



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LQ INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, FF

Introduction

In the first application the tenant seeks recovery of a security deposit doubled under s. 38 of the *Residential Tenancy Act* (the “Act”) and the cost of internet cancellation. The tenant’s advocate withdrew the tenant’s claim at the end of the hearing.

In the second application the landlord seeks to recover a portion of the cost of cleaning and repair resulting from alterations made to the rental unit but mostly those resulting from a fire in the unit.

Both parties attended the hearing, the landlord by its representative Mr. Q., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant responsible for fire damage to the unit or for the repair of alterations? If so, what is a reasonable measure of damages?

Background and Evidence

The rental unit is a three bedroom apartment in a very old, six unit apartment building. The tenancy started in February 2014. The written tenancy agreement lists the tenant and two others as tenants. Those two others vacated the rental unit some time ago and been replaced since then. The tenant's new roommates are not on the tenancy agreement. The other two tenants on the tenancy agreement have not been named as respondents.

The rent was \$1700.00 per month. The landlord holds a \$590.00 security deposit.

On September 6, 2016 the tenant left a candle burning in his bedroom while he went to the washroom. He says he lit the candle because the power was out.

The candle started a fire in the room. By the time the tenant returned, the smoke was too thick to see the fire. Neighbours called the fire department which attended very quickly and extinguished the fire.

The fire caused burn damage to walls and the floor. There was significant smoke damage. As well, the fire department crew damaged a wall and two windows in extinguishing the fire. There is no suggestion that such damage was not necessary in order for the fire department to deal with the fire.

The tenant moved out almost immediately. His bedroom was not reasonably habitable. His two roommates stayed until early in October.

The landlord hired a renovation company which performed the following work:

- Cleaning and removal of debris due to fire damage
- Disposal of leftovers (furniture, boxes, junk, cabinet . . .)
- Removal of loft bed
- Smoke seal the entire unit
- 2 doors replacement with hardware
- Repair replace damaged electrical wire and outlets
- Repair and repaint all walls, ceiling, baseboard, framing
- Supply and install 12mm laminate flooring and 4" wooden base

- Rough carpentry and finishing details
- Debris removal
- Repair damaged drywall and window frame in bathroom, with new window

The landlord's representative says that unbeknownst to him a rough "loft" bed had been constructed in one of the bedrooms by attachment to the wall. It had to be removed.

The tenant provided his recollection of events on September 6. In addition to having no power, he says the fire alarm did not work. He says he did not have ready access to a fire alarm or extinguisher in the hallway and had to descend to the floor below to pull an alarm. He says that the incident has caused him significant trauma.

Mr. Q. says there is a fire alarm and extinguisher right outside the apartment door. He says that an alarm system had been hardwired into the entire apartment building within six months before the fire.

Mr. Q. presented a renovation bill for \$17,100.00 that he has paid. He has been reimbursed for all but \$4747.00 of it from insurance coverage. He says the insurance only covered damage from the fire and not damage caused by the fire department extinguishing the fire.

He paid \$3675.00 for two new "glass fired" windows to replace those broken during the fire. He claims that the building is a "heritage" building and replacement of old style windows is more expensive than normal.

He claims \$830.48 for a new gas range and \$739.46 for a new fridge and submits invoices showing they have been purchased.

Analysis

The tenant's advocate raises a number of issues:

In his written brief he argues firstly that the landlord has failed to produce either a move-in inspection report or a move-out inspection report as required by the *Residential Tenancy Act* (the "Act") s. 23 and s. 35 and that the nature of the damage cannot be ascertained without such a report.

A landlord seeking compensation for damage to a rental unit puts itself at a distinct disadvantage by not have those reports. Their lack might hamper a determination of the state of the premises but it does not prevent a landlord from making a claim. If the question boils down to a comparison between the state of the premises at the start and at the end of the tenancy the lack of the required reports may be fatal to a landlord's application.

