



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCERT REALTY SERVICES LTD. - IN TRUST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, FF

Introduction

The hearing dealt with an Application by the Landlord for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement. The Landlord's agents K.T. and G.K., the tenant J.K. and counsel for both Tenants, T.F. appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

The Landlord incorrectly named the Tenant, J-H. K. on the Application for Dispute Resolution in that the "G" was left off the first name of his hyphenated two part name. The Tenant J-H. K. was at the hearing, and knew or ought to have known that his name was incorrectly spelled.

On my own initiative, pursuant to sections 64(3)(c) and 78 of the *Residential Tenancy Act*, and *Residential Tenancy Policy Guideline 23*, I amend the Landlord's Application and this my Decision and resulting Monetary Order to accurately reflect the Tenant, J-H. K.'s name. I find that in all the circumstances it is just and reasonable to correct the spelling of J-H. K's name on the Landlord's Application as well as this my Decision and Order.

The Tenants did not dispute the \$25,000.00 sum claimed by the Landlord nor did they dispute any of the evidence filed on behalf of the Landlord. As well, the Tenants did not

file any evidence relevant to this application. The Tenant filed evidence late, which was not relevant to this application and which was not considered at the hearing.

The only issue the Tenants took with the Landlord's application was that of liability for the loss.

Issue to be Decided

Is the Landlord entitled to a Monetary Order for compensation for losses suffered as a result of the fire caused by the Tenants on October 6, 2013?

Background and Evidence

The tenancy began April 1, 2013. A Standard Residential Tenancy Agreement was entered into by the parties, signed by both Tenants and the Landlord and entered into evidence (the "Agreement"). The tenancy was for a fixed term of one year, ending March 31, 2014, and thereafter continued on a month to month basis upon the expiration of the term.

Pursuant to the Agreement, the Tenants were to obtain insurance coverage for liability and contents. Specifically, Clause 37 of the Agreement provides as follows:

Clause: 37 LIABILITY AND INSURANCE

The tenant understands and agrees that they are entirely responsible for their personal property as well as the harm they cause to any part of the residential property, the rental unit and/or to the lives and property of other tenants (and their guests) in the residential property.

The tenant agrees to indemnify and save harmless the landlord from any and all claims, damages, losses, legal fees and other expenses resulting from the harm caused by the tenant or the tenant's guests to the residential property, the rental unit and/or the lives and property of other tenants (and their guests) in the residential property. Without limiting the generality of the foregoing, the tenant agrees to indemnify the landlord for the cost of the insurance deductible or increase in insurance premiums payable by the landlord as a result of the harm caused by the tenant or the tenant's guests to the residential property, the rental unit, or the lives and property of the other tenants (and their guests) in the residential property.

The tenant must obtain and maintain insurance coverage for liability and contents. Without limiting the generality of the foregoing, the tenant's insurance must cover (a) any loss or damage caused by the tenant or the tenant's guests to

the residential property, the rental unit and/or the lives and property of other tenants (and their guests) in the residential property, and (b) any loss or damage to the tenant's personal property.

A certificate of insurance (or other proof of insurance satisfactory to the landlord) must be forwarded to the landlord as proof of such insurance at the request of the landlord. This obligation to obtain and maintain insurance coverage for liability and contents is a material term of this Agreement. If the tenant fails to provide a certificate of insurance (or other proof of insurance satisfactory to the landlord) to the landlord at the landlord's request, terminates their insurance, or permits the insurance to lapse, this Agreement may be terminated by the landlord.

(Reproduced as Written and hereinafter referred to as "Clause 37"))

Clause 37 was initialed by the Landlord and both tenants.

On October 6, 2013, A.O. was cooking in the kitchen when a fire started. J.K. attempted to put out the fire with water, which only spread the fire more. The fire was sufficient to set off the sprinklers in the rental unit.

The Tenants confirmed they did not have liability and contents insurance at the time of the fire, nor did they have insurance at the time of the hearing.

The Landlord introduced into evidence the following:

1. The Emergency Procedures Guide Instructions to Residents, in which the following information is provided:

Instructions to Residents – Fire Procedures

If you discover a fire:

- 1) Get people out of immediate danger and close the door to the room or area.
- 2) Activate the red alarm pull station and from a safe phone call the Fire Department at **911** and inform them of a fire condition in your building. Give them your suite number, the street address of the building and the nearest cross streets.
- 3) Notify the residents in your floor area, and vacate the floor area via the nearest safe exit or stairwell. **DO NOT USE THE ELEVATORS.**

- 4) Report to the buildings' main entrance lobby, and pass along any relevant information regarding the fire (such as location or trapped persons) to the Building Incident Commander.

