

DECISION

Dispute Codes

Landlords: MND, MNR, MNSD, MNDC, FF
Tenants: MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlords and by the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain all or a portion of the security deposit or pet damage deposit in full or partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Are the landlords entitled to a monetary order for unpaid rent or utilities?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain all or a portion of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on September 15, 2005 and ended on October 1, 2010. Rent in the amount of \$1,175.00 per month was payable in advance on the 1st day of each month and there are no rental arrears, however the parties agree that utilities in the amount of \$95.73 for hydro and \$46.48 for natural gas is payable by the

tenants to the landlords. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$550.00.

The undisputed evidence of the parties is that a flood occurred from an overflowing of a creek next to the building, and water entered all 4 units of the building along with sewer backup from an overload of the city systems, although the parties don't agree with the date of the flood. The male tenant testified that his unit was hit with a lot of water and then it was gone, in the early morning hours of September 23, 2010. The landlords testified that the flood occurred on September 19, 2010.

The tenants claim the following expenses:

- \$2,025.01 for moving household items to and from a storage unit;
- \$315.00 for storing items for the month of October;
- \$934.56 for loss of wages;
- \$116.48 for the cost of renting a post office box;
- \$293.75 for pro-rated rent paid and loss of use for the last 7 days of the tenancy;
- \$550.00 for loss of 10 pairs of shoes;
- \$1,175.00 for staying with friends, being the amount of rent they would have paid the landlords;
- \$10,000.00 for mental stress.

The tenants further testified that they were insured, but their insurance claim was denied because they did not maintain the water weather guard rider as part of their policy. They also testified that their insurer advised that because the water came from the outside, the landlord was responsible for their damage costs. The tenants stayed with friends for the month of October and moved into their new accommodation on November 1, 2010.

The tenants further stated that a chandelier in the rental unit had broken during the tenancy and the landlord had told them that replacement would cost about \$50.00. The tenants agree to pay \$50.00, but the landlord has claimed a higher amount of \$77.60.

The landlords testified that the tenants did not ask for compensation. They stated that their insurance company told them to take control of the situation and get the flooring removed whether the tenants cooperated or not, and that failure to remove the flooring would worsen the situation. Further, the tenants felt they could no longer reside in the rental unit, and the landlords agreed to waive the 1 month notice from the tenants as

required under the *Act*. Also, other tenants stayed in their rental units, which were also badly damaged by the flood, and lived with the restoration rather than moving.

The landlords also provided a copy of the tenancy agreement which specifies that the tenants are responsible for carrying their own insurance against any damage or loss from whatever cause while occupying the premises, and that the landlord's insurance coverage did not include any issues with tenants or their belongings and that tenants were required to have their own insurance coverage.

The landlords further claim \$77.60 from the tenants for a broken chandelier that had occurred during the tenancy and before the flood. The landlord had originally estimated that the cost would not be in excess of \$50.00, and the tenants agreed to pay that amount, however the landlord provided a receipt showing that the actual cost was \$77.60 including taxes.

The parties also had a discussion about cleaning the rental unit, and the landlord had received an estimate of \$400.00. The landlord did not have all the cleaning done due to ongoing repairs, but provided a receipt in the amount of \$280.00 and claim that amount from the tenants.

Analysis

The *Residential Tenancy Act* states that a landlord must maintain residential premises in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. A tenant must repair damage to the rental unit caused by the actions or neglect of the tenant or their guests.

With respect to the tenants' claim, the *Residential Tenancy Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I have no evidence before me that the landlords failed to comply with the *Act*, the regulations or the tenancy agreement.

Further, I refer to the Residential Tenancy Policy Guideline 34 which states that a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now

impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract. In this case, the flood occurred, damages resulted, insurance companies denied claims, and the tenants felt they could no longer reside in the rental unit. I find that the actions of the tenants in moving out have proven that the tenancy agreement was frustrated.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss;
4. What steps the claiming party made to mitigate the damage or loss suffered.

In this case, I find that the tenants have failed to establish that the damage or loss resulted from the landlords' failure to comply with the *Act* or the tenancy agreement.

In the circumstances, however, the landlords permitted the tenants to move from the rental unit without providing written notice at least one month in advance as required under the *Act*, and have therefore agreed that the unit was not what was contracted for. Therefore, the landlords must also agree that the tenants are entitled to compensation for the rent paid after the flood occurred to the end of the tenancy. The parties do not agree on the date of the flood, and in the absence of evidence to substantiate the date, I find that the tenants are entitled to rent abatement for September 23 to 30, 2010 (7 days), in the amount of \$274.16.

With respect to the landlords' application, the parties agreed to the amount of utilities owing, and I find that the landlords have established a claim for \$142.21.

I further find that the tenants did not clean the unit prior to vacating. It may well be that the unit was not in a position to be cleaned in the normal fashion, but the tenants agreed in writing that they would pay for the cleaning upon receipt of the cost being provided. The landlord provided an estimate, and then had a less expensive cleaning conducted within the unit, has provided the receipt and claims the lesser amount. I find that the landlord has established a claim for \$280.00 for cleaning the rental unit, as well as \$77.60 for the chandelier.

Since both parties have been partially successful, I decline to order that either party recover the filing fee for the cost of these applications.

In summary, I find that the tenants are owed \$274.16 in addition to the \$569.49 security deposit and interest, and the landlords are owed \$499.81 for utilities, cleaning and the chandelier.

Conclusion

For the reasons set out above, I order that the landlords pay to the tenants the sum of \$343.84. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 31, 2011.

Residential Tenancy Branch