Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, RP, PSF, LRE

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order that the landlords make repairs to the unit, site or property; for an order that the landlords provide services or facilities required by law; and for an order suspending or setting conditions on the landlords' right to enter the rental unit.

The hearing did not conclude on the first scheduled date and was adjourned for a continuation of testimony. One of the named landlords and all 3 tenants attended the hearing on both scheduled dates, and the landlords were represented by legal counsel. The landlord and all 3 tenants testified, and the parties were given the opportunity to question each other respecting the testimony and evidence provided. By consent, all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for the cost of emergency repairs?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for rent abatement, maintenance costs, and recovery of a portion of hydro costs?
- Have the tenants established that the landlords should be ordered to make repairs to the unit, site or property?
- Have the tenants established that the landlords should be ordered to provide services or facilities that are required by the tenancy agreement or law?
- Should an order be made suspending or setting conditions on the landlords' right to enter the rental unit?

Background and Evidence

The first tenant (DNS) testified that this fixed-term tenancy began on January 15, 2015 and expired on January 1, 2016, and the tenants still live in the rental unit. Rent in the amount of $1,000.00 per month is payable in installments of $500.00 on the 5th and $500.00 on the 20th of each month, as well as a $50.00 per month charge for a storage trailer belonging to the landlord. On November 14, 2014 the landlords collected a security deposit from the tenants in the amount of $575.00 which is still held in trust by the landlords and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The rental unit is an acreage consisting of a home with 3 suites, known as Zones A, B and C, and about 3.4 acres. On December 1, 2014 the landlords told the tenant to put hydro in the tenant's name for Zone A, which is the tenant's suite. The landlords had been paying for hydro for the other 2 zones, and there were 2 electrical boxes. One box runs Zone A and the other runs Zones B & C. As a prerequisite to secure the rental unit, the tenant put the utility in the tenant's name starting December 1, 2014 which was a month and a half before the tenancy began.

On January 20, 2015 the tenants received a hydro bill for January and February, 2015 in the amount of $625.00, but the tenant's family was only in the rental unit for 5 days. The landlord offered to reduce rent in half for February, so that the $500.00 rent due on February 20 could go toward the power bill, but then told the tenants that every month after they would expect an additional $100 per month to pay it off, putting rent to $1,150.00 including the storage trailer. The tenant became concerned about paying power on entire home because of outrageously high power bills and wanted an electrician to check it out. The tenant emailed the landlords several times asking them to contact BC Hydro. The landlords kept saying they would look into it and copies of emails have been provided. The tenant contacted BC Hydro 3 times to investigate and always was told that home owner had to be contacted. Each time, the tenant contacted the landlords by email or phone saying BC Hydro needed the landlords to contact them. In March, 2016 the tenant received an email from the landlord saying that and audit had been done, but no one had been there. Apparently it was due to the high-efficiency water pump. The tenant asked to get in touch with the electrician and a copy of the report, but was not successful.

The tenant then learned that Zones B and C were constructed illegally, so the tenants have concerns that because permits were not obtained for electricity on that side of the home, there is an issue drawing power. On June 11, 2016 the tenant contacted BC Hydro again saying that the tenant had been asking for a year. An inspector arrived on June 13, 2016

and it was determined that the 2 boxes were not marked, and the tenant had been paying for power for the other 2 zones, and the neighbouring tenants had been paying the tenant's power because they weren't marked correctly. The investigation is on-going.

The tenant's mother and son moved in on November 1, 2015 and occupied Zones B & C. Those zones had been previously rented to other tenants. The tenant asks that the landlords be ordered to investigate with a certified electrician and seeks reimbursement of $2,837.00, and for an order that the landlords put power in their name immediately till this is investigated.

The tenants have provided an amended Monetary Order Worksheet setting out the following claims:

- $11,875.00 rent abatement for 18 months;
- $6,302.00 for the cost of emergency repairs due to flooding;
- $2,368.00 for water expenses due to flooding/contaminated water;
- $200.00 for printing and copying;

For a total of $20,545.00.

