



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 3, 2020. by the landlord for a monetary order for compensation or loss under the Act, to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing .

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue(s) to be Decided

Is the landlord entitled to monetary order for compensation or loss under the Act?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on June 1, 2016. Current rent in the amount of \$1,285.12 was payable on the first of each month. A security deposit of \$587.50 was paid by the tenant. The tenancy ended on November 1, 2020.

The landlord claims as follows:

a.	Recover insurance deductible	\$ 200.00
b.	Recover loss of yearly claims free deduction of \$345.21 for next three years	\$1,062.63
c.	Filing fee	\$ 100.00
	Total claimed	\$1,362.63

The landlord testified that the tenant rented a suite that was above their garage. The landlord stated on September 13, 2020 they discovered water in the garage and that the ceiling of the garage was bulging and dripping water. The landlord stated that the tenant was neglectful as they left their bathroom faucet running causing the water to overflow.

The landlord testified that the tenant did not have tenant insurance to cover the damage that was caused by their actions. The landlord stated that they had to call in a company who assessed the situation. The landlord stated that part of the ceiling of the garage had to be removed, because the drywall and insulation was saturated by water. The landlord stated that the total cost of the repair was \$7,800.00; however, their insurance company covered that amount, except that they had to pay the insurance deductible of \$200.00. Filed in evidence are photographs. Invoice for \$200.00.

The landlord testified because of the insurance claim they were informed by the insurance company that they would lose their claims free discount of \$354.21 when their policy is renewed in August of 2021. The landlord seeks to recover the loss in the amount of 1,062.63. Filed in evidence is a copy of an email from the landlord's insurance company showing the claims free discount would no longer be available when their insurance is renewed.

The tenant testified that they accidentally left the faucet running on in the rental unit when they were soaking their bathing suit, which caused water to overflow; however, no damage was done to the rental unit. The tenant stated that the flood may have never happened if the sink had an overflow in it.

The tenant testified that no tenant insurance would cover damage because it was not in the rental unit. The tenant stated since the damage was in the landlord's property it was their responsibility to use their insurance.

The tenant testified that the landlord sold the property and there is no evidence that they have lost this discount as they would have had to get new insurance for the new property.

Legal counsel for the landlord argued that the landlord ported their insurance when they moved from the property under the same policy. Counsel submits that porting insurance is a common practice and that landlord's claim free discount loss is actually greater than \$354.21, since the property value changed the actual loss would be the amount of \$392.00, commencing on their august 2021, renewal date.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or 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 states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant 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.

Residential Tenancy Policy Guideline #16 notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It further notes "An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided."

In this case the tenant left the faucet turned on in their bathroom unattended causing flooding and damage to the landlord's property. While the sink may not have an overflow, that is not a breach of the Act by the landlord. Further, the tenant had to have known as they had been living in the premise for over four years. I am satisfied that the damage caused was from the tenant's action and neglect.

As a result of the tenant's neglect and the tenant's failure to have adequate insurance to cover the damage, the landlord had no option except to claim the damage on their own insurance. I find the landlord mitigated the loss as the damaged caused was valued at \$7,800.00; however, by claiming it against their insurance they only were required to pay the insurance deductible of \$200.00. I find the landlord suffer a loss due to the tenant's action. Therefore, I grant the landlord the cost of the deductible in the amount of **\$200.00**.

I am also satisfied that the landlord will loss their claims free deduction for the next 3 years commencing their next renewal date due to the action of the tenant. This is supported by an email from the landlord's insurance provider. While I accept the landlord's moved to another residence; however, I accept the landlord's legal counsel submissions that the insurance was simply ported or transferred to their new residence. I find this was reasonable and is common to do. Such has it would be equally common for a tenant to transfer their tenant insurance when moving to a new rental. Therefore, I find the landlord is entitled to recover the total amount of $\$354.21 \times 3 = \mathbf{\$1,062.63}$.

I find that the landlord has established a total monetary claim of **\$1,362.63** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$587.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$775.13**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: February 20, 2021

Residential Tenancy Branch