



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ardent Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to sections 67, 62, and 72 of the *Residential Tenancy Act*. The landlord applied for a monetary order to recover the cost of an insurance deductible and for the recovery of the filing fee. The tenant applied for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The tenant represented himself and was accompanied by his agent. The corporate landlord was represented by their agent. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Did the tenant cause water damage to his unit and three units below? Is the landlord entitled to a monetary order to recover the insurance deductible?

Background and Evidence

The background facts are generally undisputed. The tenancy started on November 01, 2016. The monthly rent is \$846.00 due on the first of the month. The rental unit consists of an apartment located in a 4-level building complex.

The landlord stated that on October 18, 2019, the building emergency phone line received a call from the occupant of the unit below this tenant's unit, to report flooding in the unit. The restoration team attended immediately to determine the cause and mitigate the damage.

The landlord filed reports of the incident written by the restoration company. The notes in the report indicate that the tenant was home at the time of the incident but did not allow the restoration team to enter his unit. The tenant granted access to the team three days later, on October 21, 2019.

The cause of the flooding was determined to be an overflow from the tenant's kitchen sink. Three units below suffered water damage. The restoration company repaired and replaced the damaged items and billed the strata. The strata counsel decided to use their insurance to cover the damage as the cost of restoration was in excess of forty thousand dollars.

The insurance deductible was \$5,000.00 which was billed to the owner of the rental unit in an invoice dated December 31, 2019. The landlord filed proof of having paid this amount on March 01, 2020.

The tenant testified that he was informed by the landlord that he was not responsible for any costs related to the flooding. The tenant described an incident of a leaking pipe that took place in May 2020. The landlord reminded the tenant that the incident that was the subject of this hearing took place in October 2019. The tenant could not recall the incident. The tenant's agent recalled restoration work that was carried out in the rental unit in October 2019.

The landlord has applied for a monetary order in the amount of the \$5,000.00 deductible plus \$100.00 for the recovery of the filing fee.

Analysis

Section 32(3) of the *Residential Tenancy Act* addresses:

Landlord and tenant obligations to repair and maintain

(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.

Based on the testimony of both parties and after reviewing the documents filed into evidence, I find that the tenant caused the flooding by allowing the kitchen sink to overflow. The tenant is 87 years old and could not recall the incident. The tenant's agent testified that she recalled restoration work being done inside the rental unit in October 2019. The landlord provided adequate documents to support her testimony of the cost of restoration, the insurance deductible and proof of payment of the deductible.

Based on the above findings, I accept that the three units below the rental unit were water damaged as a result of the tenant leaving the kitchen faucet running, which resulted in water overflowing out of the sink and into the units below.

The extent of the water damage was in excess of \$40,000.00 and therefore the strata counsel made a claim through their insurance provider and was required to pay the deductible. Since I find on a balance of probabilities that the water damage to the rental unit and three other units was caused by the tenant, I find that the tenant is responsible for the payment of the deductible. Accordingly, I award the landlord \$5,000.00.

Since the landlord has proven her case, she is also entitled to the recovery of the filing fee of \$100.00.

Overall, the landlord has established a claim of \$5,100.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$5,100.00**.

The tenant's claim is dismissed in its entirety.

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 07, 2020

Residential Tenancy Branch