



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC; ERP; RP; RR; FF

Introduction

This is the Tenant's application for the cost of emergency repairs; compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord make emergency and regular repairs to the rental unit; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

This matter was scheduled to be heard on April 27, 2012, and was adjourned by consent because the Landlord was ill.

The Tenant and the Landlord's agent gave affirmed testimony at the reconvened Hearing.

Issues to be Decided

- Is the Tenant entitled to a monetary award for the cost of emergency repairs?
- Is the Tenant entitled to compensation for damage or loss under the Act?
- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Should the Landlord be ordered to make regular and emergency repairs to the rental unit?

Background and Evidence

This tenancy started on February 15, 2012. Monthly rent is \$750.00, due on the first day of each month. The rental unit is a basement suite in the Landlord's house. The Landlord lives in the upper suite. On March 10, when the Landlord was out of the country, there was a flood in the rental unit which originated in the Landlord's suite.

The Tenant provided the following testimony:

The Tenant stated that when the flood happened, he called a person who collected rent

for the Landlord while the Landlord was out of the country. The person told him to call a plumber. The Tenant stated that the Landlord did not provide the name of any emergency contact person while he was out of the country.

The Tenant stated that the flood caused water to saturate the ceiling and walls of the rental unit. He stated that water was running into his suite for a couple of hours before it was turned off by the plumber at street level.

The Tenant testified that he spent 20 hours over the course of two days dealing with the damages caused by the flood. This included: arranging for a plumber to come on an emergency basis; waiting for plumber; mopping up water and cleaning/drying the rental unit; moving furniture; and doing extra loads of laundry. The Tenant provided a copy of an e-mail from the plumber in evidence, along with photographs of the interior of the rental unit during and after the flood.

The Tenant stated that the flood caused water damage to the ceiling tiles in the rental unit, the carpet, the subfloor of the kitchen, and the walls. The Tenant testified that he was not able to have full use of his kitchen from March 20, 2012, until May 3, 2012, when the damaged ceiling tiles were replaced. He stated that he lost work as a result of the flood and that he was ill from mould and exposed insulation, wet wood and constant odor. The Tenant testified that he lost time with his children due to the flood and flood damage because the rental unit was unsafe and unhealthy for his children to be there.

The Tenant's claim is as follows:

Description	Total claim
Emergency response to flood March 10, 2012 (10 hours @\$20.00/hr)	\$200.00
Emergency response to flood March 11, 2012 (10 hours @\$20.00/hr)	\$200.00
Loss of full use of kitchen	\$1,000.00
Missed work due to illness and time dedicated to prepare for Hearing	\$240.00
Destroyed personal property (Rockport shoes)	\$180.00
Illness and loss of sleep	\$630.00
Compensation for loss of time with children	\$500.00
Administrative fees for preparation of documents and evidence	<u>\$50.00</u>
TOTAL CLAIM	\$3,000.00

The Tenant testified that the ceiling tiles were replaced on May 3, 2012, but the carpet has not been lifted or remediated and the floor is soft underneath the linoleum in the kitchen. He stated that a pressboard shelf in the kitchen cupboard was saturated with

water causing it to puff up and disintegrate. The Tenant stated that he had to dispose of the shelf and he seeks to have it replaced.

The Landlord's agent gave the following testimony:

The Landlord's agent testified that the Landlord had provided two names of emergency contact people in writing to the Tenant at the beginning of the tenancy. He stated that as soon as the Landlord found out about the flood, he arranged for an Insurance adjuster to inspect the rental unit. He stated that the adjuster found that only the ceiling tiles were damaged by the flood and that some of the moisture damage was attributed to the Tenant failing to use the fan when he was showering. The Landlord provided a copy of a letter from an insurance adjuster in evidence. The Landlord's agent testified that the inspection took place at 2 or 3 in the afternoon and the bathroom walls were still wet from the Tenant's morning shower.

The Landlord's agent stated that any damage to the Tenant's belongings should be claimed from the Tenant's personal insurance policy.

The Landlord's agent stated that water damage from the flood was restricted to right in front of the Tenant's door and that there was no loss of the use of the kitchen. He stated that there was no evidence of damage to the carpet or the floor.

The Landlord's agent stated that the photographs provided by the Tenant were close ups and show an exaggerated view of any damage. The Landlord's agent stated that the wires depicted in the ceiling of the rental unit were telephone wires, not electrical wires, and that the electrical box was properly enclosed, presenting no hazard.

The Tenant provided the following reply:

The Tenant testified that the Landlord did not give him a document with emergency contact information on it and stated that the document the Landlord provided in evidence was fraudulent.

