



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, ERP, RP, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order that the landlord make repairs to the rental unit pursuant to section 32;
- an order that the landlord make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1016 in order to enable the landlord to connect with this teleconference hearing scheduled for 0930. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants provided sworn and uncontested testimony that they delivered the dispute resolution package and first package of evidence (received by the Residential Tenancy Branch on 20 October 2014) to the landlord on 17 October 2014 by registered mail.

The tenants provided sworn and uncontested testimony that they delivered the second package of evidence (received by the Residential Tenancy Branch on 22 October 2014) to the landlord on 22 October 2014 by registered mail. The tenants provided me with the Canada Post tracking numbers for both mailings. I find that the landlord was

deemed served with these documents in accordance with sections 88, 89 and 90 of the Act.

The tenants asked that their application be amended to include a request for compensation for loss of the value of the tenancy agreement for November 2014 in the amount of \$600.00. I allowed this amendment as the landlord should have reasonably been aware that the outstanding repairs affecting the value of the tenancy were still an issue in November 2014.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? Are the tenants entitled to a monetary award for damages or losses under the Act, regulation or tenancy agreement? Are the tenants entitled to an order that the landlord make emergency repairs to the rental unit? Are the tenants entitled to an order that the landlord make repairs to the rental unit? Are the tenants entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, and the uncontested, sworn testimony of the tenants, not all details of the tenants' submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

This tenancy began 1 July 2007 on a month-to-month basis. The original agreement provided for monthly rent of \$1,200.00 due on the first of the month. No rental increases have been made. The landlord continues to hold the tenants' security deposit of \$600.00 paid at the beginning of the tenancy plus accrued interest. The rental unit basement has a main area (which contains a utility sink, washer dryer and playroom), two bedrooms, and a cold cellar. There is a garage on the rental property that the tenants had used as a multi-use area for a workshop, bike storage, and general storage.

The tenants testified that they have paid all rent up to and including November 2014.

The tenants adopted as their sworn testimony the written timeline provided to me in their filed evidence.

The tenant MF testified that there is an eighty year old maple tree on the boulevard in front of the rental property. I was provided with a photograph of this tree.

MF testified that the landlord also owned one of the houses across the street from them. MF testified that this house had been flooded before because of root encroachment into the sewer line. MF testified that because of the prior encroachment, the City of Vancouver sent someone to drill out the roots twice per year. MF testified that she and the tenant BF had repeatedly asked the landlord to have the same service provided to them as they had previously experienced wastewater back up into the utility sink and believed that their rental property had similar root encroachment. MF testified that they contacted the City of Vancouver to attempt to arrange for the service themselves, but that the city would only undertake this service at the request of the property owner and then only after there had been a camera-scope diagnosis by a plumber of city property root encroachment.

The tenant MF testified that at approximately 1300 on 26 September 2014 the main area and one of the bedrooms in the basement of the rental unit flooded. The floodwater entered the basement of the rental unit through the corroded sump valve, which was located in one of the bedrooms. The floodwater contained sewage.

MF testified that the floodwater soaked the carpets, baseboards and drywall. The tenants provided me with pictures of the moisture readings taken in the basement the Saturday after the flood. No fans were used to dry out the basement. There was one window that was left open to ventilate the basement.

The tenant MF testified that the landlord has undertaken the following remedial steps:

- On 26 September 2014, the landlord arranged for a plumber to attend at the rental unit.
- On 27 September 2014, the landlord removed underlay in playroom area.
- On 30 September 2014, the landlord removed the carpet from the basement, except for the second bedroom.
- On 12 October 2014, the landlord agreed to hire MF to clean the floor of the basement.
- On 15 October 2014, the landlord cleaned the main basement area floor with Diversol BX/A. The landlord used a mop to "rinse" the bedroom floor.

