

## **DECISION**

### **Dispute Codes:**

MNDC; O; FF

### **Introduction**

This is the Tenants' application for compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Tenants' Application was filed on September 21, 2012, and amended on September 26, 2012, to increase the Tenants' monetary claim.

The parties gave affirmed testimony at the Hearing.

The Tenants were not certain of the date that they served the Landlord's agent with the Notice of Hearing documents, including the Tenants' amended application, and copies of the Tenant's documentary evidence, but stated that they were hand delivered to the building manager shortly after filing the documents. The Landlord KV acknowledged that he received the documents, including the Tenants' amended application, "by the end of September".

It was determined that the Landlords provided the Tenants with copies of their documentary evidence by registered mail sent November 30, 2012.

### **Issues to be Decided**

- Are the Tenants entitled to compensation pursuant to the provisions of Section 67 of the Act?

### **Background and Evidence**

This tenancy started on April 1, 2011. Monthly rent was \$815.00, due on the first day of each month. The Tenants also paid \$10.00 per month for parking. The Tenants paid a security deposit in the amount of \$407.50 at the beginning of the tenancy. The tenancy ended on September 30, 2012.

The male Tenant stated that on July 23, 2012, a leak started on the roof of the rental property which caused water to drip down the wall and into the rental unit. The Landlord hired a roofer and the roof was patched. A copy of the roofers' invoice was provided in evidence. On July 30<sup>th</sup>, the Tenants' affected wall was patched. A copy of the work order was provided in evidence.

The Tenants called the Landlord's agent on August 8<sup>th</sup> to advise that the leak had not stopped and that water was dripping down the inside wall. The Landlord's agent testified that the roofers patched more leaks on August 10<sup>th</sup> and a hole was cut in the Tenants' ceiling to dry out the moisture and avoid mould. The Landlord's agent told the Tenants that the hole in their ceiling would be left open until the Landlord could be certain that the leak had been sealed.

On September 10<sup>th</sup>, the Tenants told the Landlord's agent that the leak was still present. The Landlord called the roofers to make additional repairs to the roof. The Tenants submitted that no repair was done. The Landlord's agent denied this and testified that the roofers came on September 10<sup>th</sup> and repaired two more cracks in the roof. A copy of the roofers' invoice was provided in evidence.

The Tenants testified that they wrote to the Landlord on September 11<sup>th</sup>, expressing their concern about the continuing leak. A copy of the letter was provided in evidence, which states that the female Tenant had taken to sleeping uncomfortably on the couch because of the sound of the water dripping behind the wall. The female Tenant was pregnant and concerned about mould.

The Landlords' agent submitted that the Tenants did not express concern about the leak from September 11<sup>th</sup> to September 24<sup>th</sup>, when the Tenants asked that the hole in the ceiling be closed.

The Tenants submitted that the Landlord contacted the property manager on September 12<sup>th</sup>, but that by September 21<sup>st</sup> neither the Landlord's agent nor the property manager responded to the female Tenant's letter.

The Landlord's agent submitted that it was difficult to address the leak because there was negligible rainfall from the date that the leak first appeared until September 25, 2012. The Landlord provided data in evidence, collected from a weather website. The Tenants refuted the precipitation report, and stated that it was a lot wetter than the data disclosed. The Tenants did not provide their own rebuttal evidence with respect to this data.

The male Tenant submitted that their right to quiet enjoyment was infringed upon and that the Landlord did not provide them with reasonable privacy and freedom from unreasonable disturbance because of the workmen regularly coming through the rental unit to address the leak. He stated that his wife had a few sleepless nights because of the dripping noise and her concern for the health of their unborn child. He stated that there were continuous drips from a week after the roof was re-patched. The Tenant stated that the Landlord did not offer to put the Tenants up somewhere else while the repairs were being made, or offer an alternate suite in the rental property.

The Landlord's agent stated that there were no vacant suites in the rental unit at the time of the leak. He stated that the roof was about 15 years old and that there were no issues with leaks until July, 2012. The Landlord's agent stated that the Landlord acted as quickly as possible after the Tenants complained of the leak, and that it took time to address the leak because of the long drought and the number of leak points on the roof.

The Tenants seek a monetary award, calculated as follows:

Refund of monthly rent and parking for the last week of July, 2012	\$206.00
Refund of monthly rent and parking for August, 2012	\$825.00
Refund of monthly rent and parking for September, 2012	\$825.00
Loss of peaceful enjoyment	\$1,000.00
Cost of serving the Landlord, ink and stationery	<u>\$50.00</u>
TOTAL	\$2,906.00

### **Analysis**

There is no provision in the Act for recovery of the cost of either party in preparing for a dispute resolution hearing or serving the other party. Therefore, the Tenants' claim for the cost of ink, stationery and serving the Landlord is dismissed.

This is the Tenants' claim for damage or loss and therefore the Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Landlord pay for the loss requires the Tenants to satisfy four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants have met the first element of the test above. There is no dispute that there was a leak at the rental unit.

With respect to the second and fourth element, I accept the Landlord's evidence that there was very little rain for the period of July 22 to September 25, 2012. I also accept the evidence of both parties that the Landlords acted reasonably quickly in attempting to seal the leak from July 23 to September 11, 2012. However, based on the evidence provided by both parties, I also find that the Landlord did not act reasonably quickly to address the female Tenant's concerns that were disclosed in her September 11<sup>th</sup> letter.

Regarding the third element of the test for damages, I find that the Tenants are entitled to compensation for nineteen days of loss of enjoyment of the rental unit, from September 11 to September 30, 2012. The Tenants had use of the rental unit for that period of time, however I accept the Tenants' evidence that their sleep was disturbed and therefore I calculate this compensation as follows:

Daily rent (\$815.00) / 30 days = \$27.17 (per day)  
8 hours (sleep) = 1/3<sup>rd</sup> of one day  
\$27.17 / 3 = \$9.05  
\$9.05 x 19 days = **\$171.95**

I find that the evidence does not support the remainder of the Tenants' claim and it is dismissed.

The Tenants have been partially successful in their application and I find that they are entitled to recovery of the filing fee in the amount of **\$50.00**.

### **Conclusion**

I hereby provide the Tenants a Monetary Order in the amount of **\$221.95** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: December 19, 2012.

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Residential Tenancy Branch