



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlords by mailing, by registered mail to where the landlords reside on August 21, 2014. I find that the Amended Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlords by mailing, by registered mail to where the landlords reside on February 13, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a.      Whether the tenants are entitled to a monetary order and if so how much?
- b.      Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on September 1, 2013 and end on August 31, 2014 and the tenants

would have to vacate the rental unit at that time. The rent was \$1350 payable in advance on the first day of each month. The tenants paid a security deposit of \$675 at the start of the tenancy.

On August 5, 2015 the neighbouring unit had a bursting of the pipes between the wall and water seeped through the common walls and the front door. The water leakage affected 5 other units. The landlord does not own the neighbouring unit.

The strata management took immediate action. Humidifiers and fans were put into the rental unit and the tenants were instructed to keep the machine on at all time to avoid mould, fungal growth and prevent further damage.

The tenant testified some of their personal belongings were damaged and had to be disposed of. Further, they lost the use of one of the bedroom and portion of the remainder of the rental unit. It caused extreme hardship because of the noise of the machines and the heat of the summer. The agent's father (one of the tenant's) has a multitude of medical ailments and his condition became worse because the tenants were not able to cook and sleep properly.

The tenants blame the landlord and seek compensation in the sum of \$9179. They testified the landlord deceived them when the landlord told them he would see whether they are covered under the landlord's insurance and thus inhibited them from vacating the rental unit earlier. The tenants ended the tenancy and vacated the rental unit on August 31, 2014. They were not able to find appropriate accommodation in Vancouver and they moved to Toronto.

The tenants did not provide the landlord with their forwarding address after they vacated the rental unit.

The agent for the landlord denies the landlords are responsible for most of the tenants' claim. She testified the Addendum to the tenancy agreement provided that "the Tenant

is advised to carry adequate insurance coverage for fire, smoke, and water damage and theft on their possessions..." She testified the real estate agent explained this to both landlord and tenant at the time the tenancy agreement was signed. The tenant disputes this evidence.

The landlord also testified they attempted to deal with the tenant after August 21, 2014 but the tenants refused to talk to them.

### Law

Policy Guideline #16 provides as follows:

#### **Claims in Tort**

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

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Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

### Analysis

The law does not impose an obligation on the landlord making the landlord the tenant's insurer. The tenants have to prove the landlord was negligent or somehow at fault if the

tenants in order to successfully bring a tort claim for property damage or personal injury. The tenant's are entitled to a reduction of rent if the rental unit is not what was rented.

With regard to each of the tenants' claims I find as follows:

- a. I determined the tenants are entitled to the sum of \$675 for the return of the security deposit. While the tenants failed to provide the landlord with their forwarding address in writing the landlord acknowledged at the hearing the security deposit should be returned to the tenants.
- b. The tenants seek reimbursement of the rent paid for August in the sum of \$1350. The tenants are not entitled to compensation for the first 5 days of the month as the leak did not occur until August 5, 2014. Thus the maximum the tenants would be entitled to would be reimbursement of \$1132. However, the tenants remained in the rental unit until the end of August and they received some value. I accept the testimony that the operation of the machine was extremely disruptive. However, in the circumstances I determined the tenants are entitled to reimbursement of the sum of \$900 for the reduced value of the tenancy for the period August 6, 2014 to August 31, 2014.
- c. I dismissed the tenants' claim for property damage including the loss of books and loss of sheets, duvets etc. The burst pipe was not caused by the negligence or misconduct of the landlord. It originated from another unit and was totally outside of the control of the landlord. It may be that the tenants have a claim against the neighbouring party but they do not have a claim against the landlords who are not at fault.
- d. I determined the tenants are entitled to \$75.96 for the cost of hydro bills as much of this claim was for the operation of the fans and dehumidifiers.
- e. I dismissed the claim of \$28 for legal advice, \$55 for film development, \$86.30 for mailing fees, \$205 for translation fees as these claims relate to the cost of preparing for litigation. The only jurisdiction an arbitrator has with respect to costs is the cost of the filing fee.

- f. I dismissed the claim of \$100 for the cost of toilet pipe repair as the tenants failed to present proof to establish this claim.
- g. I dismissed the tenants' claim of \$100 for transportation and \$40 for X-Ray patient report as the tenants failed to prove the landlord was at fault.
- h. I dismissed the tenants claimed in the sum of \$4820 for compensation for damages caused by delaying settlement. The landlord did not cause the leak. The landlord does not have a legal obligation to have insurance which would cover the removal of the tenants to a hotel. The tenants were encouraged to get their own insurance but they failed to do so. I do not accept the submission of the tenants that the landlords are responsible because they failed to tell the tenants at the start of the tenancy. Both the landlord and the tenant have language challenges. This is not a situation where one party is taking advantage of another. The law presumes the tenants have read and understand the contracts that they have signed. The tenants failed to prove they are entitled to compensation as alleged. The tenants filed their claim on August 21, 2014 and decided not to communicate with the landlord after that date. If anyone is at fault for a delay in the settlement it is the tenants. I do not accept the submission of the tenants that a statement from the landlord that he would see whether the removal of the tenants was covered under his insurance policy creates a legal obligation to compensate the tenants.

The tenant failed to prove they are entitled to compensation in the sum of \$520 for meals. The tenants had cooking facilities although it was more difficult. In any event the tenants have been compensated by the return of \$900 of the rent for August as provided above. The reduction of the rent also compensates the tenant for suffering from noises, humidity and high temperature and one person sleeping on the floor. Finally, I dismissed the tenants' claim in the sum of \$3000 for the deterioration in the health of one of the tenants as the tenants failed to prove the landlord was at fault.

**I ordered the landlord(s) to pay to the tenants the sum of \$1650.96 plus the sum of \$50 in respect of the filing fee (reduced to reflect the limited success of the tenants) for a total of \$1700.96.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 11, 2015

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Residential Tenancy Branch