With respect to the tenants' claim for emergency repairs, the tenant testified that in February, 2015 the tenants were informed by neighbours that the property was susceptible to flooding. The landlords had not advised the tenants of that, however the tenants received an email from the landlord husband stating that water-front property means it's subject to flooding. On April 19, 2016 flooding started and the tenants contacted the landlords the next day about increasing flooding. The landlord wife arrived alone on April 22 and took photographs. On April 23 the landlord husband sent the tenant an email saying that the septic had been flooded out and the tenants needed to be careful. He showed up the following day unannounced while about 9 people were sandbagging. He said he was on his way to go on vacation, acted confrontational toward the tenant in a threatening manner.

The landlords designated a representative for the tenants to contact who resides across the street. The tenants contacted that person several times per day. He was concerned from the onset about the flooding, and a decision was made to sandbag the entire perimeter. The tenants received several emails from the landlords saying that it happens every year and to expect another flooding in June. The landlords never offered any direction, but packed up and went on vacation. Then the tenant received another email saying that nature should take its course and the tenants were told to grab what was on their person and leave the rental unit immediately. The electrical panels were shut off by

the landlord's representative at the landlord's direction without consultation with any authority.

The tenant was in touch with the health inspector who said they had never heard from the landlords and was provided with direction from the Regional District. The tenants worked about 32 hours sandbagging. The health inspector said that he needed to talk to the owners, so the tenant gave him a cell number but after 4 tries was only able to speak to the landlords' representative.

When it was evident that the landlords were not going to help, the tenant contacted the Red Cross flood response unit who paid for the family to stay in a hotel, where they stayed for about 10 days. The tenants had animals at the time (2 dogs, 4 cats and gerbils), and the tenant has 5 kids, one with asthma, so the tenant was concerned about mold. On April 24, 2016 the tenants were advised by emergency services to secure a place for the family to go. They were concerned about the possibility of flooding entering the home, and about a safe place to shower and be during the flooding. Water was still rising and came up to the top of the stairs, within inches of coming onto the deck and inside. The house doesn't have a basement, is built on pilings or stilts, but the tenants were not aware of that. The tenants pumped the water onto the other side of the sandbags, placed dryer fans under the crawl space for about a week, and drained water from around the home.

The landlords were provided with a quote from a sand supply business, and the landlord's representative said that $5.00 per sandbag was reasonable. The tenants could only pack 100 at a time due to the weight and made several trips, working around the clock. The tenants were concerned that the flood water would enter the home. The tenant kept a ledger of hours worked, and a company would charge $25.00 per hour. Since the tenants are not professionals, they claim $17.00 per hour. A copy of the ledger has been provided. The tenants filled the bags, purchased wire to tie them, rented a trailer and sump pump and had to transport it all for which the tenants claim $6,302.00.

The tenant further testified that the tenants requested the septic be tested 11 times. On May 7, 2016 the landlord's representative was sent over to take water samples. It had a heavy smell and the representative said he would inform the landlords. The Health Authority told the tenants not to drink it, and that the landlords had not been in touch with Environmental Health either. The tenant made a formal complaint because the landlord said they were in constant contact with authorities, but weren't. There was zero concern by the landlords. Tests were taken, but the first time the tenants heard that water was safe to drink was on June 17, 2016 when the landlord provided a copy of the report. In the meantime, the tenants brought in water and showered at friends' homes.

The tenants have also provided photographs, which are which are marked with dates, showing black debris, which is why the tenant called Environmental Health. A black hole remained after water receded and left a heavy smell of septic throughout the yard. It's still smelling and yellow.

The tenant also testified that the landlords have submitted a 1998 permit to show that the suites were not constructed illegally, but it clearly states that septic was based on a 2 bedroom cabin, not a 5 bedroom home with 3 suites all having separate kitchens and bathrooms.

The landlords never took over the repairs, and told the tenants they called professionals, but no one ever showed up at the property. The landlords had a complete disregard.

The tenant also testified that the landlord references cutting grass in several emails provided for this hearing. The landlord husband had been incarcerated and when he got out of jail he relentlessly arrived onto the property without notice. In March, 2016 the landlords attempted to have the tenant sign an Addendum to the tenancy agreement to restrict access 15 feet off the deck, so the landlord could continue to be on the property without notice. He agreed, and said he would cease all communications with the tenants and allow the landlord wife to deal with the tenancy, but his actions after that show him continuing to enter the property for various purposes. Due to the nature of the charges that the landlord husband was convicted of, the tenants have concerns with respect to the safety of their children, and have told the landlords several times of their concern and discomfort. The tenants seek an order that the landlord husband not attend at the rental property, and that the landlord wife retain the landlords' responsibilities where it requires the landlord to enter onto the rental property.

