



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOTAL CONCEPT DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord 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; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

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.

As the tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 12, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage or losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on December 1, 2016. At the expiration of the initial term, the tenancy continued as a month-to-month tenancy for the same \$1,600.00 monthly rent established in the initial fixed term tenancy agreement. The landlord continues to hold the tenant's \$800.00 security deposit paid in December 2016.

Although the rental unit is located in a strata complex, the parties confirmed that the rental is with the landlord as the owner of the individual strata unit, and thus this tenancy falls within the jurisdiction of the *Act*, and not the *Strata Property Act*.

On February 10, 2017, there was a fire that originated in the tenants' rental unit. This fire occurred when Tenant TK (the tenant) left the rental unit while a new USB power bank battery charger they had purchased online was charging for the first time. The tenant provided written evidence that they waited an hour before they left the rental unit, and the battery charger seemed to be working properly at that time. Two and a half hours after the tenant left the rental unit, one of the lithium batteries in the power charger exploded causing a serious fire in the rental unit. There was \$72,000.00 in damage caused as a result of this incident to the various strata units affected by this fire.

The insurance company for the strata building paid all but the \$2,500.00 deductible for this fire. The strata billed the owner of the strata unit, the landlord, for the \$2,500.00, a bill that was subsequently paid by the landlord. The landlord sent demand letters to the tenants on February 28, 2018 and May 17, 2018, requesting reimbursement for the \$2,500.00 the landlord was required to pay to the strata corporation for this building. As the tenants have not agreed to pay this amount, the landlord applied for dispute resolution for the recovery of the \$2,500.00 in losses for which they maintain the tenants are responsible. The landlord also requested recovery of the \$100.00 filing fee.

In the written evidence, the landlord maintained that the battery charger in question was a non-CSA approved item. There is evidence that this item was purchased online by the tenant and manufactured in the Middle East. The product is apparently no longer being manufactured.

The tenants did not dispute the sequence of events that led to the fire, the landlord's evidence that the fire originated in the tenants' suite, nor the landlord's evidence with respect to their payment of the deductible to the strata corporation whose insurance covered the damage. Rather, they maintained that since they were not negligent in this

matter and this was an accident that they should not be held responsible for the deductible loss. The tenants entered into written evidence a copy of the fire investigator's March 3, 2017 report regarding this fire, which reached the conclusion that this fire was caused by an explosion of one of the lithium-ion batteries in the battery charger. The fire investigator determined that this was an accidental fire and that the most probable source of ignition was an electrical short within one of the power banks lithium-ion batteries. Since the fire was accidental and the tenants and their insurance agent maintained that the tenants were not negligent, the tenants asserted that they should not be held responsible for the landlord's claim for recovery of the \$2,500.00 deductible payment made by the landlord to the strata corporation.

The tenants' insurance agent also said that since the insurance payment was made by the strata corporation and not the landlord, this matter falls within the *Strata Property Act* and not the *Residential Tenancy Act*. However, the parties both agreed that this tenancy was undertaken between the landlord named as Applicant in this application and the tenants named as Respondents.

The landlord entered into written evidence a copy of a June 27, 2018 email from the tenant's insurance agent, which reads in part as follows:

The Residential Tenancy Act does not speak to Strata deductibles, and under the Strata Property Act, which does speak to deductibles, you are unable to recover for the cost of the deductible, The only area of the Residential Tenancy Act that speaks to damages; says...

Section 32...

(3) 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. Note, it indicates that the tenant must repair damage "... that is caused by the actions or neglect of the tenant..."

This fire was as a result of a faulty charger which was being used in the recommended manner. This was not caused through an action of our insured, but rather through a faulty product...

This would seem to indicate that there is no responsibility on my insured, but rather the landlord to maintain the property. Our insured is not responsible for the damages caused and they were not caused by any actions on her part, such as leaving a tap on.

(as in original)

Analysis

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 case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 32(3) of the *Act* reads as follows:

(3) 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.

Although I have given careful consideration to the written evidence in the form of the email from the tenant's insurance agent and the sworn testimony that the tenant's insurance agent gave at the hearing, I find that section 32(3) of the *Act* is not limited to attaching responsibility for damage to the rental unit only in situations where this is demonstrated neglect. This section includes also actions of the tenant which can lead to a monetary award for damage. I find that the fire very clearly resulted from the action of the tenant in plugging in a new non-CSA approved battery charger and leaving the rental unit while it was charging, I find that section 32(3) of the *Act* made the tenant responsible for the damage which ensued. While the tenant's actions may not constitute negligence, the fire resulted from the tenant's actions, and as such, I find the tenants responsible for any losses the landlord has incurred arising out of this tenancy. Section 7(2) of the *Act* requires a landlord to mitigate tenant's exposure to the landlord's losses. In this case, the strata corporation's insurance looked after the repair of the damages caused by the tenant's actions. Had the strata corporation's insurance company not stepped forward and looked after the damage caused as a result of the tenant's actions, the tenant (or their insurance company) may have been held

responsible for all of the damage that occurred as a result of the tenant's actions. The actions of the landlord in ensuring that the strata corporation looked after the tenant's exposure to the damage which occurred other than the deductible payment that was not covered by the building's insurance satisfied the landlord's duty to mitigate the tenants' exposure to losses pursuant to section 7(2) of the *Act*.

For these reasons, I allow the landlord's application to recover the \$2,500.00 deductible payment that was made as a direct result of the tenant's actions that led to the February 10, 2017. As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to obtain a monetary award for damage and losses incurred during this tenancy and to recover the filing fee:

Item	Amount
Monetary Award for Damage and Losses Arising out of this Tenancy	\$2,500.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,600.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 09, 2018

Residential Tenancy Branch