



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDCT, OLC, PSF, FFL, MNDLS

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* ("Act") the landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenants applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65: and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue

At the outset of the hearing both parties confirmed that the tenants' have given notice and will be moving out of the unit by March 31, 2018. The tenants confirmed that they are only seeking a monetary order and are no longer pursuing the remainder of their application, accordingly, I dismiss the tenants application in its entirety save and except for the monetary claim. The landlord advised that they are still pursuing the application as applied for. The hearing proceeded and completed on that basis.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
 Is the landlord entitled to recover the filing fee for this application from the tenant?
 Are the tenants entitled to a monetary award for compensation for loss or damage under the Act, regulation or tenancy agreement?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on August 1, 2017. The tenants are obligated to pay \$1000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$500.00 security deposit. The landlord testified that as part of their tenancy agreement, the tenants were to have contents and liability insurance in place. The landlord testified that the tenants assured her that their insurance was in place and in order. The landlord testified that on October 22, 2017 the tenants overflowed their bathtub to the extent that extensive damage was done to the bathroom and parts of the rest of the suite. The landlord testified that the tenants did not contact them until the following day around noon. The landlord testified that the tenant had already called the insurance company and that they had begun remediating the damage and that a claim was opened.

The landlord testified that several weeks later, the tenants insurance company sent her a bill demanding payment as the tenants did not have insurance and that the tenants were being investigated for fraud. The landlord testified that if the tenants had contacted them directly and immediately they could have had the work done in about three days but since the tenants went through the insurance company, it has taken months. The landlord testified that the tenants claim is ridiculous since they were negligent and caused the damage in the first place. The landlord testified that the tenants should not be entitled to any amount.

The landlord is applying for the following:

1.	Insurance Company for emergency cleanup and repair	\$5170.40
2.	Flooring repair	345.45
3.	Baseboard repair	81.95
4.	Labour for repairs	585.00
5.	Filing fee	100.00
6.		
	Total	\$6282.80

The tenants gave the following testimony. SB testified that she and RG had an argument about insurance coverage on October 22, 2017. SB testified that she had purchased insurance online at 9:00 p.m. on that night. SB testified that around 10:30 she was running a bath for herself but fell asleep on the couch. SB testified that she

made two attempts to contact the manager and waited about thirty minutes to hear back, but with no success. SB testified that she called the insurance company and that they arrived at approximately 12:30 a.m. SB testified that the insurance company is not investigating them for fraud but due to the timing of when she applied for insurance and the time of the overflowing tub, the insurance company found it to be too close in time and would not be covering them.

SB and RG testified that the repairs took over two months to be done and there are still some minor issues to be dealt with. The tenants testified that they had very little of the apartment space to use and seek the equivalent of two months' rent as compensation. The tenants testified that \$2000.00 is very reasonable.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

SB conceded and acknowledged that she was at fault for falling asleep while letting the bathtub overflow. In her own testimony, she further conceded that the timing of her purchasing insurance and the time of the water damage was suspect. Based on all of the testimony given, the documentation, and on a balance of probabilities, I find that the SB was negligent in this matter and caused the damage to the unit. I further find that the tenant did not make sufficient attempts to contact and allow the landlord a chance to address the damage. The landlord provided extensive documentation to support the amount as claimed and that the tenants were to have content and liability insurance. I find that the landlord has proven their claim and are entitled to \$6282.80. Although the landlord has not applied to retain the deposit, applying the offsetting provision under Section 72 of the *Act*, I find that the landlord is entitled to retain the deposit.

As I have found that the SB was responsible for the damage and that she chose to call the insurance company without giving the landlord an opportunity to address the

damage, the tenants are not entitled to compensation. The parties were at the discretion of the insurance company's timeline which was initiated by the tenants.

The tenants have not been successful in their application.

Conclusion

The landlord has established a claim for \$6282.80. The landlord is entitled to retain the \$500.00 security deposit in partial satisfaction of the claim. I grant the landlord an order under section 67 for the balance due of \$5782.80. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply.

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: March 12, 2018

Residential Tenancy Branch