The tenants claim $11,875.00 rent abatement, being 50% of the rent since the beginning of the tenancy (18 months) for all 3 rental units for the landlords' failure to inform the tenants that flooding was imminent and false advertising; $6,302.00 for repairs, being $6,102.00 for the tenants' time and effort and $200.00 for renting a pump; and $2,368.00 for water expenses. The tenants also paid 6 people for their time, and have submitted an Invoice.

The tenant also testified that the Health Authority mentioned that landlords are responsible to provide potable water and an estimated amount would be 4 gallons of water per day per person, and the tenant believes that amount is reasonable, although the amount of water purchased has not been tracked. The tenant testified that no receipts have been provided, and hauling water is still on-going. Neither the rental unit nor the tenants' belongings were damaged.

The second tenant (JLV) testified that dealing with the flooding was hard on the tenants' family, and then the tenants were treated poorly and told to pack up and move out by email.

The third tenant (SDS) testified that the landlords didn't help when flooding occurred and left it to the tenants to deal with it. When the landlord got out of jail and started walking about the property. The tenant told him he wasn't permitted to do that, but said he didn't know that but then returned again.

The landlord testified that the house is a duplex containing 3 units with connecting doorways. At the beginning of the tenancy the tenant only occupied Zone A. That unit was in very good condition, having only 1 previous tenant.

During 2015 the tenant never asked for a rent reduction due to the condition of the rental unit or for any other reason, but did so in March, 2016.

The landlord did not tell the tenants to sandbag the property, but did say that anyone helping with doing so, the landlord would contribute. The landlord told the tenants that it was not wise to sandbag, and the best course of action is to let it build up and receded to prevent water from trapping behind the sandbags, which the landlord believes happened.

The property flooded previously in 2013. The house is on pilings of pressure treated wood and the insulation is water resistant. The ground is covered with gravel and landscape material, and a flood would have to be 4 feet high to do any damage to the house.

During the flooding, the tenants' attitude toward the landlord was confrontational making it difficult to communicate with them. The tenants were told to vacate, stay away from high water and wait for it to recede which is required by government Ministries and the health authority. The landlord also told them that, but the tenants barred the landlords from the property. After the water receded it was tested and no contaminants were found, but the landlord does not recall whether or not the tenants were informed of that.

The landlords have calculated the amount of hydro charges paid by the tenants for Zone A, and the landlords have communicated that to the tenants but have not provided copies of the bills. The landlords also agree to pay to the tenants the sum of $628.00 for out-of-pocket expenses for sandbagging, and agree that no rent should be paid during the flooding.

The landlords' counsel submits that the tenancy was frustrated due to natural flooding, and the tenants chose to stay. The fixed term had expired, and counsel refers to Residential Tenancy Policy Guideline #34 – Frustration. No rent abatement for any time prior to the flooding should be awarded to the tenants, and the tenants' monetary claim is

exaggerated. There were no actual expenses, no damage to personal property, and there is no authority for a tenant's time or labor incurred by a tenant that a landlord is obligated to pay.

Analysis

The *Residential Tenancy Act* requires a landlord to provide and maintain rental accommodation 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, makes it suitable for occupation. A landlord's obligation in that regard applies whether or not the tenant knew of a breach by the landlord at the time of entering into the tenancy agreement. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party to mitigate such damage or loss.

With respect to the tenants' claim for recovery of the costs for emergency repairs, I accept that the tenants believed they were doing what was necessary to prevent damage to the property. The *Residential Tenancy Act* defines emergency repairs as:

> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
> (c) made for the purpose of repairing
>
> (i) major leaks in pipes or the roof,
> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.

I find that the repairs were considered to be emergency repairs. The tenants claim $6,302.00 for the cost of emergency repairs due to flooding but have not provided evidence of $6,302.00 having been spent. The landlords agree to repay out-of-pocket

expenses for emergency repairs in the amount of $628.00. I am not satisfied that the tenants have satisfied the test for damages for other than the receipted expenses, and I order the landlords to repay the tenants that amount.

