

## **Decision**

**Dispute Codes:** MNR, MNDC

### **Introduction**

This hearing was convened in response to an application by the tenant for a monetary order as compensation for emergency repairs / and compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on May 1, 2011. Monthly rent was \$850.00 and a security deposit of \$450.00 was collected.

Heavy rains fell in the vicinity of the unit on or about the evening of May 11, 2011. On the morning of May 12, 2011, the tenant contacted the landlord to report “flooding” in the unit. Evidence submitted by the tenant includes photographs taken of various places within and outside of the unit. The tenant vacated the unit and relocated to a family member’s home on the evening of May 12, 2011. By on or about May 13, 2011 the tenant had removed all or most of her possessions from the unit, and had stored many of them in a rented storage unit.

The landlord voluntarily returned the tenant’s full security deposit of \$450.00, in addition to ½ month’s rent of \$425.00, for a total of \$875.00. However, the tenant seeks further compensation from the landlord as follows:

\$425.00: balance of rent for May 2011

\$223.38: storage unit for possessions removed from the unit

\$ 40.00: vehicle gas required for the unexpected move

**Total:** \$688.38

The tenant takes the position that the damp environment created in the unit from “flooding” had the potential for negatively affecting the health of her son. The landlord takes the position that “flooding” was minor and that the problem was remedied within 24 hours following notification by the tenant. Further, the landlord argues that he was under no obligation to reimburse the tenant and could have filed his own application to recover costs arising from the tenant’s decision to end the tenancy without proper notice. As it turns out, the landlord testified that new renters took possession of the unit effective June 1, 2011.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 44 of the Act speaks to **How a tenancy ends**, and provides in part:

44(1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy....
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated
- (f) the director orders that the tenancy is ended.

Residential Tenancy Policy Guideline #34 addresses “Frustration,” and provides in part:

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.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect

and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

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For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15<sup>th</sup> day of the month, under the *Frustrated Contracts Act*, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the documentary evidence and testimony of the parties, I find that there is insufficient evidence to support the tenant's position that the unit became unhealthy or unsafe as a result of the "flooding." While I acknowledge the tenant's concerns related to the health of her child, there is insufficient evidence to support her position that the environment within the unit was contaminated by mold spores or in some other manner insufficiently healthy or safe for occupancy.

Further, I find that there is insufficient evidence that the tenancy was in effect, "frustrated" as a result of the "flooding." I also find that the landlord responded in a timely manner to the tenant's report of "flooding," and that the individual hired by the landlord to "seal the foundation" had completed the job within approximately 24 hours of being contacted.

The tenant had the option of remaining in the unit and applying for a rent reduction as a result of inconvenience resulting from the "flooding," or giving proper notice the end the

tenancy. However, instead, the tenant elected to end the tenancy by simply vacating the unit.

**Conclusion**

Following from all of the above, the tenant's application for compensation beyond that which has already been voluntarily paid to her by the landlord, is hereby dismissed.

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*.

DATE: August 30, 2011

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Residential Tenancy Branch