



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for damage to the rental unit and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent copies of the decision will be e-mailed to him at the e-mail address provided in the hearing. At the request of the Tenant, copies of the decision will be mailed to him at the address provided in the hearing.

### Preliminary Matters

Although settlement was proposed during the hearing, a settlement agreement was not reached between the parties. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit or recovery of the filing fee?

### Background and Evidence

The parties agreed that the rental unit is located in a multi-story strata building and that several fixed-term tenancies were signed between the Tenant and the Landlord over the course of the Tenant's occupancy in the rental unit. The first tenancy agreement in the documentary evidence before me, signed on October 22, 2015, states that the tenancy began on November 15, 2015, and ended on November 30, 2016. The parties agreed that several addendums and a form K were signed as part of this tenancy agreement and that the addendums required the Tenant to carry personal and third party liability insurance, among other things.

The parties agreed that subsequent to the initial tenancy agreement described above, the Landlord and the Tenant entered into a second tenancy agreement when the initial agreement expired. The second tenancy agreement in the documentary evidence before me was signed on December 1, 2016, for a fixed term of one year. Although an addendum formed part of this second tenancy agreement, no form K was attached and the parties agreed that there was no requirement as part of this second tenancy agreement for the Tenant to carry personal or third party liability insurance.

Both parties agreed that on or about October 2, 2017, the Tenant damaged a sprinkler in the rental unit causing a flood and water damage to the Tenant's rental unit as well as common property and several other strata lots in the building. The Tenant testified that this damage was unintentional and that it occurred as he was storing an item on a shelf in the bedroom closet. The Tenant stated that as soon as he realized the damage occurred, he personally contacted the 24-hour concierge who immediately shut off the water to the sprinkler, and that the fire department attended shortly thereafter to vacuum up the water.

Both parties agreed that neither the Tenant nor the Landlord had insurance at the time of the flood and the Agent testified that the Landlord was therefore required to use the strata insurance to cover the cost of the damage which carries a deductible of \$10,000.00. In support of this testimony the Landlord provided an e-mail from the strata regarding the flood damage to 13 units and the insurance deductible, as well as photographs of damage to the rental unit and a copy of the bill from the strata to the Landlord in the amount of \$10,000.00.

The Agent testified that as the Tenant caused the water damage for which the \$10,000.00 deductible was charged, the Tenant is therefore responsible for this cost. The Tenant disputed that he is responsible for the \$10,000.00 deductible as the

sprinkler was not adequately protected and difficult to see. The Tenant stated that the damage was also entirely unintentional and occurred while he was placing a box onto a shelf in the bedroom closet. As a result, the Tenant argued he should not be responsible for the cost of repairing this damage. Further to this, the Tenant argued that he should not be held responsible for the Landlord's negligence in failing to carry proper insurance and that in any event, the Landlord failed to mitigate the cost of this loss by not having insurance coverage. As a result, the Tenant argued that he is not responsible to pay the \$10,000.00 strata deductible which is likely significantly higher than the cost of the deductible the Landlord would have had to pay, had they obtained their own insurance coverage.

### Analysis

Residential Tenancy Policy Guideline (the "Policy Guideline") #16 states that in determining whether compensation for damage or loss is warranted, the arbitrator may consider whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

There was no disagreement between the parties that on or about October 2, 2017, the Tenant damaged a sprinkler in the rental unit causing a flood and water damage to the Tenant's rental unit as well as common property and several other strata lots in the building. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Although the Tenant argued that he is not responsible for the damage or the costs of repairing it as the damage was unintentional, section 32 of the *Act* states that 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. As a result, I find that the Tenant was responsible for the damage caused by the flood and the costs of repairing this damage, regardless of the fact that this damage was unintentional.

Based on the documentary evidence before me from the strata and the Landlord, I am satisfied that \$10,000.00 is owed by the Landlord to the strata for the coverage of an

insurance deductible directly related to the water damage caused by the Tenant. However, section 7 of the *Act* states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. The Tenant argued that the Landlord failed to mitigate potential loss as the sprinkler was not well protected, however, there is no evidence before me that the Landlord is required by law or the tenancy agreement to ensure that sprinklers in the rental unit are located or protected in any particular manner. Further to this, the photographs submitted by the Agent demonstrate that the sprinkler in the closet was clearly visible. As a result, I give the Tenant's argument that the Landlord failed to mitigate loss when he did not adequately protect the sprinkler no weight.

The Tenant also argued that the Landlord failed to mitigate this loss when he did not require the Tenant to carry insurance as part of the current tenancy agreement and by failing to carry insurance on the property themselves. Although the evidence before me establishes that the Tenant was previously required to carry insurance for his own possession as well as third party liability under a former tenancy agreement, the parties both agreed that no such requirement formed a part of the tenancy agreement in place at the time of the flood. Further to this, the Agent acknowledged that the Landlord did not have their own insurance coverage for the rental unit and as a result, the strata was required to use their own insurance and bill the Landlord for the \$10,000.00 deductible.

While I acknowledge that the damage was unintentional and find that the Tenant acted reasonably to mitigate the damage or loss by acting quickly to have the sprinkler deactivated, as stated above, I find that the Tenant is none the less responsible for the damage and therefore bears the responsibility for at least some of the cost for repairing it. However, I agree that the Landlord failed to mitigate this loss by not carrying insurance or requiring the Tenant to carry insurance.

Policy Guideline #5 states that if an arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. Although there is no evidence before me regarding the amount of a deductible that might have been payable by the Landlord had they carried their own insurance, I find it reasonable under the circumstances for the Landlord to pay 50% of the \$10,000.00 deductible claimed as a result of their failure to mitigate this loss. As a result, I find that the Tenant is responsible to pay the remaining 50% in the amount of \$5,000.00.

Based on the above, and pursuant to section 72 of the *Act*, the Landlord is therefore entitled to retain the \$700.00 security deposit paid by the Tenant in partial satisfaction of the \$5,000.00 owed. Pursuant to section 67 of the *Act*, the Landlord is entitled to a Monetary Order in the amount of \$4,300.00 for the balance remaining after the deduction of the security deposit.

As the Landlord was only partially successful, I decline to grant the Landlord recovery of the filing fee.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,300.00. 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: July 3, 2018

---

Residential Tenancy Branch