



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the landlord's 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;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 1:50 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on November 8, 2018 a copy of the Application for Dispute Resolution and Notice of Hearing was sent to both the tenants by registered mail to their forwarding address. The landlord provided registered mail receipts and tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenants were both deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Issues

Is the landlord entitled to a monetary award for damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on May 1, 2005 and ended as a result of frustration following a severe fire in the rental unit on November 14, 2017.

The landlord is claiming \$5000.00 which was the cost of its insurance deductible. The actual damage was well over this amount. The landlord argues the tenant's negligence was the cause of the fire. The landlord submitted a Fire Investigation Report from a professional fire investigation company which they were required to obtain for insurance purposes. The following are excerpts from the report:

Examination

All of the rooms within the Unit are densely occupied with domestic possessions. Most areas have items stacked randomly ranging in depth from 2-4 feet. The living room is the area of fire origin. The living room has a desk, a bunkbed, an upholstered chair, a sofa and a shelving unit. The furniture and areas not occupied by the furniture are mostly covered with several feet of stored domestic materials. There is a walkway cleared leading from the dining area to the bunkbed and desk.

Conclusion

Based on the physical evidence at the scene and information obtained from witnesses it is my opinion it is probable that:

- *The material first ignited was combustibles located adjacent the quartz lamp;*
- *Heat from the quartz lamp ignited the combustibles; and*
- *The combustible materials had accumulated in close proximity to the Lamp as a result of the storage methods.*

The landlord also submitted various pictures of the rental unit taken at the time of the fire in support of their claim that the rental unit was extremely cluttered increasing the risk of fire. The landlord provided an invoice for the insurance deductible amount paid.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act requires that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that the tenant did not maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and this is supported by the landlord's evidence submissions and undisputed testimony. The pictures submitted by the landlord and the fire investigation report support that the rental unit was extremely cluttered. The report also supports that that the storage of combustible materials in close proximity to the lamp were the cause of the fire. I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenants.

I find the landlord has suffered a loss as claimed in the amount of \$5000.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5100.00. Should the tenants 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: March 07, 2019

Residential Tenancy Branch