Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit, for money owed or compensation under the Act, and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. The tenant HD, attended the hearing. As the tenant AA did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on April 8, 2014, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant AA has been duly served in accordance with the Act.

Both the landlord and the tenant HD 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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In this case, the landlord has written that they seek a monetary order in the amount of $1,600.00; however, the detail of dispute only refers to the amount of $1,000.00. There is no details provided or any

monetary amount claimed for the addition $500.00. Therefore, I will only hear the issue that is listed in the details of dispute at this hearing as the principles of natural justice require that a person be informed and given particulars of the claim against them.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages or money owed?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on May 15, 2013. Rent in the amount of $1,800.00 was payable on the first of each month. A security deposit of $900.00 was paid by the tenants. The tenancy ended on February 4, 2014.

The landlord claims as follows:

a.	Insurance deductable	$1,000.00
b.	Filing fee	$ 50.00
	Total claimed	**$1,050.00**

The parties agreed that on December 20, 2013, the fire sprinkler system in the laundry room burst causing damage to the rental unit and two other units. Filed in evidence is a restoration report confirming the damage.

The landlord testified that she seeks to be reimbursed by the tenants for the cost of her insurance deductable as she was told by the strata that sprinklers do not burst on their own and that the tenant must have been neglectful.

The tenant testified that she did not do anything to the sprinkler to make it burst. The tenant stated she was in her bedroom when the heard a crazy noise and found that noise was from the fire sprinkler system in the laundry room going off. The tenant stated that the fire department attended, turned off the water and asked routine questions. The tenant stated that the dryer was on at the time of the incident.

The tenant testified that when the fire sprinkler repair person attended he said it could be a faulty sprinkler head that ruptured. The tenant stated that she also received a report from the landlord in an email and that indicated the sprinkler head was activated and the broken sprinkler head was replaced. The tenant stated there is nothing in the report which would indicate that she was neglectful.

The landlord responded that she never spoke to the fire sprinkler repair company to get their profession opinion and is simply relying on the information from the strata.

Filed in evidence is a letter dated July 20, 2014, from the strata president, which in part reads,

> "Also please notice that sprinklers do not burst by itself. We have 250 units and every unit has an average of 5 to 7 sprinklers, if the sprinklers burst by itself, we have to experience this almost every week, so I assume they were not confortable us being there to find what exactly happened."

[Reproduced as written]

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.

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 Respondent 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

In this case, I accept the undisputed evidence of the parties that the fire sprinkler system ruptured in the laundry room causing damage to the rental unit. However, I do not find the letter from the strata president dated July 20, 2014, proves that the tenant was neglectful; rather, the letter is simply an opinion of a third person.

There was no evidence from the landlord when the fire sprinkler system was last inspected or maintained or the age of the equipment that ruptured.

Further, the landlord did not directly talk to the fire sprinkler repair person to get an independent expert opinion; rather their evidence is based on information provided by the strata. The strata is a third party and they may or may not have an interest as to who is responsible for damage caused in their building when pipes rupture.

In light of the above, I find the landlord has failed to prove the tenant has violated the Act. Therefore, I dismiss the landlord's claim in its entirety.

As I have dismissed the landlord's claim to retain the tenants' security, I find the tenant is entitled to a monetary order for the return of the security deposit in the amount of **$900.00**. This order may be enforced in the Provincial Court (Small Claims division) should the landlord fail to comply with this order.

Conclusion

The landlord's application is dismissed. The tenants are granted a formal monetary order for the return of the security deposit.

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: August 06, 2014

Residential Tenancy Branch