



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, service of hearing documents were explored with the parties. The landlord testified that she sent the hearing package to the tenant via regular mail within three days of filing. The tenant acknowledged receipt of the Notice of Hearing but claimed the landlord's Application for Dispute Resolution was not with it. The tenant also acknowledged receiving the landlord's evidence package in March 2016. The tenant stated that he was aware of the landlord's claims against him and was prepared to be deemed sufficiently served.

As for the tenant's written response, the tenant testified that he delivered two packages to the landlord's residence, on June 9, 2016 and June 15, 2016. The tenant stated that he left the packages partially under the door mat at the landlord's front door. The landlord responded by stating that she had been away and had a house sitter attend her residence. The landlord found one envelope that had been left by tenant and stated that the envelope contained only one piece of evidence, a letter purportedly written by the tenant's girlfriend. I noted that other evidence submitted by the tenant included a copy of the cheque the landlord wrote him for return of the security deposit and the landlord also had a copy of this in her evidence package. The tenant had also filled in a Tenant's Application for Dispute Resolution but he had not filed it and paid the filing fee to the Residential Tenancy Branch so I found this document to be inconsequential. The tenant also provided print-outs of other dispute resolution decisions found on the Residential Tenancy Branch website.

Given both parties failed to demonstrate that they served the other party in a manner that complies with the Act and the parties were spending a large amount of time arguing about service issues, I gave the parties the option to proceed or I would dismiss the case with leave to reapply so that they may serve their documents properly. Both parties indicated that they wished proceed. As for tenant's written submissions that were before the landlord, I informed the tenant that he may submit his position orally during the hearing. The tenant was also informed that he retains the right to file his own Application for Dispute Resolution but that I would not be considering his claims in the absence of an application.

As both parties confirmed that the landlord refunded the tenant's security deposit after she filed, I amended the landlord's application accordingly.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the rental unit or damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The six month fixed term tenancy commenced June 30, 2015 or July 1, 2015. The tenant paid a security deposit of \$425.00 and a pet damage deposit of \$100.00. The tenant was required to pay rent of \$850.00 on the first day of every month. The tenant moved out in November 2015 although the exact date was unclear as both parties provided various dates as to when the tenancy ended. The security deposit and pet damage deposit have been refunded to the tenant.

The landlord seeks compensation of \$1,000.00 from the tenant. The amount represents the insurance deductible the landlord had to pay for restoration and repairs to the rental unit following a flood that took place during the tenancy.

It was undisputed that on August 4, 2015 the tenant drilled a hole in a wall in the rental unit so as to install a wall-mount for a television. The drill bit punctures the hot water line and water sprayed in the unit for some time before the fire department arrived and turned the water supply off at the street. Efforts to remediate the water damage commenced shortly thereafter and repairs were completed in September 2015. The landlord's insurance policy paid for the restoration with the exception of \$1,000.00 deductible. The landlord paid this amount to the restoration company and provided evidence to demonstrate this.

The landlord testified that shortly after the incident occurred the tenant was apologetic and promised to pay the deductible. The tenant asked for verification of the amount of the deductible but when the landlord provided it the tenant refused to pay.

The tenant acknowledged that he feels some moral or ethical responsibility to pay the landlord and acknowledged that he did tell the landlord that he would pay the deductible; however, he has changed his mind because he claims the landlord verbally attacked him. Now the tenant takes the position that he is not legally responsible for the damage for the following reasons:

- The landlord carried insurance to protect the property.
- The tenant was not required to carry tenant's insurance.
- The tenant was not negligent in his actions and the flood was the result of an accident.
- The tenant claims to have obtained the landlord's prior permission to hang a television from the wall.
- The tenant was diligent in using a stud finder to locate the wall studs but that the stud finder also picked up copper and wire in its readings which explains why the stud finder indicated a stud when in fact it was a water line.
- The tenant submitted that he was told by a restoration company employee that the water line was not installed properly since it did not have a metal shield to protect it from being punctured.
- The tenant also pointed out that he was unable to find the water shut off quickly as it was not pointed out to him by the landlord and the landlord did not respond right away to his text messages and phone calls.

The landlord responded by explaining that she was at an appointment, without her phone for a period of time, when the tenant sent her text messages but that she responded to him as soon as she was available. The landlord also proceeded to return to the rental unit after she received the tenant's messages. The landlord denied giving the tenant permissions to hang a wall mounted television and explained that she told the tenant he could hang pictures. As for installation of the water line, the landlord stated that she did not install any water lines since acquiring the property and is unaware of any incorrect installation.

The tenant acknowledged that he had planned to purchase tenant's insurance but did not have insurance on the date of the incident. The tenant pointed out that the tenant

was not required to carry tenant's insurance. The landlord acknowledged that she did not require the tenant to carry tenant's insurance as a term of his tenancy.

Analysis

Section 32 of the Act provides for the landlord's and the tenant's obligations with respect to repairing and maintaining a property. Section 32(3) provides that a tenant is responsible for the following:

(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.

[Reproduced as written with my emphasis underlined]

Where a tenant damages a rental unit by way of his actions or neglect, and the landlord incurs a loss as a result of the tenant's actions or neglect, sections 7 and 67 of the Act provides that the landlord may recover the loss from the tenant.

In this case, I find it is clear and undeniable that the landlord paid \$1,000.00 to the restoration company hired to rectify the water damage to the property that occurred on August 4, 2015 as this amount was not covered by her insurance company. The issue is whether the tenant is liable to pay the landlord this amount under the Act.

The tenant characterizes the events of August 4, 2015 as an accident. I accept that it was an accident; however, I find that losses that result from an accident are still recoverable. As seen in section 32(3) the tenant is responsible for repairing damage that is the result of his "actions" or neglect and it is not upon the landlord to prove both. I find the action that resulted in the escape of water on August 4, 2015 was the act of drilling into the wall and hitting the water line and it is undeniably the tenant that was behind those actions.

As for the tenant's decision to not have tenant's insurance from the start of the tenancy, while unfortunate, does not translate into an exemption from his obligations under the Act to repair damage he causes by way of his actions. Accordingly, I find the lack of tenant's insurance to be irrelevant to the landlord's claims against the tenant.

While I was provided disputed submissions as to whether the landlord gave the tenant permission to hang a television from the wall, I find this position largely irrelevant as it is clear to me that the landlord did not give the tenant permission to puncture a water line.

I also find there is insufficient evidence to demonstrate that the water line was incorrectly installed or that the landlord had knowledge of an incorrectly installed water line.

With respect to other decisions issued in other cases, it is important to point out that section 64(2) of the Act provides that: "The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part". Section 62(2) also provides that "The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act." Accordingly, I have made this decision based upon the facts and merits of this case.

In summary, I find the tenant's actions resulted in water damage to the property and the landlord suffered a loss of \$1,000.00 as a result of the tenant's actions. Therefore, I grant the landlord's request to recover this amount from the tenant. I further award the landlord recovery of the \$50.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order in the sum of \$1,050.00 to serve and enforce upon the tenant.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$1,050.00 to serve and enforce upon the tenant.

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: July 05, 2016

Residential Tenancy Branch