The plumber that attended on 26 September 2014 indicated to the tenant that the sump valve was broken and that immediate repair was required. The broken sump valve was allowing backflow of sewer water into the basement. The plumber stated that the sump was badly corroded. The tenants provided picture evidence showing the state of corrosion. The plumber indicated to the tenants that when he drilled out the pipe there

was evidence of tree roots on the head. The plumber indicated that he required a camera to definitively diagnose the problem, but that he believed that the flood was no fault of the tenants and that the flood was caused by the tree roots from the city boulevard tree. The landlord did not undertake the repairs recommended by the plumber.

The tenants testified that the landlord has repeatedly indicated an unwillingness or inability to make an insurance claim to remediate the flooded basement. The tenants testified that the landlord told them it was not worth the money to fix the house as he was going to sell it.

The tenants arranged with their insurer to remove their belongings from the basement, move their belongings to convert the use of the living room to a bedroom, and pack and secure their belongings in the garage. The tenants did not pack the belongings and do not know which of the numerous boxes contain specific belongings. The tenant MF testified that they cannot unpack them to locate their belongings.

On 1 October 2014, the landlord issued the 2 Month Notice. On the second page of the 2 Month Notice, the landlord has crossed out the words "*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse*" and added the words "*putting the house on the market for sale*". This change is initialed by the landlord.

On 2 October 2014, the tenants delivered a letter to the landlord by express post. In this letter, the tenants issued a demand that the landlord clean and remediate the flood damage.

On 7 October 2014, the tenants delivered a second letter to the landlord by express post. In this letter, the tenants reiterated their demand that the landlord repair and remediate the flood damage. As well, the tenants notified the landlord that they had a quote of \$3,000.00 to properly repair and remediate the flood damage. The tenants noted their repeated requests that the landlord examine the rental unit's pipes for corrosion and tree root incursion. The tenants also set out a proposed settlement.

On 10 October 2014, the tenants delivered a third letter to the landlord by express post. This letter largely reiterated the demands set out in the tenants' letter of 7 October 2014.

On 15 October 2014, the tenants consulted a lawyer for advice on the landlord's obligations and their obligations in respect of the flood and resulting damage. I was provided with a receipt for the cost of this consultation.

The tenants provided an estimate, dated 3 October 2014, from a restoration company for the proper remediation of the flood damage. The estimate totaled \$3,255.84. Necessary remediation, as set out in this scope of work, included removing and disposing of the exterior drywall up to at least two feet, removal and disposal of insulation, a three-step bio wash, application of an anti-microbial agent, and installation of drying equipment.

As a result of the flood, many of the tenants' items from the basement as well as items moved from the main floor (to accommodate sleeping arrangements for the children) had to be stored in the garage and the second basement bedroom. These items were packed by the tenants' insurer.

The tenants described the current condition of the rental unit. The living room has been converted to a bedroom. Their garage is only usable as storage. The basement has a bad odor that the tenants described as smelling like a barn. Their carpet has been removed from the basement except for the bedroom currently being used as a storage space. The carpet in the bedroom used for storage had floodwater tracked over it. The tenants estimate that they have lost one-half of the value of their tenancy as a result of the flood damage and their current living conditions.

I was provided with numerous photographs that confirm the extent of the flood damage, the tenants' current living arrangements, and the current storage conditions in the garage and second bedroom.

The tenant MF testified that her daughter is in a semi-professional dance troupe that requires the daughter to practice in uniform. The daughter's dance costume is currently packed into one of the many boxes in the garage that the tenants' insurer removed from the home following the flood. The tenants testified that, in order to retrieve the costume, they would have to completely unpack the garage as they have no idea where the costume is. The tenants provided a receipt for the cost of replacing the dance uniform.

The tenants similarly claimed for the cost of replacing homeschooling materials. The tenants did not provide a receipt for the replacement cost of the homeschooling materials.

The tenant MF provides cleaning services on a part-time basis. Her regular hourly rate for these services is \$25.00. The tenant MF provided a lower estimate of five hours for time she spent cleaning the basement flood area.

The tenant MF testified that as a result of the flood claim, the tenants insurance will increase by 20% over the next five years. The tenants' current annual insurance costs are approximately \$500.00.

The tenants consulted with a lawyer on 15 October 2014 to determine their rights and obligations in respect of this tenancy. I was provided with a receipt for the lawyer's fee.

