



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COPPER POINT RESORT INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for alleged damage to the rental unit caused by the tenant and for recovery of the filing fee paid for this application.

The landlord, her agent BG, the tenant's representatives, and their legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The tenant's witness attended the hearing when called upon.

The evidence was discussed and neither party raised any concerns about the evidence provided by the other in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for alleged damage caused by the tenant to the rental unit and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on April 16, 2015, monthly rent began at \$817.60 and the tenant paid a security deposit of \$400.00.

The landlord submitted the tenancy ended on April 26, 2019 and the tenant submitted it ended on April 30, 2019.

The evidence shows that the rental unit was a unit within a condominium building, run by a strata corporation.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent	\$3,120.00
2. Insurance deductible payment	\$5,000.00
3. Filing fee	\$100.00
TOTAL	\$8,220.00

Insurance deductible payment-

In support of her application, the landlord submitted that the corporate tenant failed to maintain a reasonable temperature in the rental unit, which in turn caused the pipes in the ceiling to burst. The burst pipes resulted in flooding in the rental unit.

The landlord submitted a neighbour noticed the flooding on March 4, 2019, and they notified the owner. The landlord's agent submitted that the temperature that day was -20.

The landlord's relevant evidence included a certification of completion, noting the repairs were completed on July 29, 2019, an invoice for the deductible, the written tenancy agreement, and the report of damage to the rental unit.

The landlord's agent confirmed that no one had personal knowledge of the temperature in the rental unit that night, as the rental unit was sometimes occupied and sometimes not.

The landlord submitted they spoke with the strata corporation and they said the burst pipe was a landlord responsibility.

The strata corporation used their insurance to hire the restoration company and required the landlord to pay their \$5,000.00 deductible.

The landlord submitted a copy of a statement from a plumbing company, in which the project manager wrote their findings in a "small report". Within that report, the manager said that they noticed the water damage to the ceiling and a large hole in the drywall where the pipe had burst. The report also went on to state that it was clear the pipe had split and cracked and "is likely due to freezing". The report also stated that they were not on site before someone had turned the temperature up, so the project manager could not confirm the pipe was due to freezing; however, it was likely.

Tenant's response

The tenant's agent's explained that the rental unit is used for staff accommodations for employees at their property.

When questioned by their legal counsel, the tenant's agent, TW, said she went into the rental unit on February 28, 2019, to flush the water, turn on the taps, and to turn up the heat as part of her weekly staff accommodation inspections. TW said everything was working as it was supposed to and she ensured the heat was turned up in the two bedrooms, the living room and the bathroom. TW said she looked at all four thermostats.

TW said that the rental unit was vacant on February 28, 2019, and the maintenance workers were the only ones in the rental unit prior to the flood, which meant the heating should still have been on.

JM-tenant's witness-

The tenant's witness provided testimony in support of his signed statement entered into evidence by the tenant.

JM wrote his observations regarding the incident in the rental unit. In the letter, JM also listed his credentials, as follows, in part:

A 3rd class power engineer;

Holds a power engineering diploma (SAIT 2000) ASET certified;
A senior instructor with RFABC (Recreational Facilities Association of BC);
Teaches and develops courses for Arena, pool and facility operation and maintenance;
A technical director with RFABC;
Provides industry leader feedback to WorkSafeBC, Technical Safety BC and BC Health Authority;
2 years' experience in maintenance management at industrial laundry facilities;
8 years' experience as Chief Engineer with the tenant, working with staff, upper management, owners, Strata association, trades, insurance companies, code authorities and suppliers to ensure code compliance.

JW wrote that he attended the rental unit after the flood and submitted that the unit and building appeared significantly old, with the leak being in the ceiling of the kitchen and the pipe exposed.

At this point, JW investigated the leak and noted that the pipe was in the ceiling parallel to the party wall and perpendicular to the exterior wall, running in the floor joist of the unit above. JM noted that there appeared to have been repairs made already in the same area of the pipe in question as shown by the fittings, terminated old pipes and short sections of old pipes showing different levels of corrosion. JM noted there appeared to be old water damage that suggested the leak in question here was not the first leak.

JM wrote there was not a sufficient amount of insulation and places where there was no insulation. JM also wrote the location of the pipes was Strata property and was the Strata's responsibility to repair. As an example, any repairs to be made would have to go to strata for approval.

JM testified that his opinion was that the freezing of the pipes was bound to happen as the pipes run directly to the outside and they were poorly insulated.

Tenant's legal counsel-

The legal counsel argued that the plumbing report of the landlord identifies that the air in the pipes was not coming from the rental unit.

Rent-

The landlord confirmed that the tenant paid the full month's rent in March, but that she is entitled to the loss of rent revenue as the rental unit was under repair for four months.

Tenant's response-

The tenant's legal counsel argued the burden of proof has not been met by the landlord.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Insurance deductible payment-

I find the evidence before me is that the landlord has only speculated that the temperature in the rental unit was cold or that cold temperatures caused the pipe to burst.

On the other hand, I find the tenant has submitted persuasive proof by way of their expert witness' report and testimony that the pipes in question were old, had been repaired before in multiple spots and were poorly insulated, especially considering they directly lead to the outside air.

I also find the landlord has submitted insufficient evidence that the pipes within the building and in between condo units were not strata responsibility.

Overall, I was left with the impression the landlord's application against the tenant was the result of her unsuccessful attempt to have the strata corporation take responsibility for the pipes within the building between units. I do not find the landlord's failed dispute with the strata corporation to be the responsibility of the tenant.

Due to the above, I find the landlord has not submitted evidence that the tenant has violated the Act, the Regulations, or the tenancy agreement.

I dismiss the landlord's claim for the insurance deductible payment.

Rent-

As I have found the landlord has not supported her claim holding the tenant responsible for the burst pipes, I likewise dismiss her claim for loss of rent revenue.

As I have dismissed the landlord's monetary claim, I dismiss her request for recovery of the filing fee.

Conclusion

The landlord's application for monetary compensation is dismissed.

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: August 30, 2019

Residential Tenancy Branch