Counsel for the landlords submits that there is no authority for monetary compensation for a tenant's time or labor in making repairs or protecting the landlord's property. There is also no authority to award punitive damages, to punish the respondent. However, there is authority for aggravated damages so long as it is specifically sought by the applicant. I refer to Residential Tenancy Policy Guideline #16 – Claims in Damages, which states, in part:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, <u>for aggravation to the injury</u> caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering."

(<u>Underlining added</u>.)

The first tenant testified that the tenants claim $11,875.00 rent abatement, being 50% of the rent since the beginning of the tenancy (18 months) for all 3 rental units. I find that the tenants have specifically sought aggravated damages for the landlords' failure to tell the tenants that the property was subject to flooding. The tenants resided in the rental unit beyond the end of the fixed term, and there is little or no evidence of a devaluation of the tenancy prior to the flood. I am not satisfied that the tenants suffered any damages as a result of not knowing, if they in fact did not know. Nor have the tenants established that the landlords have breached the *Act* or the tenancy agreement by not telling the tenants. Therefore, I find that the tenants have failed to establish elements 1 and 2 in the test for damages with respect to the claim for rent abatement for the entire tenancy.

With respect to the tenants' claim of $2,368.00 for water expenses, no records have been kept by the tenants of how much water was purchased or used. The tenants rely on information provided by the Health Authority, that 4 gallons per person per day is reasonable, however I have no idea how much the tenants actually spent. I find that the tenants have failed to establish element 3 in the test for damages.

The *Residential Tenancy Act* provides for recovery of a filing fee for the cost of making an application for dispute resolution, but not for recovery of costs associated with preparing for a hearing, and therefore, the tenants' claim of $200.00 for copying and printing is dismissed.

With respect to the tenant's testimony wherein the tenant seeks that the landlords be ordered to investigate they hydro issue, put the power bill in the landlords' name, and to reimburse the tenants the sum of $2,837.00, the landlords agreed at the hearing to provide all accounts and compare what the parties paid, and the landlords will reimburse the difference to the tenants. I hereby order the landlords to provide those accounts, and I leave it to the parties to determine the amount, if any that the tenants have over-paid. If the parties cannot come to an agreement, the tenants will be at liberty to apply for a monetary order for the difference. The tenants' application in that regard, therefore, is dismissed with leave to reapply.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the $100.00 filing fee.

The tenants also seek an order that the landlords make repairs to the unit, site or property. Counsel for the landlords submitted that the tenancy was frustrated by the flooding event, and I accept that. The water has receded, and I'm not satisfied what repairs are currently required, therefore, I dismiss that portion of the application.

However, the tenants also seek an order that the landlords provide services or facilities required by law or the tenancy agreement. Potable water is a necessary service, and I order the landlords to ensure potable water is available for use on the rental property, or that the landlords pay for water to be delivered to the rental unit.

A landlord may not enter rental property while tenanted excepted in certain situations. The tenants testified that the landlord husband continues to enter onto the property without notice, and I order the landlords to comply with Section 29:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The first tenant testified about incarceration and conviction of the landlord husband, and that concerns were raised with the landlords. That testimony was not challenged or disputed, and I find that the tenants have established that the landlord husband need not attend the rental unit. I order that all visits that a landlord is required to make comply with Section 29 above, and that those visits not include the landlord husband.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $728.00.

The tenants' application for an order that the landlords make repairs to the unit, site or property is hereby dismissed.

I hereby order the landlords to ensure there is potable water at the rental unit at all times and when not available, the landlords pay the costs of water delivery to the rental unit.

I further order that the landlord husband not attend on the rental property, and all duties of the landlord that require a landlord to enter onto the rental property be completed by the landlord wife or other designate, and that all visits to the rental property comply with Section 29 of the *Act.*

I further order, by consent, that the landlords provide all hydro accounts to the tenants and compare what the parties paid, and to reimburse any overpayment to the tenants. If the parties cannot come to an agreement, the tenants will be at liberty to apply for a monetary order for the difference.

This order is final and binding and may be enforced.

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: July 29, 2016

Residential Tenancy Branch