



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**MNDC, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Preliminary Matters**

At the start of the hearing an assistant who was present with the tenants explained that the tenants have some special needs and that the male tenant might require time to respond and make his submissions. Throughout the hearing I found the tenants were each fully engaged in the process. They each made submissions and were provided with a full opportunity to be heard.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation in the sum of \$12,575.37 for the cost of repairing the unit as the result of a flood?

Is the landlord entitled to the \$100.00 filing fee costs?

### **Background and Evidence**

The tenancy commenced on January 15, 2013. The tenants pay subsidized rent which is due on the 1<sup>st</sup> day of each month. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection report was supplied as evidence. The report indicated that the bathroom was newly painted and that all areas of the bathroom and kitchen were in acceptable condition.

Although the parties differed slightly on the dates events occurred; there was no dispute that in late April 2013 the landlord received a call from the tenants, reporting the presence of water in their kitchen cupboards. The landlord called the tenants back and asked if someone had been taking a bath recently; the tenants replied that they had.

The landlord went to the unit and found the kitchen cabinets were waterlogged, the upper shelf was damp and the cabinets above the sink were severely swollen. The bottom shelf of the upper cupboard was swollen and cracked, which the landlord determined was the result of the cabinets having been repeatedly wet, swollen and dried.

The landlord investigated further by checking for a sign of leaks or damage in the bathroom. The landlord noticed white marks on the bathroom fibreboard, indicating that excessive water had been on the floor for extended periods of time. The landlord's maintenance person was then called and attended at the unit.

The maintenance person reported no sign of leaks from the bathtub or toilet and that the fibre flooring was wet and white under the toilet. The assessment was that water had leaked from the bathroom floor, down the toilet cut-out onto the kitchen cupboards.

A copy of an April 24, 2013 incident report completed by the landlord was submitted as evidence. The landlord notated on the report that the building maintenance team would be asked to speak with the tenants about the use of the bathtub and possible resulting water damage. The female tenant told the landlord that she was frustrated with excessive splashing that her children engaged in when in the bathtub.

The landlord had their construction company investigate the leaking. A hole was cut in the kitchen ceiling to access the area below the bathroom. On August 20, 2013 the construction company project manager sent the landlord an email, a copy of which was supplied as evidence. The email contained several date errors, but set out the steps the construction company had taken, by first attending at the unit. On that date they opened the access panel behind the bathtub to check the water lines. The subfloor under the tub was dry and after running the taps and shower no leaks were detected in those areas of the supply lines.

On May 27, 2013 the construction company removed the damaged drywall from the kitchen bulkhead. On May 28, 2013 the plumbing was checked beneath the toilet and no obvious signs of any plumbing issues could be detected. The project manager concluded that the water damage was not related to a plumbing problem and appeared to be originating from the upper bathroom.

A June 18, 2013 invoice in the sum of \$12,575.37 was supplied as evidence of the work that had to be completed as a result of the flooding.

Costs claimed by the landlord are as follows:

MATERIALS	
Drywall	19.98
Drywall supplies	25.00
Paint	50.00
Primer	26.00
Caulking	6.00
Paint supplies	25.00
Sink and faucet	96.00
Under lay	44.00
Misc supplies	43.02
Tax	23.45
<b>TOTAL</b>	<b>\$358.45</b>

LABOUR	
Flood tech	320.00
Asbestos sample	80.00
Drywall	336.00
Painter	320.00
Carpenter	352.00
Cleaner	192.00
<b>TOTAL</b>	<b>\$1,600.00</b>

Drying charges, subtrades, etc.	150.00
Cabinets	4,281.00
Asbestos abatement	2,598.00
Flooring	389.00
Asbestos sample	195.00
Plumber	510.00
Tipping fees	68.16
Overhead/professional fee 18%	1,826.93
<b>TOTAL</b>	<b>10,018.09</b>

The landlord explained that the B.C. government is self-insured; therefore, B.C. Housing is not in a position to purchase 3<sup>rd</sup> party insurance. Payment for damages caused by tenants must come from government revenue.

The tenants described the removal of belongings that was required to allow repairs to take place. The tenants took a video of the flooring that was exposed when the baseboard was removed. The tenants said that when they moved into the unit the area around the baseboards was not inspected for caulking and gaps. The tenants stated that the baseboard was in a corner, 4 to 6 inches from the bathtub and that this baseboard was not attached to the wall. There was a tiny gap; and there was clearly a

hole behind the baseboard which would have allowed water to seep into the kitchen. The baseboard is now caulked; which stops water from flowing out of the bathroom.

The tenants asked if they could submit their video, for review as evidence. At this point an explanation was provided regarding the rules for the submission of digital evidence. The tenants had confirmed receipt of the hearing package in January 2014, but as they each have special needs, they did not understand the need to submit this evidence. I pointed out the Notice of Dispute Resolution Hearing given to each tenant as part of the hearing package, included general information on evidence submission. I declined the request that additional evidence submissions be allowed and accepted the tenant's affirmed testimony, describing what they saw. I determined that the tenants had ample opportunity to prepare for the hearing and make all of their evidence submissions within the required time-frames.

The tenants said that one of the construction company workers told them that the flood was not their fault, but that they were not to tell anyone they had that conversation. The tenants could not identify this person.

The tenants said that their children cause an amazing amount of splashing when in the bathtub and that they told the landlord they were annoyed by this activity. The tenants also said that when they talked with the landlord perhaps they had been overly dramatic in relation to the splashing that actually occurs. During the hearing the tenant stated that sometimes when she comes upstairs and the children are in the bathtub she will find puddles of water on the floor.