(Reproduced as Written)

2. An Incident Report dated October 10, 2013, filed by K.T., and which includes the following information:

- The incident occurred about 9:00 p.m.
- J.K. and his wife were cooking in the kitchen when oil caught fire.
- They panicked and try to put out the fire with water.
- The flames burst to the ceiling and triggered the sprinkler in the kitchen.
- The sprinkler flooded and damaged the rental unit as well as four apartments below as well as the hallways on the third, second and first floor.
- The manager, K.T. called 911 and Fire-Pro.
- K.T. and her husband I.T. extracted water with shop-vacs.
- The fire truck extracted water from the rental unit.
- By 2:00 a.m. the water was extracted by a technician from P.T.
- A restoration company began work on October 9, 2013 at approximately 10:00 a.m.

3. An Incident Report from the Vancouver Fire and Rescue Services which includes the following information:

- Dispatched: 2013-Oct-06 21:17:50
- On Route 2013-Oct-06 21:21:04
- Onscene 2013-Oct-06 21:26:12
- Incident Duration 1 Hrs 8 Mins 7 Secs
- Remarks: 10/06/2013 22:45:46
 - Respondent for a report of a water problem
 - Investigated found sprinkler head activated due to a small kitchen fire
 - Requested Fire investigator
 - Removed water
 - Left scene in care of fire investigator
- Extensive water damage to entire unit #306. Extensive damage to unit #206 below and slight damage to unit #207.

(Reproduced as written).

4. a 17 page letter from the restoration company, P.R. Ltd. titled Scope of Work (Final Repairs)
5. a copy of an invoice from P.R. Ltd. for November 15, 2013 in the amount of \$9,341.94, and an invoice for January 13, 2014 in the amount of \$43,943.55
6. a copy of their Insurance Cover Note indicating a \$25,000.00 deductible for Flood and Sewer Backup and a \$25,000.00 deductible for water damage.
7. A cancelled cheque/proof of payment of the \$25,000.00 deductible confirming his amount was paid on December 12, 2013.
8. A copy of the Proof of Loss dated April 24, 2014 indicating \$60,086.26 in building loss, \$5,179.51 in gross rents, a deductible of \$25,000.000 leaving a balance of \$60,265.77 paid by the insurer.
9. A demand letter from the Landlord to the Tenants dated November 13, 2013 wherein the Landlord demands payment of \$26,595.69 from the Tenants.
10. A receipt for payment and tracking number confirming the Tenants were served the application material by registered mail.
11. Photos of the damage to the building.

G.K. gave affirmed testimony in which he provided the following evidence:

- The tenants are required to have insurance as a condition of their tenancy. They did not have such insurance.
- The tenants had a fire in their rental unit on October 6, 2013 and the manager called the Fire Department right away.
- The sprinkler system “tripped” as a consequence of the fire.
- The water was shut off as soon as possible.

K.T. gave affirmed testimony in which she provided the following evidence:

- The rental unit is located in one of two buildings managed by K.T. Her relief building manager, A.T. and his wife, M.T. reside in the same building and on the same floor as the rental unit. K.T. resides in the other building. The two buildings are connected by an underground parking.
- K.T. could not hear the fire alarm in the other building.
- The fire occurred in the evening on October 6, 2013.
- Low pressure in the sprinkler system caused the alarm to go off which resulted in the security company paging her. She was unaware that a fire had occurred.
- K.T. and the relief building manager A.T. went to inspect the sprinkler system. They then inspected the fire panel.
- While inspecting the sprinkler system, A.T.'s wife, M.T., informed them that a tenant had told her that the sprinkler head was broken in his apartment.
- K.T. and A.T. attended the rental unit and discovered that there had been a kitchen fire. She immediately called the fire department.
- She testified that in her estimate, approximately five minutes after she became aware of the fire she called the fire department.
- Approximately 8 minutes after her call the first fire truck arrived. This first fire truck was not equipped to deal with water extraction.
- After the first fire truck left, the sprinkler system was shut off although the water continued until the sprinkler drained.
- The second fire truck arrived approximately 20 minutes later.

J.K. gave affirmed testimony in which he provided the following evidence:

- He was never told he needed insurance.
- At 8:47 p.m. on October 6, 2013, his wife was cooking in the kitchen when a pot lit on fire. He came in the room and attempted to extinguish the fire with water but it flared up. He and his wife were both surprised.

- The sprinklers and fire alarm went off immediately. He later clarified that the sprinklers came on at 8:51 p.m.
- His wife had minor burns and he tended to her.
- He went outside and spoke to M.T., the wife of the relief building manager. He believed that M.T. was also a building manager as she had taken his application for the rental unit.
- M.T. came into his unit, did not ask any questions, and left.
- J.K. attempted to deal with the water by sopping up the water with towels and putting towels in front of the other suites. He also started moving his furniture away from the sprinklers.
- J.K. did not call the fire department.
- 25-30 minutes later, K.T. and A.T. came up to the unit, saw the sprinkler head and the evidence of the fire.
- 15-20 minutes after K.T. and A.T. first came into the unit the water shut off. He stated this was at 9:35 p.m.
- A.T. came back up to the rental unit several times, each time asking if the water had stopped.
- 15 minutes after the water shut off, the firefighters came up to the suite. He later testified this was at approximately 9:50 p.m.
- He did not leave the rental unit at any time as he was attempting to clean up the water.
- He did not have tenants' insurance at the time of the fire.
- He does not currently have tenants insurance.

