



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, MNSD, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the deductible of an insurance claim, the filing fee and to retain the security deposit in satisfaction of the claim. The tenant applied for the return of her security deposit and compensation for the loss of her belongings in a fire.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of her security deposit and to compensation?

Background and Evidence

The parties entered in to a tenancy agreement on November 02, 2012 for a tenancy that was due to start on December 01, 2012. The monthly rent was \$975.00 due on the first of the month and the tenant paid a security deposit of \$470.00. The rental unit consists of a three level town house located in a town house complex.

The landlord filed a copy of the tenancy agreement. Clause #28 of the agreement states the following:

The tenant agrees to carry sufficient insurance to cover their property against loss or damage from any cause and for third party liability and the tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's property.

The tenant testified that she started moving in around 9am on the morning of December 01, 2012. The tenant noticed some odour in the rental unit and lit a few candles to neutralize the odour. The tenant and her mother (also a tenant named on the tenancy agreement) were sorting out their belongings on the third floor of the town house at approximately 2 p.m., when they smelt smoke. They came out of the room and noticed that there some of the cardboard boxes were on fire on the bottom floor. They rushed out of the rental unit and contacted neighbours for assistance.

The fire truck arrived and put out the fire. The rental unit was completely destroyed and the there was significant damage to four other townhouses.

The tenant stated that she had emptied some boxes and flattened them in preparation for recycling. She stated that these boxes were piled one on top of the other and some of them may have slid down and come in contact with the flame of a candle. The tenant also stated that the smoke alarm was not activated and therefore the fire was significant in size by the time they smelt smoke in the upper level. The tenant concluded that the smoke detector was inoperative on the day of the fire. The tenant also testified that she lost all her belongings in the fire and was claiming \$25,000.00 in damages.

The landlord stated that every unit has a monitored smoke detector and a monitored heat sensor. The monitoring company was put on alert at 14:10 hours on December 01, 2012 and followed procedure by contacting the fire department. The landlord filed a copy of the report from the monitoring company.

The landlord made a claim through their insurance provider. In a letter dated December 06, 2012, the insurance provider informed the landlord that it was determined that the fire originated in the dispute rental unit and was caused by moving boxes that caught fire from a lit candle. The extent of damage was still in the process of being assessed and the occupants of four other units would have to be evacuated in order to start restoration work.

The insurance company sent the landlord an invoice in the amount of \$10,000.00 for the insurance deductible. The landlord filed a copy of this invoice and is claiming this amount from the tenant. The landlord has also applied to retain the security deposit of \$470.00 in partial satisfaction of the claim.

Analysis

Based on the testimony of both parties and the documents filed into evidence, I find that the tenant was responsible for the fire when she left lit candles unattended in the unit.

The smoke detector and the heat sensor were functional and resulted in the fire department attending the rental unit to fight the fire. The fire caused damage in excess of the deductible of \$10,000.00 and therefore the landlord made a claim through her insurance provider and was required to pay the deductible. Since the fire was caused by the negligence of the tenant, I find that she must pay this deductible. Accordingly, I award the landlord \$10,000.00.

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

The tenant acknowledged that by signing the tenancy agreement she agreed to carry sufficient insurance to cover her property against loss or damage. Therefore I find that the landlord is not responsible for the damage caused by the fire to the tenant's property. Accordingly, the tenant's claim in the amount of \$25,000.00 is dismissed.

Overall the landlord has established a claim of \$10,100.00. I order that the landlord retain the security deposit of \$470.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$9,630.00. 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 **\$9,630.00**.

The tenant's application 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*.

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Dated: March 14, 2013

Residential Tenancy Branch

