



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant claimed a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and the tenancy agreement.

Both parties appeared at the hearing. The Landlord was assisted by his son A.C. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2006 and ended on July 1, 2015. Monthly rent was initially paid in the amount of \$475.00; at the time the tenancy ended rent was payable in the amount of \$500.00.

The Tenant testified that a fire occurred on June 16, 2015. He alleged it was started by the Landlord's wife who was burning candles in a prayer room. The Tenant further stated that a second fire occurred shortly after the first, which he understood to be an electrical fire caused by the remediation company who were dealing with the first fire. He testified that he and his family tried to stay in the rental unit, but after a few days they had to vacate the rental because of the smell and unhealthy living conditions. He claimed that although they vacated the rental on June 24, 2015, the rental unit was essentially uninhabitable for the final 14 days of the tenancy.

The Tenant confirmed that he paid rent for June 2015 but did not pay rent for July 2015.

The Tenant testified that he did not have tenant's insurance.

The Tenant claimed that he and his family moved into a hotel from June 24 to July 1, 2015, following which they moved into his brother's basement on July 1, 2015. Introduced in evidence was a copy of a receipt for \$945.05 for the seven days the Tenant and his family stayed in a hotel.

He further stated that it was not possible to move into his brother's home until July 1, 2015. As their personal possessions could not be moved into his brother's home immediately, the Tenants were forced to put their items in storage. Introduced in evidence was a copy of a receipt for \$206.79 for this expense.

The Tenant also claimed that he and his family required medication as a result of smoke inhalation. He provided a receipt from a drug store in the amount of \$15.44. The receipt did not indicate the nature of the medication.

The Tenant further testified that because they needed to vacate the rental unit on such short notice, they required assistance moving. In this regard he submitted three receipts for vehicle fuel totalling \$145.11; and receipts for "food and drink" which he says he provided for the movers totalling \$109.24.

The Tenant stated that he was required to take a week off work as a result of the fire and the move and submitted a claim for lost wages in the amount of \$877.52. Introduced in evidence was a letter from the Tenant, V.D.'s employer which indicated

that he was paid \$31.34 per hour. This letter does not indicate whether V.D. was absent from work for any period of time and if so when.

The Tenant also claimed \$500.00 for dry-cleaning and furniture cleaning. During the hearing he testified that he had not in fact cleaned the items yet and therefore had not yet incurred these expenses.

Finally, the Tenant claimed \$1,200.00 for “physical exhaustion and stress” related to the fires and the move.

In total the Tenant claimed as follows:

Hotel accommodation	\$945.05
Storage	\$206.79
Medication	\$15.44
Fuel for moving	\$145.11
Food and drink for movers	\$109.24
Lost wages	\$877.52
Dry cleaning (estimate)	\$500.00
Physical exhaustion and stress	\$1,200.00
TOTAL	\$3,999.15
TOTAL claimed on Application and attached Monetary Orders Worksheet	\$4,000.00

In response to the Tenant's claims the Landlord confirmed that he was opposed to paying any amounts to the Tenant. He submitted as follows:

- The fire department has not yet determined the cause of the first fire. The 2nd fire was caused by the restoration company, not the Landlord. In any case, there is no suggestion that the Tenants were responsible for the fire in any way.
- Had the Tenants protected themselves with tenant's insurance their claim would, in all likelihood, have been paid by their insurance company. The Tenant informed the Landlord that his wife would not let him purchase tenant's insurance as it was \$300.00 per year. The Tenant's claim is excluded from the Landlords insurance claim as it is not possible to take out insurance for someone else's benefit. The Landlord submits that he should not be expected to pay for losses incurred by the Tenant due to his failure to obtain appropriate insurance.

- The medication receipt does not provide any details as to the name of the medication, nor does it appear to be as a result of a prescription.
- The Tenant's claim for compensation for hotel accommodation includes "in room dining charges" which should not be compensable.
- The Tenant's claim that he was insensitive and not willing to help is incorrect. The Landlord stated that his 80 year old mother was in emergency at the hospital as a result of the smoke inhalation and that he had to tend to her needs first.

Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenant has the burden of proof to prove their claim.

I accept that the rental unit was not habitable from the date of the first fire, June 16, 2015, to the end of the tenancy, June 30, 2015. Accordingly, I award the Tenant the sum of **\$250.00** representing compensation for the 15 days the Tenant paid for rent for that time period.

I decline the Tenant's claim for compensation for the cost of hotel accommodation. The Landlord correctly noted that had the Tenant obtained tenant's insurance, these amounts may have been recoverable as an insurance claim; further, in failing to obtain tenant's insurance the Tenant failed to mitigate this loss.

I am unable to find that the medication receipts relate to medical issues arising as a result of the fire. The receipts provide no details as to the medication purchased. As such, I am unable to find that these expenses relate to the tenancy and I therefore dismiss this claim.

I accept the Tenant's evidence that he and his family were not able to move into his brother's home for a period of time. Due to the emergency created by the fire, and as he was not able to store his items in the rental unit, alternate storage was required. Accordingly, I award the Tenant the amount claimed: **\$206.79**.

A tenant has no guarantee of perpetual occupancy; as such, moving expenses are inevitable when a tenancy ends and are therefore not recoverable. Consequently, I dismiss the Tenant's claim for compensation for moving expenses relating to fuel, food and drink charges.

The Tenant claimed he was forced to take time off work due to the fire in the adjacent unit. The evidence submitted merely indicates his hourly rate, not whether he in fact missed any work. Evidence in the form of pay stubs would have confirmed his hours of work and pay and whether it was negatively impacted by the fire and the move; however, that evidence was not before me. I find the Tenant has failed to prove his claim for lost wages and accordingly I dismiss his claim in this regard.

The Tenant confirmed he had not incurred the dry-cleaning charges. Accordingly, I dismiss his claim for compensation for these estimated amounts as he has failed to prove such a loss occurred.

While it is acknowledged that a fire in one's home would be stressful, the Tenant failed to provide any supporting evidence for his claim for \$1,200.00 for "physical exhaustion and stress". I find that the Tenant has failed to prove this loss exists and as such this claim is also dismissed.

Pursuant to section 72(1) of the *Residential Tenancy Act*, I award the Tenant recovery of the **\$50.00** filing fee.

In sum, I award the Tenant the amount of **\$506.79** for the following:

Compensation for rent paid for June 16 to June 30, 2015	\$250.00
Storage	\$206.79

Filing fee	\$50.00
TOTAL awarded	\$506.79

The Tenant is granted a Monetary Order for the sum of \$506.79 and must serve the Order on the Landlord. Should the Landlord fail to pay the Tenant may file and enforce this Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant is entitled to compensation in the amount of \$506.79 representing reimbursement for rent paid for 15 days when the rental unit was not habitable, \$206.79 for storage costs and recovery of the filing fee.

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: January 6, 2016

Residential Tenancy Branch