The Tenant testified that he always uses the fan when he is taking a shower. He stated that the water from the flood was not limited to the area in front of his door. He stated that it was streaming from the fan in his bathroom and running down the walls.

Analysis

A lot of testimony and documentary evidence provided was not relevant to the Tenant's claim. In this Analysis portion of the Decision, I refer to the relevant evidence only.

Section 33(1) of the Act defines “emergency repairs” as follows:

Emergency repairs

33 (1) In this section, **"emergency repairs"** means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

The flood (major leak) was contained on March 10, 2012, and there was insufficient evidence of any other “emergency repairs” required at the rental unit. Therefore, the Tenant’s application for an Order that the Landlord provide emergency repairs is dismissed.

With respect to the Tenant’s application for an Order that the Landlord provide regular repairs to the rental unit, Section 32(1) of the Act requires the Landlord to provide and maintain the rental unit in a state of repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. However, after the Hearing had concluded, the Tenant filed a copy of his written notice to end the tenancy effective June 30, 2012. As the tenancy is ending and there are no emergency repairs that remain to be done, I decline to issue Orders that the Landlord make regular repairs to the rental unit.

The Tenant seeks monetary compensation for various items as set out in his Application for Dispute Resolution and supporting documentation.

The document from the plumber who attended states, in part:

“we went around back and there was water coming through the ceiling of the kitchen It looked like it was full street pressure the floor was soaked and water was flowing out the door at the back.

I called [the Landlord's agent] to tell him about the severity of the problem and that I needed to get access to the upper suite of the house before I could turn the water back on. He said he was driving a cab and thought he might have a fare from the airport I told him that he needed to come right away that this was an overtime call and that I had to find the source of the water which is upstairs. He arrived about a half hour later with his wife and had a look at the suite and didn't seem to think it was that bad. It had been leaking through the ceiling at full street pressure for about an hour.

I got the impression that he wasn't going to do anything about the damage downstairs.”

(reproduced as written)

The evidence shows that the flood originated in the Landlord's suite and that the Landlord's agent paid the plumber's bill. The Landlord's agent did not stay to help clean up the aftermath from the flood, nor did he send any remediation experts to take care of the clean-up. The Tenant seeks compensation for his time and efforts to clean up the rental unit after the flood was contained. I find that the clean-up was necessary in order to minimize the water damage to the Landlord's property. The Tenant estimated that it took him 20 hours to complete the clean-up, move furniture and do extra laundry.

I find that the Tenant did not provide sufficient evidence that he was not able to fully use the kitchen from March 10, 2012 to May 3, 2012. I find that missing ceiling tiles, although cosmetically unattractive, would not preclude him from using the sink and counters. There was insufficient evidence of falling debris or unsafe electrical wires hanging from the ceiling. I do find that he did not have full use of the rental unit for March 10 and 11, due to the flood and the resulting clean-up, and allow him a nominal award in the amount **\$50.00** for the depreciated value of the tenancy for those two days.

There is no provision in the Act for administrative fees for preparation of documents and evidence to support an Application for Dispute Resolution and this portion of the Tenant's claim is dismissed.

The Tenant provided insufficient evidence that there was mould in the rental unit or that he suffered from the effects of mould.

I find that there was insufficient evidence that the Landlord or the Tenant caused the flood and that the Tenant's private insurance should cover the cost of replacing his shoes, doing the extra laundry, and compensation for the remainder of the Tenant's claim. However, I also find that the Tenant is entitled to be compensated for his efforts to minimize damage to the Landlord's property and award him the amount of **\$300.00** for this portion of his claim.

The Tenant's application had some merit and I find that he is entitled to recover the cost of the filing fee in the amount of **\$50.00**.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct his total monetary award in the amount of **\$400.00** from future rent due to the Landlord. In the event that the Tenant is unable to do so for the month of June, 2012, and due to the fact that the tenancy may be ending on June 30, 2012, I hereby provide the Tenant a Monetary Order in the amount of \$400.00 against the Landlord. If the Tenant is able to deduct his monetary award from future rent, then the enclosed Monetary Order shall become satisfied and of no further effect.

Conclusion

I find that the Tenant is entitled to a monetary award in the amount of **\$400.00**, which may be deducted from future rent due.

Due to the fact that the Tenant has apparently given notice to end the tenancy effective June 30, 2012, I hereby provide the Tenant a Monetary Order in the amount of \$400.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

If the Tenant is able to deduct his monetary award from June rent, then the enclosed Monetary Order shall become satisfied and of no further effect.

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: May 30, 2012.

Residential Tenancy Branch