



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC

Introduction

The landlord applies for recovery of a \$5000.00 deductible paid as a result of an insurance claim flowing from damage caused by water emanating from the tenant's rental unit.

Issue(s) to be Decided

Does the relevant evidence produced during the hearing show on a balance of probabilities that the landlord is entitled to the award claimed?

Background and Evidence

The essential facts are not in dispute.

The rental unit is a two bedroom condominium apartment. The tenancy started in April 2005 and ended November 30, 2014. The rent had been \$500.00 per month. The landlord received a \$225.00 security deposit.

The tenant is in her sixties. She is blind.

On or about November 7, 2014 the tenant accidentally left a tap running or partially running and as a result there was a water overflow. The water ran into the apartment, through the floor and into a condominium apartment below.

The strata corporation engaged the services of a restoration company to remediate and repair the damage resulting from the water overflow into the two apartments and including examination and remediation and repair of the floor/ceiling area between the two apartments.

The deductible for the strata's insurance policy was \$5000.00. It was charged to the landlord and he has paid it. He now seeks it from the tenant.

The representative for the tenant, her son-in-law, argues that she was not guided through the tenancy agreement even though she was blind.

He argues that the tenancy agreement does not say she would be responsible for any insurance deductibles or that she should have her own insurance.

He says his mother-in-law is living on a very low income and cannot pay \$5000.00.

He says that the landlord should have fully informed his tenant about her liability for damage in such a circumstance; that an apartment is like a consumer product and the consumer should be fully informed before renting that product.

He says there was no damage to “common areas” and so his mother-in-law should not be responsible for those costs.

Analysis

The damage to the apartments and the structure between the apartments and the resultant remediation and repair work were caused by the tenant’s failure to close a tap properly.

Though she is blind, she must bear the same responsibility as any other tenant for damage resulting from her accidental mistakes. This obligation exists regardless of whether or not there is a written tenancy agreement. The fact that the tenant is blind and could not read the tenancy agreement is not relevant to the fact of her responsibility in this regard.

There is no obligation on a landlord to inform a tenant that she will be responsible for damage she causes. It is a simple fact of the common law and is restated in s. 32(3) of the *Residential Tenancy Act*, which provides

(3) A tenant of a rental unit 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.

It is not uncommon for a landlord to require a tenant to carry “tenant insurance” as a condition in a tenancy agreement but there is no obligation on a landlord to do so, nor is there any restriction on a tenant from doing so despite the absence of such a clause.

Common areas of a condominium apartment are often thought of as hallways, vestibules, grounds and the like, but technically they include the building structure itself and the spaces between the floors. There was remediation and repair work conducted between the floors in this case. The structure was examined and dried out.

The landlord's loss in this case has been limited to the payment of the deductible portion of the insurance. Had he not been insured his responsibility would have been for the full cost of remediation and repair. He is entitled to recover the loss he has incurred as a result of the damage caused by the incident.

Conclusion

In these very unfortunate circumstances I must find that the landlord is entitled to recover the deductible from the tenant.

I grant the landlord a monetary order in the amount of \$5000.00. There is no claim for recovery of any filing fee.

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

