



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FF MNDC

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlords' Application. All parties confirmed receipt of each other's evidentiary materials.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation for damage and losses?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

This month-to-month tenancy began on December 1, 2016 with monthly rent set at \$1,050.00. The landlords collected a security deposit in the amount of \$525.00, which they still hold. The tenant continues to reside in the rental suite.

The landlords are seeking a monetary claim in the amount of \$25,000.00 in compensation for the insurance deductible they paid after an incident on March 6, 2017. Both parties do not dispute that an insurance claim was made by the strata management company on behalf of the owners of the complex after the tenant had left the faucet on, resulting in a flood that caused damage to the rental unit, and the unit below.

The landlords submitted, in evidence, an email from the tenant, dated March 6, 2017, which read: "I left one of the faucets on in the morning and when the water was back on the sink overflowed and covered the kitchen floor". The tenant confirmed that he had sent this email, and that he had left the faucet on.

The landlords submitted documents to support their monetary claim, including a letter dated April 7, 2017 from the strata management company that read "please be advised that further to the water loss that occurred on March 6, 2017 when your tenant left the tap open during a posted water shut-off that an insurance claim has been opened as the damage exceeds \$25,000 and the deductible invoice will be forwarded to you for payment once received".

The landlords also submitted in evidence a letter dated April 4, 2017 from the strata management company titled "re: invoice charge back" that reads: "Please find an enclosed copy of an invoice from...in the amount of \$25,000.00 for insurance deductible....The strata corporation has paid the invoice on your behalf, and the sum of \$25,000.00 has been assessed against your strata lot account". The landlords testified that payment was made by cheque to the strata on April 24, 2017.

The landlords also provided the deductible invoice from the restoration service company for \$25,000.00 dated March 31, 2017, as well as the summary of the insurance coverage for the strata plan, which indicates \$25,000 as the deductible for water damage and flood.

The tenant disputes that he should be responsible for the \$25,000.00 deductible as he testified that the landlords did not provide confirmation that they had paid the \$25,000.00 deductible. The tenant disputes that he should pay for the \$25,000.00 deductible despite the fact that he left the faucet on, as he had received a notice that the water would be shut off that date from 8:00 A.M. to 8:00 P.M. The tenant testified that although the water shut-off was posted to take place from 8:00 A.M. to 8:00 P.M., the water was restored before 8:00 P.M., and he was not home to mitigate the damage as he was under the assumption no water would be available until the posted time. The tenant also disputes that the sink was full of dishes, as indicated on the landlords' application. The tenant proposed that the water overflowed due to the sink not draining properly, but admitted during the hearing that he had never notified the landlords of any issues with the sink or drainage. The tenant further testified that despite the fact that he had left the faucet on, the landlords failed to mitigate the losses by failing to carry their own insurance to cover the deductible, which the landlords

confirmed they did not have. The tenant further testified that the landlords benefitted from the insurance claim as the old vinyl floors that contained asbestos were replaced. The landlords replied that the restoration company had no choice but to replace the floors to a different standard as the asbestos was a health hazard, and the decision was not an upgrade as it was necessary one required by law and health regulations.

The landlords provided undisputed testimony in the hearing that the actual repairs exceeded the \$25,000.00 deductible and that they had mitigated the tenant's exposure to the landlords' monetary losses by paying the insurance deductible and utilizing the strata insurance coverage, which all owners contribute to as part of their strata fees.

### **Analysis**

Section 32 (3) of the *Residential Tenancy Act* reads in part as follows:

*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.*

The landlords provided undisputed, sworn testimony that the tenant had left the faucet on in his suite, which was left unattended during a water shut-off on March 6, 2017. Although I accept the testimony of the tenant that he was unaware that the water would be restored prior to the posted time of 8:00 P.M on March 6, 2017, I find that his choice to leave the faucet on and unattended, regardless of whether the water shut-off was taking place or not, is neglectful, and resulted in damage to the rental unit. I find that the tenant failed to provide sufficient evidence to support that the water damage was due to the landlords' failure to maintain the rental unit in working order. I also find that the tenant failed to provide sufficient evidence to support that the landlords gained financially due to this incident, as the vinyl floors contained asbestos and required abatement as supported by the tenant's evidence. The tenant continues to reside in the rental unit, and the landlords have not re-rented the unit for an increase in monthly rent.

I find that the landlords have provided sufficient evidence to support that they suffered a monetary loss of \$25,000.00, and that this amount was charged back to them by the strata. Although the tenant disputes that this payment was made by the landlords, I am satisfied that the landlords were assessed this deductible by the insurance company through the strata management company, and are responsible for this deductible as summarized in the strata insurance coverage, and as indicated in the correspondence from the strata management company to the landlords.

I find that it was undisputed that the tenant had left the faucet on, which caused a flood to the rental unit. I find that it is due to the intentional and neglectful actions of the tenant, the landlords suffered a monetary loss, and the tenant is responsible for the repairs in accordance with section 32(3) of the Act.

The tenant testified that the landlords failed to mitigate the tenant's exposure to the landlords' losses by failing to carry their own insurance coverage. Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

*"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

*The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation<sup>2</sup>. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.*

*Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.*

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."*

I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlord's monetary losses as is required by section 7(2) of the Act. I find that the landlords had responded immediately upon being notified by the tenant of the damage to the rental suite, and the tenant's exposure to the actual monetary loss was minimized

by claiming through the strata insurance, which premiums are paid for through the landlords' monthly strata fees. I find that the \$25,000.00 deductible is the lesser of the actual costs incurred to repair the damage caused by the tenant, and the \$25,000.00 deductible could not be avoided. Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$25,000.00 in satisfaction of the monetary loss suffered by the landlords due to the tenant's obligation under section 32(3) of the *Act* to repair the damage caused by the tenant's actions.

I find that the landlords' Application has merit and that the landlords are entitled to recover the fee for filing this Application.

### **Conclusion**

I issue a monetary order in the amount of \$25,100.00 in the landlords' favour which allows the landlords compensation for the monetary loss suffered due to the actions of the tenant, as well as recover the filing fee for this application.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: November 8, 2017

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Residential Tenancy Branch