During construction the tenants moved into another unit which had been updated. Even though their children continued to splash and spill water onto the floor, no leaking occurred. The tenants said that since the repair has been completed in their own unit the splashing and spilling of water has not resulted in any further leaks; the children still splash and the tenants mop the floor. The tenants said that this showed the bathroom floor had not previously been properly sealed, to stop the egress of water from the floor, down the walls into the kitchen area. The tenants said that the landlord has now installed a water dam at the corner of the bathtub, in an attempt to retain water in the tub.

The tenants said that a sliding door on the tub would work best, to stop water from being splashed out of the tub and leaking from the tub when having a shower. The tenants testified they have to place an object on the shower curtain, at the corner, to stop water from going onto the floor.

The tenants mentioned the possibility of a recently leaking tap; but confirmed that they had not had any concerns about this prior to the flooding that was reported to the landlord in April 2013.

The landlord said that there is no evidence of a hole in the wall.

## Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 32(3) of the Act provides:

*(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

From the evidence before me I find that the water egress from the bathroom onto the kitchen cabinets was the result of the actions of the tenants, who allowed water and puddles to form on the upper bathroom floor. Even if there was a hole behind the baseboard, it would have been reasonable for the tenants to have expected what I find was an excessive amount of water, likely repeatedly splashed onto the floor over a period of time, to seep under the baseboards or find a point of egress into the ceiling below.

I based this assessment on the testimony of the tenants who acknowledged that their children splash excessively when in the tub. This behaviour continued during the period of time the tenants were moved into another unit; activity it seems would be reasonable on which to place limits; given the problem that had occurred in their unit. I find it is likely the leaking into the kitchen area occurred over a period of time and that the absence of obvious leaks in the temporary housing would not preclude leaks occurring if the splashing were to occur in that unit over an extended period of time.

There was no evidence, after proper investigation by the construction company, of any possible source of water, other than from the floor of the bathroom. It is not reasonable to expect that water forming puddles on the floor would not leak and cause problems, over time. It is also not reasonable to expect a wood-frame building with wood baseboards to have a watertight bathroom. There was no evidence before me that a watertight bathroom is required by law.

If there was a hole behind the baseboard that would have contributed to the flow of water that could seep to the kitchen; I have taken this possibility into account. However, I find that the tenants must assume some responsibility for the damage that has occurred and that, pursuant to section 32 of the Act, costs must be paid as a result of negligence. I find, on the balance of probabilities that by allowing their children to repeatedly splash water on the floor, to the point of puddles forming, could reasonably be expected to have negative outcome on the structure of the unit. The tenants viewed the problem as one of insufficient caulking rather than something they could control. I disagree with this assessment and find that assumption simply allows the tenants to

reject any responsibility for the water egress that would not have occurred if they had mitigated by putting a stop to the repeated splashing of water onto the flooring.

I have considered the items claims by the landlord and have adjusted them, taking into account depreciation and replacement costs for optional purchases. There was no evidence before me in relation to the age of the building or components; therefore I have assigned nominal values for some costs claimed.

Residential Tenancy Branch policy suggests that an arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded as affirmation that there has been an infraction of a legal right.

MATERIALS	Claimed	Accepted	Comment
Drywall	19.98	4.00	Nominal
Drywall supplies	25.00	5.00	Nominal
Paint	50.00	10.00	Nominal
Primer	26.00	5.20	Nominal
Caulking	6.00	1.20	nominal
Paint supplies	25.00	0	No detailed breakdown of these items was provided; i.e. brushes
Sink and faucet	96.00	0	Tenants did not damage the sink and faucet
Under lay	44.00	8.80	
Misc supplies	43.02	0	No detail indicating what these items were
Tax	23.45	2.25	
<b>TOTAL</b>	<b>\$358.45</b>	<b>36.45</b>	

LABOUR	Claimed	Accepted	Comment
Flood tech	320.00	0	No detailed breakdown of this cost was supplied
Asbestos sample	80.00	0	The presence of asbestos would not be the result of actions of the tenants
Drywall	336.00	67.20	Nominal
Painter	320.00	64.00	Nominal
Carpenter	352.00	70.40	Nominal
Cleaner	192.00	38.80	nominal
<b>TOTAL</b>	<b>\$1,600.00</b>	<b>240.40</b>	

	Claimed	Accepted	Comment
Drying charges, subtrades, etc.	150.00	35.00	Nominal for drying - absence of detailed invoice
Cabinets	4,281.00	500.00	Nominal sum recognizing the need to replace cabinets was the result of negligence on the part of the tenants; age of cabinets not known
Asbestos abatement	2,598.00	0	The presence of asbestos is not the responsibly of the tenant

Flooring	389.00	77.80	Nominal
Asbestos sample	195.00	0	
Plumber	510.00	510.00	The need for plumbing repair was the result of the tenant's actions
Tipping fees	68.16	15.00	Nominal
Overhead-professional fee 18%	1,826.93	0	The choice of the landlord to use a professional company vs. in-house repair staff
<b>TOTAL</b>	<b>10,018.09</b>	<b>1,137.80</b>	

Therefore, I find that the landlord is entitled to compensation in the sum of \$1,414.65; the balance of the claim is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee payable on a claim under \$5,000.00 for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,464.65. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to compensation in the sum of \$1,414.65; the balance of the claim is dismissed.

The landlord is entitled to a \$50.00 filing fee cost.

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 26, 2014

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Residential Tenancy Branch