Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding XENON HOLDINGS LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on June 2, 2019, in which the Landlord sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on September 13, 2019. Since the filing of the Application, the Landlord was informed of the extent of her insurance coverage. By Interim Decision dated September 16, 2019, the hearing was adjourned to November 28, 2019 to allow the Landlord to amend their Application to accurately reflect their monetary claim.

Both parties called into the hearing on September 13, 2019. When the hearing reconvened on November 28, 2019, only the Landlord called into the hearing.

During the November 28, 2019 hearing I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

> **Commencement of Hearing:**
> The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.
>
> **Consequences of not attending the hearing**

> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As I confirmed the Tenants were provided notice of the continuation of the hearing. and the Landlord called in and was ready to proceed, I proceeded with the hearing in the Tenants' absence.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Should the Landlord be authorized to retain the Tenants' security deposit?

3. Should the Landlord recover the filing fee.

Background and Evidence

The Landlord testified that the tenancy began May 1, 2018. She confirmed the Tenants paid a $1,250.00 security deposit which she continues to hold.

The Landlord's claim originated from flooding in the rental unit as a result of frozen pipes. The Landlord testified that the Tenants did not have heat on in the entryway during the winter of 2019. She stated that on February 15, 2019 the pipes broke damaging not only the subject rental unit but also the neighbouring unit.

The Landlord stated that the Tenants told the strata manager that they did not heat that area as they believed it was a "waste of hydro". In support she provided a copy of an email from the strata manager, D.P., dated February 15, 2019 in which he wrote that the supply line broke; also introduced in evidence was an email from D.P. dated February 16, 2019 in which he writes that the "Tenants said they've always kept this off as they thought it was a waste of Hydro.".

The Landlord also provided a photo of the thermostat which was taken by D.P. at the time the pipes broke and which showed the thermostat as being turned off.

The Landlord confirmed that the cost to deal with the broken pipes and resulting repairs was $37,940.00. The Landlord's insurance covered $25,000.00 of that amount such that the Landlord paid the balance of $12,940.29. The Landlord's coverage was

confirmed by email sent to the Landlord on August 2, 2019. The Landlord confirmed she sought monetary compensation from the Tenants for the $12,940.29.

The Landlord also stated that soon she will be renewing her insurance and expects that her premiums will increase due to this claim.

The Tenants moved out of the rental unit on June 2019.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides in part as follows:

> **Landlord and tenant obligations to repair and maintain**
>
> **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.
>
> …

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's evidence that the Tenants failed to heat the entry way of the rental unit causing the pipes to freeze and then break. I find that in doing so, they caused damage to the rental unit. I also find they failed to repair the damage as required by section 32(3) of the *Act.*

The Landlord testified that the cost to repair the broken pipes and deal with the resulting water damage was $37,940.00. I was not provided any evidence as to whether the Tenants carried their own tenants' insurance, which is their responsibility. Fortunately for the Tenants, the Landlord made a claim on her own policy, which covered $25,000.00 of the total amount. I accept the Landlord's evidence that she paid the balance of $12,940.29. Although the claim will likely result in higher premiums, the Landlord did not make a related claim.

I find the Landlord is entitled to recover the $12,940.29 from the Tenants for the amounts she paid over and above her insurance coverage.

As the Landlord has been successful in her application, I also award her recovery of the $100.00 filing fee for a total claim of $13,040.29.

Pursuant to sections 38 and 72 of the *Act,* I authorize the Landlord to retain the Tenants $1,250.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **$11,790.29.** This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords' claim for monetary compensation for the amounts she paid to repair broken pipes and resulting water damage in the rental unit is granted. She is entitled to monetary compensation in the amount of $13,040.29 which includes recovery of the filing fee.

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: December 2, 2019

Residential Tenancy Branch