. In these circumstances the burden of proving the Tenant damaged the sprinkler head which resulted in flooding rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant damaged the sprinkler head. In reaching this conclusion I was influenced, in part, by the absence of testimony from the person who wrote the fire incident report or testimony from an expert witness who could provide an expert opinion regarding the cause of the damage. In the absence of such testimony, I find that there is insufficient evidence to conclude that the damage to the sprinkler head and/or the drywall could not have been caused by water pressure; that the water pressure could not have broken glassware on the counter; and that the glass on the floor could not have been spread about by the water pressure. Given the questions raised by the Tenant, I find the fire incident report is not sufficient to determine the cause of the activation.

I note that the Landlord had the option of calling an expert witness, but did not do so. I note that the Landlord also had the option of requesting a summons for the person who wrote the fire incident report, pursuant to section 76(1) of the *Act*, which the Landlord did not do.

As I have no personal knowledge regarding sprinkler systems and there has been no expert evidence presented that would cause me to conclude that a sprinkler could not inadvertently activate, I find that it is possible that there is an alternate explanation for the activation.

As the Landlord has failed to establish that the Tenant caused the flood by damaging the sprinkler head, I dismiss the Landlord's claim for damages arising from the flood.

As the Landlord has failed to establish the merit of the Application for Dispute Resolution, I dismiss the Landlord's application to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord's Application for Dispute resolution has been dismissed in its entirety. 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 23, 2015

Residential Tenancy Branch

