



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASC PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for damage and other monetary loss pursuant to section 67 and to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing (2 landlord representatives and 2 tenants). All parties were given a full opportunity to be heard, to present their testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss as a result of a flood from the tenants' rental unit? Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This tenancy began on May 1, 2014 as a month to month tenancy. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The agreement shows a monthly rental amount payable of \$950.00. The landlord testified that the landlord continues to hold the \$475.00 security deposit paid by the tenants at the outset of the tenancy (May 1, 2014). The tenants still reside in the rental unit.

The landlord testified that they did not supply the tenants with a washing machine but the tenants have their own washing machine in the rental unit. The tenants testified that the previous tenants owned a washing machine in the unit and the tenants purchased the machine when they moved in. The landlord testified that, as a result of the condition of the washing machine or as a result of the tenants' failure to properly attend to the

washing machine, a leak occurred that ultimately caused substantial damage to three separate units within the residential premises, including the tenants' unit ("the flood").

Both parties agreed that the leak/flood began in the tenants' unit. The landlord provided undisputed testimony that, at the time of the flood, before the tenant had contacted the landlords, the landlords had been advised of the flood by the tenants' neighbours. The property manager was sent to determine where the water was coming from. When he went to the tenants' rental unit that evening, Tenant TC was attempted to mop up the water on his floor. The tenant testified that he did not have a phone number for the property manager: he was attempting to mop up and find the number when the property manager arrived.

Both parties agree that the property manager assisted Tenant TC extensively that evening with cleanup. The property manager also contacted a restoration company to dry the damaged portion of the three rental units occupied by the tenants and the tenants' downstairs tenants one and two floors below. The landlord testified that the leak was severe enough to damage both the unit below the tenants and the unit below that unit. The lower floor suite required carpet and ceiling repair. The second floor suite required carpet and ceiling repair as well as painting. Both units required other repairs, as well.

The property manager testified that, on the night of the flood, he did not speak to the tenant about payment for these damages but that he asked the tenant if he had insurance. When the tenant stated that he did not have tenant insurance, the property manager told Tenant TC that they would discuss that part later. The landlord testified that the tenant had been contacted several times with respect to the damage costs and a possible payment plan. The landlord testified that, initially, the tenants seemed property to agree to a payment plan. However, ultimately, the tenants refused to pay towards the damages, telling the landlord that the landlord can use his insurance.

The landlord sought a monetary order in the amount of \$2762.15 for damage to the rental units. He provided a breakdown of the monetary amount sought as follows:

Unit	Repairs to 3 units	Amount
107	\$175.00 carpet cleaning/services 7.69 replacement part in unit 112.40 fan, dehumidifier rentals for cleanup 452.68 contractor labour and materials re: drywall, mud, paint and paint supplies, etc.	\$808.97

	21.00 <i>property manager handyman work</i> 40.20 <i>property manager handyman work</i>	
207	175.00 carpet cleaning/services 7.69 replacement part in unit 112.39 fan, dehumidifier rentals for cleanup 452.68 contractor labour and materials re: drywall, mud, paint and paint supplies, etc. 47.25 re-stretch carpets 14.03 paint colour samples 21.00 <i>property manager handyman work</i> 40.20 <i>property manager handyman work</i> 168.00 <i>property management cleaning</i> 5.04 <i>property management cleaning</i> 6.72 <i>property management cleaning</i> 33.56 <i>property management cleaning</i>	\$1083.56
307	175.00 carpet cleaning/services 7.68 replacement part in unit 112.39 fan, dehumidifier rentals for cleanup 452.67 contractor labour and materials re: drywall, mud, paint and paint supplies, etc. 47.25 re-stretch carpets 14.03 paint colour samples 21.00 <i>property manager handyman work</i> 39.60 <i>property manager handyman work</i>	869.62
3 units	Total Monetary Amount Requested by Landlord	\$2762.15

The tenant argued that the landlord should rely on their insurance to cover the costs of these repairs. He acknowledges that he did not have insurance for his own unit contrary to the requirements of the residential tenancy act he signed at the outset of this tenancy.

