

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

This application was brought by the tenants on July 15, 2010 seeking monetary compensation for loss and damage under the legislation or rental agreement consequent to a flood in the rental unit, return of their security deposit in double and recovery of the filing fee for this proceeding, claims totalling \$5,391.

As a preliminary matter, the tenant advised that they had not received the landlord's evidence package dated November 3, 2010. At the same time, the landlord requested that this matter be adjourned to a face to face hearing as she found the claims to be excessive or unfounded. I found that neither issue would warranted a delay in the hearing as the landlord had from July 2010 to submit evidence and any requests she might have had with respect to the hearing.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to monetary compensation for loss of use of the rental unit and related costs, return of the security deposit in double and recovery of the filing fee for this proceeding.

Background, Evidence and Analysis

This tenancy began on August 1, 2009 under a fixed term rental agreement set to end on July 31, 2010. Rent was \$1,200 per month and the landlord holds a security deposit of \$600 paid at the beginning of the tenancy.

The tenant's claim arise from a flood on May 22, 2010 in this large condominium building apparently resulting from vandals opening the valve on a standing pipe and causing damage to a number of units.

During the hearing, the tenants gave evidence that the rental unit was uninhabitable from the day of the flood until they gave up possession on June 30, 2010 and, according to the landlord, returned the keys on July 2, 2010. The landlord stated that a number of other residents had remained during restoration but I am persuaded by the tenants' photograph evidence that the condition of the rental unit was sufficiently compromised that they were justified in the early departure.

During the hearing, the tenants submitted the following claims on which I find as follows:

Return of rent from May 22, 2010 to May 31, 2010 – \$387.00. Based on the per diem claim for the period in May during which the tenants stayed elsewhere, I find this claim should be allowed.

Compensation for hosts May 22 to May 31, 2010 - \$200. The tenants seek reimbursement of \$200 paid to their hosts at the end of May. I find that the tenants have already been compensated by the afore noted return of rent and cannot be compensated twice for the same issue. This claim is dismissed.

Compensation for missed work - \$324. While the tenant has submitted written corroboration from her employer that she was uncharacteristically absent from work for

two days following the flood, I find that to have been a discretionary choice on the tenant's part as the restoration company was in place at the time. This claim is dismissed.

BC Hydro bill from May and June 2010 - \$96.20. The tenant submitted evidence from BC Hydro that the operation of five 1200-watt fans and two 1,200-watt dehumidifiers operating for six days would consume \$96.20 worth of electric power. The tenants seek reimbursement from the landlord and I find the claim should be allowed.

Shaw cable bills – for each of June and July 2010 - \$73.92. While I initially considered allowing the June portion of this claim, on reflection, I find that the landlord had no control over when the tenants would cancel their cable service and should not be responsible for the cost. The tenants were clearly not entitled to recover the cost for July, and I now reject the argument that they incurred the cost for June because the landlord had not provided them with a firm date as to when the restoration work would be complete. The claim is dismissed in its entirety.

Return of rent for June - \$1,200. I accept that the rental unit was not fit for occupancy for June 2010 and find that the tenants are entitled to return of the June rent. As a matter of note, the landlord gave written evidence of having agreed to waive the July rent. This claim is allowed.

Rent paid for other accommodation for June 2010 - \$1,200. The tenants cannot claim both return of their June rent and then ask the landlord to pay an additional \$1,200 for their accommodation for the same period elsewhere. This claim is dismissed.

Mail box rental - \$16.34. The tenants initially claimed \$194.88 for rental of a mail box, but advised during the hearing that the amount claimed was for a full year. I find that it was not the landlord's responsibility to see to the tenants' mail and disallow this claim.

Moving truck rental - \$150. Given that the end of this tenancy was imminent and the tenants were soon to incur this cost in any event, the claim is dismissed.

Public storage fee - \$208.28. As the landlord has already been required to return rent for the material period which would have included accommodation of the stored materials, this claim is dismissed.

Stop payment fees - \$10.00. However prudent, I find this cost was discretionary and may not have been necessary. It is dismissed.

Double security deposit - \$1,200. The tenants acknowledge receipt by email of a copy of a cheque for return of their security deposit and requesting acknowledgement on July 3, 2010. The tenants stated that they had not received the actual cheque, that it was defective in using only the payees first names and that they are now entitled to double under section 38(6) of the *Act* as it was sent later than 15 days of the end of the tenancy. In fact, the cheque would have been on time as the end date of the tenancy as per the rental agreement was July 31, 2010. In addition, the tenants did not reply to the landlord advising that they had not received the cheque. Therefore, I find that the tenants remain entitled to return of the single security deposit as previously agreed by the landlord, add it to the total to follow, and advise the landlord to cancel the previously issued cheque.

Mailing, photo and printing expenses - \$117.05. Costs associated with evidence preparation are not claimable and these are dismissed.

Filing fee - \$100. I find that the tenants have made claims such as both return of rent and compensation for alternative accommodation for the same period. I find that such claims were obviously double claims for the same loss and that clearly raised their claims above the \$5,000 point that doubled the filing fee. Therefore, I find the tenants should remain responsible for their own filing fee.

Thus, I find that the landlord owes to the tenants an amount calculated as follows:

Return of rent – May 22 to May 31, 2010	\$ 387.00
Hydro costs for dryers and dehumidifiers	96.20
Return of rent for June 2010	1,200.00
Security deposit (No interest due)	600.00
TOTAL	\$2,283.20

Conclusion

In addition to authorization to retain the security deposit in set off, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$2,283.20** for service on the landlord. .

December 2, 2010