Counsel for the Tenants submitted that the Tenants take no issue with the claim for \$25,000.00 in terms of amount. The only issue in dispute was that of liability. He further submitted that his clients acknowledge they are responsible for the fire, and that it was the fire that caused the sprinkler to go off, but the Landlord and the manager bear some responsibility as they did not pull the fire alarm.

He submitted that it is the Landlord who is responsible for following up on the Tenants' obligation to have liability and contents insurance pursuant to Clause 37. Finally, he submitted that the Tenants were not clear who was management and who was not, and that in any case all management should be properly trained. He submitted that the "proper steps" were not taken. He made no submissions on what such "proper" training would be, nor what "proper steps" were omitted. Finally, he submitted that it was unclear why the fire department took as long as they did to attend the rental unit.

Analysis

The Landlord sought a Monetary Order for compensation for damage or loss pursuant to section 67 of the Act; that section provides as follows:

Director's orders: compensation for damage or loss

- 67** Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Related to section 67 is section 7 of the Act which provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32(3) of the Act provides that a 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.

It is clear that the damage caused to the rental unit and units below the rental unit was caused by the fire in the Tenants' kitchen. I find that the fire in the Tenants' kitchen which was sufficient to engage the sprinkler system is the sole cause of the loss suffered by the Landlord. I do not accept the Tenants' submission that the Landlord is somehow liable for the loss, or that the Landlord did not follow appropriate procedures.

Pursuant to Clause 37 of the Agreement, the Tenant agreed to:

"indemnify and save harmless the landlord from any and all claims, damages, losses, legal fees and other expenses resulting from the harm caused by the tenant or the tenant's guests to the residential property, the rental unit and/or the lives and property of other tenants (and their guests) in the residential property. Without limiting the generality of the foregoing, the tenant agrees to indemnify the landlord for the cost of the insurance deductible or increase in insurance premiums payable by the landlord as a result of the harm caused by the tenant or the tenant's guests to the residential property, the rental unit. Or the lives and property of the other tenants (and their guests) in the residential property.

Accordingly, the Tenants agreed to indemnify the Landlord for any damages and loss and specifically agreed to indemnify the Landlord for the cost of the insurance deductible. In this case, it is clear the insurance deductible was \$25,000.00.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides that a tenant is required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Tenants accepted that it was the fire in their rental unit which engaged the sprinkler system and which in turn caused water damage to the rental unit as well as several units on the floor below. Yet, despite causing a fire, the Tenants did not activate the red alarm pull station, nor did they call the Fire Department at **911** and inform them of the fire. Their response was simply not reasonable.

Counsel for the Tenant submitted that the Tenants were perplexed as to why the fire department did not arrive sooner. I find that it was the Tenants choice to not immediately call the fire department and pull the red alarm pull station which delayed the arrival of the fire department.

I further find that the Tenants failure to accurately inform the Landlords agents of the existence of a fire in their rental unit which further delayed the arrival of the fire

department and ability of the Landlord's agents to minimize the loss. I accept the Landlords' evidence that the Tenants informed M.T. that the issue was with a "broken sprinkler" head, and by doing so, they concealed the existence of a fire.

I find that the Landlord satisfied their obligations pursuant to section 7(2) of the Act and attempted to minimize the loss by turning off the sprinkler system after the departure of the first fire truck thereby minimizing the damage caused by the Tenants' fire.

The Tenant took no issue with the amounts claimed by the Landlord, which represented the amount paid as an insurance deductible. I find that the \$25,000.00 premium paid by the Landlord as a consequence of the damage caused by the October 3, 2014 fire is a loss suffered by the Landlord as a consequence of the Tenants not complying with the Act and Agreement and is accordingly recoverable from the Tenants.

The Tenants submitted that it was the Landlord's responsibility to ensure the Tenants had adequate contents and liability insurance. The Landlord's agent, K.T., rightfully stated that such insurance is for the *Tenants' protection*. I find that the Tenants lack of contents and liability insurance has no bearing on their responsibility to reimburse the Landlord for the losses the Landlord suffered as a consequence of the Tenants' fire.

Conclusion

The Landlord is entitled to a Monetary Order for the sum of \$25,000.00 comprising of the \$25,000.00 insurance deductible paid by the Landlord. Although the Landlord has been successful, the monetary jurisdiction of the Act, prohibits me from making a Monetary Order over \$25,000.00, and as such I decline the Landlords' request that I make an Order that the Tenants reimburse the Landlords the \$100.00 filing fee. This order may be filed in the Small Claims division of the Provincial Court of British Columbia 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: September 24, 2014

Corrected: August 21, 2015