The tenant also argued that, as there are no itemized invoices created for the property management team's work in repair and clean-up, he submitted that those losses claimed by the landlord are not substantiated with evidence to support their claim. In adding up the amounts represented by the property management work in cleaning and repairs, the tenant submitted that \$366.32 of the landlord's monetary claim was unproven with any documentary evidence.

Tenant TC testified that he was doing laundry and cooking dinner the evening of the flood when the washing machine leaked. He testified that it was not a huge area that was flooded. He believed that the water shut off valve in the rental unit malfunctioned and therefore the washer had too much water inside of it. He confirmed the landlord's testimony that the property manager gave "us lots of help". Tenant TC submitted that he had been told that he was not liable in the circumstances because he was not negligent.

Analysis

The tenant argued that the landlord should have to claim compensation through their insurance but this is not the case. The landlord may choose to use their insurance or they may choose to seek compensation from the responsible party. The landlord has chosen the later, arguing that the tenant's own washing machine failed either because of mechanics or because of failure of the operator (the tenant). The landlord testified that they did not want the expense of a large deductible and insurance premiums increased in these circumstances. The landlord argued that the amount they seek is comparable to an insurance deductible amount and that the tenant would have been responsible for the insurance deductible as well. Tenant's insurance is required by the residential tenancy agreement signed by both parties and the tenant did not have insurance at the time of the flood.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this circumstance, the landlord must prove that they suffered loss. The monetary loss as a result of the need for repairs is not disputed by the tenant (but for a small amount of undocumented handyman and cleaning costs). Based on the evidence at this

hearing, I find that the damage and loss incurred by the landlord came as a result of the tenant's violation of the residential tenancy agreement in that they failed to have insurance to cover the costs incurred by the landlord. Furthermore, while I note that the tenant certainly did not intend for a flood or the damage that resulted, I find that he was negligent either in his care and attention to the washer or in that he did not address the flood in a timely enough fashion.

I find that the landlord has provided detailed invoices and receipts to support and prove claims for compensation of the following costs,

Unit	Repairs to 3 units	Amount
107	\$175.00 carpet cleaning/services 7.69 replacement part in unit 112.40 fan, dehumidifier rentals for cleanup 452.68 contractor labour and materials re: drywall, mud, paint and paint supplies, etc.	\$747.77
207	175.00 carpet cleaning/services 7.69 replacement part in unit 112.39 fan, dehumidifier rentals for cleanup 452.68 contractor labour and materials re: drywall, mud, paint and paint supplies, etc. 47.25 re-stretch carpets 14.03 paint colour samples	\$809.04
307	175.00 carpet cleaning/services 7.68 replacement part in unit 112.39 fan, dehumidifier rentals for cleanup 452.67 contractor labour and materials re: drywall, mud, paint and paint supplies, etc. 47.25 re-stretch carpets 14.03 paint colour samples	\$809.02
Total \$	Amts Landlord entitled to - documented repairs	\$2365.83

The types of damages an arbitrator may award to a party are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act* as

described and considered above; an amount reflecting a general loss where it is not possible to place an actual value on the loss; “nominal damages” where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, I find that the landlord is entitled to an amount of nominal damages for the efforts of his property management team to restrict the extent of damage caused by the flood on the first evening, for making repairs and assisting with clean. While these amounts are not documented and therefore are not “proven”, I find that all of the testimony, including the tenant’s testimony supports the claim that the property management team was critical in addressing this matter. Therefore, I find the landlord is entitled to recover a nominal amount of damages totaling \$125.00.

Given that this is an ongoing tenancy, I am certain that the landlord and tenant will make the appropriate arrangements to address the landlord’s compensation. As the landlord was successful in the application, I find that the landlord is entitled to recover the \$100.00 filing fee for this matter.

Conclusion

I grant the landlord a monetary order in the amount of \$2590.83.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: June 27, 2017

Residential Tenancy Branch