



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the re-hearing of the Landlord's Application for Dispute Resolution, made on November 6, 2018 (the "Application"). The original hearing took place on March 7, 2019, and the Tenants were granted a new hearing in a Review Consideration Decision issued on March 27, 2019.

The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by V.P., an agent, who was accompanied by J.K., a witness. A.C. attended the hearing on behalf of both Tenants and was accompanied by A.W., legal counsel. V.P., J.K., and A.C. provided affirmed testimony.

The Landlord testified that the Application package and a subsequent documentary evidence package were served on the Tenants by registered mail on November 8, 2018, and April 5, 2019, respectively. The Landlord also re-submitted documentary evidence to the service portal, duplicating the evidence relied upon by the Landlord. A.C. acknowledged receipt of the above documents.

The Tenants submitted documentary evidence in response to the Application. According to A.W., it was served on the Landlord by email. On behalf of the Landlord, V.P. acknowledged receipt before the original hearing on March 7, 2019.

Neither party raised any issue with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purpose of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on May 1, 2005, and ended on November 15, 2017. Rent was due in the amount of \$1,808.00 per month. The Tenants paid a security deposit of \$700.00, which was returned with interest.

The Landlord's claim is for \$5,000.00 for an insurance deductible. According to V.P., a fire in the Tenants' rental unit on November 14, 2017, resulted in losses. A receipt from the restoration company in the amount claimed was submitted into evidence. The Landlord also submitted photographs depicting the interior of the rental unit.

The Landlord submitted further documentary evidence in support of the claim. An Incident Report completed by the local fire service was referenced. It states, in part:

[A Tenant] states she had a halogen torchere lamp in the corner of the living room. There were 3-4 plastic storage containers stacked on top of one another, with an empty cardboard box at the top. She turned on the lamp for light while packing. A short time later she noticed the box had caught fire...The suite is very cluttered with boxes of papers, unopened items, empty cardboard boxes and plastic storage totes. Suite rates 5-6 on the hoarding scale...Probable cause is combustible items stacked too

close to a halogen lamp causing a fire. The fire load in the suite caused rapid fire growth. Fire, water and smoke damage to suite is extensive.

[Reproduced as written.]

In addition, the Landlord submitted a fire investigation report, dated January 4, 2018. The writer concluded:

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.*

[Reproduced as written.]

In reply, A.W. submitted that the Landlord did not provide a fire extinguisher, and that there was no sprinkler system in the rental unit. Both of these, she suggested, could have reduced the amount of damage caused by the fire. In addition, A.W. advised the Tenants are elderly, are long-term tenants, and have limited income. She also noted that A.C. was burned during the incident.

In response, the V.P. testified that a sign posted close to the elevator advises all tenants of the location of fire extinguishers on each floor. A photographic image of the sign was submitted in support. In addition, V.P. testified that all tenants were asked to familiarize themselves with the location of fire extinguishers.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$5,000.00 for reimbursement of an insurance deductible, I find the Landlord's loss arose due to a fire in the Tenants' rental unit on November 14, 2017. Further, I find it is more likely than not that the fire was caused by the Tenants' negligence, albeit unintentionally. This finding is supported by the conclusions reached in an Incident Report completed by the local fire service and a fire investigation report, both of which were submitted into evidence.

With respect to the submissions of A.W., I find there is insufficient evidence before me to conclude the lack of a sprinkler system in the rental unit reduces the Tenants' liability for the fire and the Landlord's resulting loss. Similarly, I am satisfied that the Landlord does provide fire extinguishers on each floor, and that their location is posted near the elevator. The Tenants' ages and financial circumstances are not relevant considerations.

The Landlord is granted a monetary award in the amount of \$5,000.00. Further, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Therefore, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$5,100.00.

Conclusion

The Landlord is granted a monetary order in the amount of \$5,100.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 16, 2019

Residential Tenancy Branch