



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCERT REALTY SERVICE
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages caused by the tenant, their pets or guests to the unit, site or property, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement recorded that this tenancy began on July 1, 2000, for an initial nine-month fixed term, that rolled into a month-to-month tenancy. The Landlord

recorded on their application for these proceedings that rent in the amount of \$1,537.00 is to be paid by the first day of each month and the Landlord had been given a \$480.00 security deposit at the outset of this tenancy. A copy of the tenancy agreement was submitted to documentary evidence by the Landlord.

The Landlord testified that on October 28, 2019, there had been an emergency water main leak, that required the city to turn off the water to the rental property while repairs were conducted. The Landlord testified that when the water was turned back on, by the city, they discovered water running out of the Tenant's rental unit. When they entered the rental unit, they discovered the faucet in the kitchen running, with the kitchen sink plugged and water running all over the rental unit and out the door.

The Tenant testified that when they woke up on October 28, 2019, they looked out their window and saw a fountain of water gushing in front of the rental property with maintenance staff standing around. The Tenant testified that when they used the bathroom that morning they discovered orange coloured water in the bowl and realized that there was a problem with the water pipes. The Tenant testified that they then turned the kitchen tap on in order to run the colour off and that after a few minutes of letting the water run they discovered that the water has stopped flowing.

The Tenant testified that they were going out for the day and had thought that they had turned the tap off but later realised that they must have left the tap in the on setting when they left. The Tenant testified that they did not plug the kitchen sink but that the plug must have fallen into the closed position at some point during the day.

The Landlord testified that the original quote for the repairs to the rental unit and surrounding units that were damaged due to this water leak were just over \$35,000; however they were able to reduce the cost of the repairs to \$17,946.33 by having their own staff complete the repairs instead of hiring a professional restoration company.

The Landlord testified that they had offered a settlement of \$7,500.00 to the Tenant, which had initially been accepted by the Tenant but that due to the Tenant losing their job during the Covid-19 pandemic, the Tenant had defaulted on their payment plan for that settlement.

The Tenant testified that due to their current financial situation, they could not afford the requested amount for the repairs. The Tenant agreed that the water damage was caused by them leaving the kitchen tap in the on position when they left for the day but they

argued that the Landlord did not provide them with notice that the water would be turned off that day so they should not be responsible for this bill.

The Landlord testified that as this was an emergency water main break, and that they could not have provided their Tenants with advance notice of what was happening. The Landlord also testified that once initial water main break was reported to the city and under control, they personally attended each unit on the rental property advising each renter of what was happening. Additionally, the Landlord testified that once the city completed the repairs, and turned the water back on, they personally attend each rental unit again providing an update of the situation, and that it was during this second attendance at the Tenant's rental unit that they discovered the water flooding out of the Tenant's unit and into the hall.

The Landlord testified that they are seeking a monetary order for their offered settlement amount of \$7,500.00 for the partial recovery of their costs to repair the damage caused by the Tenant.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the agreed upon testimony of both parties that there was a water main rupture on October 28, 2019, that caused city to turn off the water supply to the rental property while they conducted repairs. I also accept that the Tenant turned the kitchen faucet, in their rental unit, to the on position, during the repair period of the water main rupture, leaving the faucet in the on position while they left the rental unit for the day. I find that the Tenant was negligent in their actions by leaving the kitchen faucet in the on position and that this negligence caused extensive water damage to the Landlord's property that the Landlord is claiming for in these proceedings.

Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

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.*

I find that the Tenant breached section 32(3) of the *Act* when they causing extensive water damage to the Landlord's property and did not repair or pay for the repair of the this damage.

In this case the Landlord is requesting partial recovery of their costs to repair the damage cause by the Tenant to the rental property. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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 is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant's breach of section 32 of the *Act* resulted in a financial loss to the Landlord. I also accept the Landlord's testimony supported by their documentary evidence that it cost them \$17,946.33 to have the water damage to the rental property repaired.

Additonally, I find that the Landlord took reasonable steps to minimize the value of their losses due to the Tenant's breach, when they utilized their own staff to make the required repairs.

Furthermore, I find that it was very generous of this Landlord to offer the Tenant a settlement of \$7,500.00 to resolve this matter, at less then 50% of their actual costs to repairs the damages, when by law they would have entitled to recover 100% of their actual costs for damages caused by a tenant.

Accordingly, I find that the Landlord has proven the entitlement of the recovery of the requested \$7,500.00 in the partial recovery of their cost to repair this rental property, due to damaged caused by this Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$7,600.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 25, 2021

Residential Tenancy Branch