The tenants have asked for damages or compensation for loss in the following amounts:

Item	Amount
compensation for loss of value of tenancy agreement for October 2014	\$600.00
compensation for loss of value of tenancy agreement for November 2014	600.00
compensation for replacement of a dance uniform	44.92
compensation for replacement of homeschooling materials	150.00
compensation for five hours of cleaning	125.00
lawyer's fee	98.00
compensation for the tenants insurance costs	500.00
recovery of filing fee for this application	50.00
Total Monetary Order Requested	\$2,167.92

Analysis

A 2 Month Notice may only be issued for specific reasons prescribed by section 49 of the Act. The 2 Month Notice was invalidly issued as "putting the house on the market for sale" is not prescribed reason. The tenants' application to cancel the 2 Month Notice is granted.

The tenants have applied for an order that the landlord complete emergency repairs. Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures,
- the primary heating system,
- damaged or defective locks that give access to the rental unit,
- the electrical systems, and
- in prescribed circumstances, a rental unit or residential property.

In this case, the landlord has not undertaken to repair the corroded sump valve, which is a damaged plumbing fixture within the meaning of section 33. These repairs are necessary to preserve the residential property. The tenants have given the landlord ample opportunity to fix the sump and issued numerous demands that it be fixed.

I order the landlord to undertake these repairs. Should the landlord fail to initiate these repairs within one week from the date of this decision, the tenants may initiate repairs and, provided the tenants conform with subsections 33(5) and (6) of the Act, the landlord must reimburse the tenants for the amounts paid. This order is limited to repairs relating to the sump.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, make it suitable for occupation by the tenant. The tenancy agreement was for the occupation of the entire property. I accept the tenants' testimony that the basement has not been properly repaired and remediated (including required remediation of floors, drywall and baseboards) and that the flooring has not been replaced. I order that the landlord undertake the necessary remediation and repairs to make the area of the rental unit affected by the 26 September 2014 flood fit for its use by the tenants. This includes cleaning or replacing, as necessary, the carpet in the second bedroom that has secondary sewage transfer.

Normally, damage to the tenants' resulting from a flood will not be the responsibility of the landlord; however, where the landlord has caused the flood through his action or negligence, the landlord is liable for the damages that result. The tenants provided photographic evidence of the condition of the sump valve. The tenants provided sworn testimony that they had alerted the landlord to the issue of potential root blockage when the basement utility sink backed up. The landlord did not act on this warning. The tenants requested that the landlord hire a plumber to investigate possible root occlusion. The landlord did not act on this request. The tenants asked the landlord to request the city mitigate possible root occlusion from the maple. The landlord did not call the city. The tenants attempted to contact the city themselves, but were told that only the property owner could initiate such a request. The tenants testified that the landlord had a similar flood in the property he owns across the street and that he knew or ought to have known that the same type of flood was likely to occur in the rental unit. The landlord did not act on this knowledge.

The landlord owed the tenants a duty of care and he breached this duty of care resulting in damage to the tenants. Based on the tenants' sworn and uncontested testimony and

the documentary evidence provided by the tenant, I accept, on a balance of probabilities, that the flood was the result of the landlord's negligence.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

In this case the tenants have claimed for the following damage or losses flowing from the sewage flood:

Item	Amount
compensation for replacement of a dance uniform	\$44.92
compensation for replacement of homeschooling materials	150.00
compensation for five hours of cleaning	125.00
lawyer's fee	98.00
compensation for the tenants insurance costs	500.00
Total Damages Requested	\$917.92

The tenants have provided me with a receipt showing the cost of replacing the dance uniform. I accept that due to the delay in the landlord's remediation the tenants were unable to retrieve any of their possessions from the garage. I find the tenants are entitled to the cost of replacing the dance uniform.

The tenants were unable to provide me with a receipt for the replacement homeschooling material. I believe that the tenants did replace the books, but the tenants have failed to meet their burden to prove the quantum of the loss by failing to provide a receipt. I find that the tenants are not entitled to compensation for the home schooling materials.

