



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, MNDC, RR, FF, SS

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the issues to be determined included their request for a Monetary Order for money owed or Compensation for damage or loss under the *Act*, Regulation or Tenancy Agreement as well as to recover the filing fee.

The hearing began on August 13, 2015 was adjourned to October 29, 2015 and completed on January 7, 2016.

As noted in my Interim Decision made August 14, 2015, the Tenants withdrew their application for more time, for an Order for substitutional service and for a repair order pursuant to section 65(1).

Both parties appeared at the hearings. 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.

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. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover their filing fee?

Background Evidence

In their Application for Dispute Resolution the Tenants claim \$5,000.00 in compensation from the Landlord for losses arising from leaking pipes and flooding of the rental unit basement. During the hearing the Tenant, W.S., stated that he did not intend to indicate \$5,000.00 on his Application, and that someone at the Residential Tenancy Branch wrote that figure into the form.

During the August 13, 2015 hearing, W.S. confirmed that the Tenants claim included the following:

|   |                   |
|---|-------------------|
| Vet bills   | \$500.00          |
| Moving expenses   | \$800.00          |
| W.S. lost wages   | \$3,000.00        |
| Amount paid to W.S.'s daughter for filling out the Application for dispute resolution | \$100.00          |
| Filing fee  | \$50.00           |
| <b>TOTAL</b>  | <b>\$4,450.00</b> |

W.S. testified that the rental unit was a side by side duplex. He stated that the sewer lines for both sides of the duplex joined into one main sewer line in the laneway. He stated that in August of 2013, the sewer backed up and flooding occurred. At this time the Landlord was in Europe and initially not able to deal with the problem. W.S. stated that the Landlord initially asked the Tenants to deal with it, after which the Landlord's son hired a third party who dug out the line and replaced it.

W.S. testified that the Tenants' pet became sick because of the contaminated yard as well as the smoke from the other renters. Introduced in evidence by the Tenants were the following invoices relating to their pet:

| date       | Business Name on Invoice        | amount          |
|------------|---------------------------------|-----------------|
| 05/09/14   | Q.P. Pet Hospital               | \$74.21         |
| 09/08/14   | Q.P. Pet Hospital               | \$77.49         |
| 12/05/14   | G. Pet Care Hospital            | \$122.95        |
| 18/07/2013 | A. Animal Hospital              | \$80.83         |
| 14/12/05   | P. Drug Mart medication receipt | \$14.55         |
|            | <b>TOTAL</b>                    | <b>\$370.03</b> |

The Tenants did not explain the difference between the \$500.00 claimed on the Monetary Orders Worksheet filed in support of their application and the \$370.03 in receipts provided in evidence. The Tenants also did not provide any evidence to support a finding that the above invoices were related to the flooding at the rental unit, or the smoke which the Tenants alleged came from the other renters. When I asked W.S. how they were related, he became agitated and responded that the yard was “covered in feces” and it made the dog sick.

The Tenants also sought \$800.00 in moving expenses on their Monetary Orders Worksheet. They provided a receipt in evidence confirming this amount.

W.S. also claimed to have lost \$3,000.00 in wages dealing with the sewage back up and cleaning of the rental unit from August 2013 to November 2013. W.S. testified that he was self-employed and worked on vehicles approximately 3 days a week. He claimed that he earned \$800.00 per month. W.C. failed to provide any proof of income, income tax returns or any other such evidence in support of his claim for lost wages. Again, when I asked if he had any evidence to support his wage loss claim, he became agitated.

W.S. introduced his blood test results from August 19, 2014 in which amphetamines were found in his system. W.S. claimed that the presence of amphetamines was a result of the neighbours’ smoking “speed and crack”. He stated that the Landlord refused to “deal with this”. He failed to explain how this was related to his monetary claim.

W.S. stated that he hired his daughter to fill out the Application for Dispute Resolution as he is on disability as a result of a head injury and paid her \$100.00 to do so. He sought compensation for this amount.

The Landlord testified on his own behalf. He stated that he found the Tenants’ claims to be “ludicrous”. He stated that the Tenants’ claims that the rental unit yard, and basement were covered in feces and urine was simply false. He further testified that the Tenants’ claims that this “went on for months” is also false as it was dealt with within a week’s time.

The Landlord confirmed that a flood had occurred, but stated it was dealt with immediately. He stated that his son attended and hired professionals to address the issue. He further testified that despite resolving the issue in a timely manner, he paid the Tenants \$500.00 to reimburse them for the time they spent cleaning up the rental unit as well as the inconvenience caused by the flooding.

The Landlord stated that, while he failed to see how the neighbours' smoke related to the Tenants' monetary claim, he addressed their concerns as and when the Tenants raised them. He confirmed that the Tenants complained about the next door renters smoking and as a result he attended the residence on two occasions. He said that on the first occasion the Landlord could not smell any trace of smoke and when he asked the Tenants to come downstairs to speak with him they both refused and stated they were "too tired". The Landlord stated that on the second occasion he also could not smell smoke.

The Landlord disputed the Tenant, W.S.'s, claim for lost wages as he stated he was informed W.S. was in receipt of disability benefits and not working.

On January 7, 2016, the Tenant W.S. again testified on behalf of the Tenants and provided their reply to the Landlord's response. On this date, W.S. was antagonistic and argumentative. He yelled in the phone and accused me of not listening to him when I asked him to clarify some of his evidence.

