



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIDO ENTERPRIZES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing convened on September 14, 2015 and was adjourned to written submissions. An Interim Decision was issued September 15, 2015 and must be read in conjunction with this Decision.

Issue(s) to be Decided

Has the Landlord proven entitlement to keep the Tenants' security deposit?

Background and Evidence

The undisputed evidence was the Tenants entered into a written month to month tenancy agreement that began on December 1, 2013. Rent of \$1,600.00 was due on or before the first of each month and on or around December 1, 2013 the Tenants paid \$800.00 as the security deposit. The tenancy ended on February 20, 2015 and the Tenants' forwarding address was provided to the Landlords on March 27, 2015.

On February 20, 2015 a fire occurred in the rental unit which caused a complete loss of the building and contents.

A copy of the Structure Fire Report was submitted into evidence which states, in part, as follows:

Fire location was downstairs bedroom adjacent to door and stair to upper level. Occupants of building were 17 / 8 & 4 years old with grandfather in adjacent detached shop. Candle was left burning on cloth covered wicker table adjacent to doorway when mother left for store. Older children were in living room playing video games with 4 year old [child's name] free to roam about house / bedroom. Child came running into living room with smoke from bedroom involvement already evidence. Older boys alerted grandfather and attempted to extinguish with garden hose but involvement in bedroom was too great. Quick involvement / burn pattern on wall of bedroom / open flame with small child playing in area all indicate wicker

table as fire ignition material and candle as source. This causation would be deemed accidental regardless of whether the candle fell over / was knocked over by the 4 year old or was handled by child.

[Reproduced as written excluding child's name]

The Landlord testified that they were seeking to retain the Tenants' \$800.00 security deposit to help cover some of their losses as the fire was clearly started due to negligence on the part of Tenants. The Landlord argued that the Tenants were negligent in leaving the house with a candle burning and a small child unattended.

When asked what losses they incurred the Landlord stated that they have lost the entire house and are also losing rental income because the insurance company is only paying \$800.00 per month for lost rental income, even though the rent was double that at \$1,600.00 per month. She asserted that the insurance company has a maximum amount they will pay out and they do not think the house will be rebuilt prior to the insurance payments stopping.

The Tenant testified that her child was not left unattended he was left with his uncle and grandpa. She confirmed a candle was lit but the grandfather was in the room at the time she went to the store.

The Tenant argued that there were not enough smoke alarms in the house and specifically there were no smoke alarms in or around the bedroom where the fire started. The Tenant submitted that because the house was three levels the building code requires a fire alarm system be installed. There were no fire alarms in the house.

The Landlord rebutted the Tenant's submissions and argued that there were smoke alarms in the house. She noted there was one between the hallway and the kitchen. She stated this was a residential home and therefore did not require built in fire alarms.

On September 18, 2015 additional evidence was received at the RTB from the Landlord as ordered in the Interim Decision. The evidence consisted of three pages, a cover page; copies of Canada Post registered mail receipts addressed to the Tenant's Advocate on September 18, 2015; and a letter dated September 17, 2015 issued from the Landlord's insurance company.

The aforementioned letter issued by the Landlord's insurance company states that the Landlord will be paid \$400.00 per month for lost rental income to a maximum of \$9,600.00. The letter indicates that the Landlords are responsible to pay the \$500.00

insurance deductible and that the Landlords will also suffer a loss of \$614.97 due to policy limitations for replacement of appliances.

The Tenant was ordered to submit their written response to the Landlord's evidence no later than October 14, 2015. As of October 29, 2015 no written response was received at the RTB from the Tenant or her Advocate.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 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.
- 7(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 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], 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.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

The undisputed evidence was the rental property was consumed by fire on February 20, 2015. That fire was caused from a burning candle which was left unattended on a cloth on top of a wicker table. Notwithstanding the Tenants' arguments that there were not enough smoke detectors in the house and there were no fire alarms, I accept the Landlord's submission that the fire was caused due to the Tenant's or the Tenant's guest's negligence of leaving a lit candle unattended.

In absence of a written response from the Tenant or the Tenant's Advocate, I accept the Landlord's undisputed evidence that they will suffer a loss in excess of the Tenants' \$800.00 security deposit comprised of losses of rental income, the cost of the insurance deductible, and a loss for the cost of the appliances. Accordingly, I grant the Landlord's application and order that they retain the full security deposit, pursuant to section 72(2)(b) of the *Act*.

Conclusion

The Landlord's application was upheld and they were granted an order to retain the Tenants' \$800.00 security deposit.

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 30, 2015

Residential Tenancy Branch