MF testified that she provides professional cleaning services at an hourly rate of \$25.00. I accept her uncontested and sworn testimony that the landlord agreed to compensate her for her cleaning. I accept MF's estimate of five hours of cleaning. On this basis, I find that the tenants are entitled to cleaning expenses of \$125.00.

The tenant sought legal counsel for assistance with determining their rights and obligations under this tenancy. I do not find that the payment of legal fees was loss or damage caused by the flood. Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding legal costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional. I find that the tenants are not entitled to compensation for their lawyer's fee.

The tenants seek \$500.00 for compensation for their increased costs of tenants insurance over the next five years. The tenants provided testimony that their insurance premiums will increase by 20% over the next five years and that their insurance premiums before this flood were approximately \$500 per year. The tenants have not provided me with receipts or documents that enumerate the value of the increase. I recognize that the tenants' costs of insurance will be increased as a result of the flood caused by the landlord's negligence, but am unable to value the loss. Where no significant loss has been proven, but there has been an infringement of a legal right, an arbitrator may award nominal damages. Based on this, I award the tenants nominal damages of \$100.00 for the damage to their future insurability.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. Residential Tenancy Branch, Policy Guideline 6 provides me with guidance in determining the amount of the reduction in value. The Policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted.

The tenants have claimed for the value of one half of the property because of the diminished value of the tenancy. An improperly remediated sewage flood represents a serious health and safety issue in addition to an inconvenience due to loss of area. The tenants have given the landlord ample time to remediate the damage. The landlord has chosen not to act, unnecessarily prolonging the length of time the situation has persisted.

On the basis of the evidence provided to me by the tenants regarding the smell in the basement and the loss of use of the rental unit and as the landlord has delayed

performing these necessary repairs, I value the past reduction in value over October 2014 and November 2014 to be equal to one half months rent or \$600.00 per month. The tenants are entitled to a monetary order for that amount.

I order that the value of the tenancy is diminished as follows until such time as the remediation and repairs to the basement are substantially complete. "Substantially complete" for the purpose of this order shall be the time at which the downstairs bedrooms and playroom are fit for use as bedrooms and playroom. Substantial completeness does not include any minor repairs that temporarily remain outstanding. Until such time as the repairs are substantially complete, the landlord is only entitled to \$600.00 in monthly rent as of December 2014.

Should the landlord fail to deliver a substantially complete rental unit by 31 December 2014, the tenants' rental abatement is further increased to \$700.00 and the tenants' monthly rent is reduced to \$500.00.

Should the landlord fail to deliver a substantially complete rental unit by 28 February 2015, the tenants' rental abatement is further increased to \$800.00 and the tenants' monthly rent is reduced to \$400.00.

As the tenants have been successful in their application they are entitled to recover their filing fee of \$50.00.

Conclusion

I order that the landlord remediate and repair the flood damage to the rental unit. Should the landlord fail to initiate these repairs within one week from the date of this decision, the tenants may initiate repairs and, provided the tenants conform with subsections 33(5) and (6) of the Act, the landlord must reimburse the tenants for the amounts paid. This order is limited to repairs relating to the sump.

I issue a monetary order in the tenants' favour in the amount of \$1,519.92 calculated as follows:

Item	Amount
compensation for loss of value of tenancy agreement for October 2014	\$600.00
compensation for loss of value of tenancy agreement for November 2014	600.00

compensation for replacement of a dance uniform	44.92
compensation for five hours of cleaning	125.00
nominal compensation for damage to the tenants' insurability	100.00
filing fee	50.00
Total Monetary Order	\$1,519.92

The tenants are provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord's 2 Month Notice is cancelled and is of no continuing force or effect. This tenancy continues.

I order that, until such time as the remediation and repairs are substantially complete, future rent is abated on the following terms:

Item	Rent Amount	Abatement
December 2014	\$600.00	\$600.00
January 2015	\$500.00	\$700.00
February 2015	\$500.00	\$700.00
March 2015 onward	\$400.00	\$800.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 12, 2014

Residential Tenancy Branch