W.S. confirmed that he sought compensation for having to live with "the smells in the basement, and dealing with the feces". He also claimed that he did 99% of the repairs of the house for 40 months and should be compensated for his work. W.S. stated that the Landlord collected over \$40,000.00 in rent, yet W.C. did nothing but work on the rental unit as the Landlord would not attend to required repairs.

W.C. disputed the Landlord's claim that he paid them \$500.00 for the labour and "stuff"; and said that the Landlord paid them \$500.00 for money they had spent, not any amount for labour.

W.C. also claimed that he spent numerous days finding a plumber to resolve the sewage backup. He said that the Landlord's son was only there for 10 minutes and left. He stated that the plumber was there for 3.5 days and the Tenant had to be at the rental unit, missing work, as someone had to be there at all times.

W.C. further alleged that the cleanup and repairs took more than a week, because some of the plumbers wouldn't even work at the rental unit because they had problems getting paid from the Landlord previously.

The Tenant also made the following allegations when replying to the Landlord's response. These claims were not particularized on the Tenant's Monetary Orders Worksheet.

- He sought compensation for having to live with the “filth and smells, the feces and garbage in the back yard, the basement and on the back porch as well as mold upstairs”. The Tenant provided in evidence emails which he sent to the Landlord which he claimed supported his claim. He did not supply any photos to substantiate this claim nor did he articulate what amount he was seeking in terms of compensation for these alleged losses.
- He claimed that part of the basement was not useable because of leaks in the exterior walls and resulting water damage. He estimated that the area which was not useable was approximately 35% of the basement, or 17.5% of the rentable space. This was also not included in his original claim.
- He claimed that the oil tank was leaking in the yard which caused his dog illness. He confirmed he did not have any evidence to support this claim.
- He stated that their cabinet, which contained all their cleaning products, was damaged by the downstairs leak as was their carpet. He claimed \$100.00 for the carpet, \$100.00 for the cabinet and \$60.00 for the lost cleaning products. Again, this was not included in his original claim, not noted on his Monetary Orders worksheet, nor was there any indication in the materials that he would be seeking such relief.
- He claimed that he could not paint the walls. He said the paint would “literally fall off the walls” and when he took the chip into the paint store they told the Tenant that the paint was “government blue and green” street sign paint and was not to be used inside or by the public. These allegations do not appear to be related to the Tenants’ claims.

The Landlord disputed the above claims and noted that the Tenants failed to provide any notice that they would be seeking compensation for these alleged losses.

The Landlord claimed that there was, in fact, no feces in the yard or the basement as claimed by the Tenants. He stated that the old drainage pipe was not taken out, as the plumber did not wish to disturb the old line.

### 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 Tenants have the burden of proof to prove their claim.

As noted earlier in this my Decision, the Tenants indicated on their Monetary Orders Worksheet that they sought compensation for the following.

|   |                   |
|---|-------------------|
| Vet bills   | \$500.00          |
| Moving expenses   | \$800.00          |
| W.S. lost wages   | \$3,000.00        |
| Amount paid to W.S.'s daughter for filling out the Application for dispute resolution | \$100.00          |
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| <b>TOTAL</b>  | <b>\$4,450.00</b> |

All other allegations made by W.C. during the hearing which were not related to the above claims, were not considered in this my Decision.

The Tenants claim that their pet became ill as a consequence of a sewage back up at the rental unit. While it is the case that they submitted invoices in evidence, they provided no evidence which would support a finding that the procedures, examinations, or treatments related to the sewage back up. While it may very well be that they incurred these expenses, I find that they failed to prove that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act or agreement. Accordingly, I find that the Tenants have failed to prove this claim and I dismiss their claim for compensation in the amount of \$500.00.

The Tenants also claimed moving costs. As Tenants are not guaranteed perpetual residency, moving is an inevitable cost of tenancy and is not recoverable under the Act. This claim is similarly dismissed.

The Tenants also claimed \$3,000.00 in lost wages, alleging that W.C. was not able to work due to his time spent dealing with the sewage back up and other repairs to the rental unit. The Tenants failed to submit any evidence which would support a finding that W.C. missed any work; for instance, evidence such as tax returns, pay slips, or bank deposits might have supported their claim. In failing to do so, I find that the Tenants failed to prove they suffered such a loss.

I accept the Landlord's evidence that he was informed W.C. did not work and was, rather in receipt of disability benefits.

In all the circumstances, I find that the Tenants failed to prove they suffered a wage loss and I dismiss this part of their claim.

The Tenants sought the sum of \$100.00 in compensation for amounts they claimed to have paid to W.C.'s daughter to prepare the application for dispute resolution. They failed to provide any proof that such a payment was made. Further, this is not a recoverable expense under the Act and is therefore dismissed.

**In sum, I dismiss the Tenants' claim in its entirety.**

As the Tenants were unsuccessful, I dismiss their claim for recovery of the filing fee.

All other issues, which were raised by the Tenants in their reply to the Landlords' response, were not properly before me and I make no findings in that regard.

### Conclusion

The Tenants' claim for monetary compensation from the Landlord is dismissed.

Dated: January 29, 2016

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Residential Tenancy Branch