Where however the damage clearly occurs during a tenancy, as the result of a fire for example, a move-in condition report would be of minimal value.

In this case the tenant left shortly after the fire, without letting the landlord know where he was. The landlord was not in a position to contact the tenant to set a date with him for a move-out condition inspection even had it wanted to conduct one.

The tenant's roommates were not the landlord's tenants. The landlord had no obligation to conduct an inspection with them and they had no power to bind the tenant to any admissions they might have made at such an inspection.

Secondly, the tenant's advocate argues that the landlord has failed to particularize its claim and related costs so as to differentiate between repaired items sufficient to prove the amount or value of the damage or loss. Particularly, the renovator's invoice does not specify an hourly rate or indicate how much time was spent on each item in the invoice. In my view, the proposition that a claimant must prove its measure of damages is an overriding one and must be kept in mind while dealing with each of the items of this claim.

Thirdly, the tenant's advocate suggests that the tenant should not be responsible for damage not caused by the fire. I will deal with this proposition below.

Last, the tenant's advocate submits that the landlord has failed to mitigate its loss.

It is apparent that the tenant's actions resulted in the fire. Whether there was power to his suite is not an aspect that is relevant. His responsibility lies in contract, not in negligence. He is responsible to repair damage to the rental unit or common areas that is caused by his actions or neglect (s. 32(3) *Residential Tenancy Act*).

I find that the fire and the fire department efforts to quench it cause considerable damage to the premises including damage to the floors and walls as well as the destruction of windows in the unit. I accept that all the repair work listed in the

renovator's invoice was work reasonably required to attend to the damage resulting from the fire; but for the bathroom.

It has not been shown that the repair work performed in the bathroom was the result of the fire. The photos submitted by the landlord show a window frame having been removed to expose what appears to be significant rot. It has not been shown that the window frame was damaged by the fire or by the fire department. This damage is not the responsibility of the tenant.

As tenant's counsel points out, due to the lack of detail in the renovator's invoice, the bathroom repair cannot be separated out from it. While this makes it difficult to accurately assess compensation it does not prevent compensation from being awarded. In all the circumstances of this case I award the landlord one half its share of the renovator's bill: \$2373.50.

I have allowed the cost of "loft bed" removal in the foregoing bill. Despite the lack of a move-in inspection and report, the tenant admitted the loft bed was constructed during his tenancy and so he is responsible for the cost of its removal.

The landlord's evidence satisfies me that the fire department had to smash out two windows and that the replacement cost is high due to their antique status. I award the landlord the Glass and Window bill of \$3675.00. The bill does not include the bathroom window.

I dismiss the landlord's claim for a new stove and fridge. No objective evidence was presented to show their condition at the end of the tenancy (including a move-out inspection report) and so it cannot be reasonably determined that they were in such a state as to required replacement. Nor can it be determined how old they were. Under Policy Guideline 40, "Useful Life of Building Elements" a fridge and stove have a normal life of fifteen years and the replacement of one or the other older than that will draw little in the way of an award, on the principle that an award should not put the claimant in a better position than had the damage not occurred.

Regarding mitigation, ""...the burden which lies on the defendant of proving the plaintiff failed in his duty of mitigation is by no means a light one, for this is a case where a party already in breach of contract demands positive action from one who is often innocent of blame." *Red Deer College v. Michaels and Finn* [1975] 5 W.W.R. 575 at 580.

The tenant has not pointed to any particular failure on the landlord's part in this regard, other than perhaps the landlord's failure to conduct inspections and prepare reports. I have already commented on this failure and its affect. In all the circumstances of this case it has not been shown that the landlord failed to mitigate its loss.

Conclusion

The landlord is entitled to an award totalling \$6048.50 plus recovery of the \$100.00 filing fee for its application. I authorize the landlord to retain the \$590.00 security deposit in reduction of the amount awarded.

The landlord will have a monetary order against the tenant for the remainder of \$5558.50.

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: February 09, 2018

Residential Tenancy Branch