# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNDC**

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenants have requested compensation for damage and loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Issues

The tenant stated that an amendment to the application, increasing the claim made and requesting return of the security deposit was submitted to the Residential Tenancy Branch (RTB) on September 16, 2016. The tenants originally applied on July 22, 2016. In accordance with RTB Rules of Procedure, section 4.6 I determined that the amendment had not been made or served to the landlord at least 14 days prior to the hearing. The amendment was made just six days before the hearing date. Therefore, the hearing proceeded based on the claim set out in the original application. I explained that the deposit must be disbursed in accordance with the legislation.

The landlord said they received 13 pages of evidence from the tenants. This is the same number of pages submitted to the RTB with the application.

One of the two tenants attended the hearing and is referred to as "tenant" throughout the decision.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of $3,900.00 as a result of loss of plumbing and septic system problems?

Background and Evidence

The tenancy commenced in October 2015. Rent was $650.00 due on the first day of each month. The landlord is holding a security deposit in the sum of $325.00. The parties did not sign a tenancy agreement.

The tenants vacated the rental unit on August 1, 2016 as the result of an order of possession issued to the landlord on July 14, 2016. The tenant referenced the previous file number (543465) to show that the matters on the tenants' application were not previously considered. That decision was viewed to confirm that only matters related to a notice to end tenancy were considered.

The tenant said that in December 2015 they noticed a bad smell coming from the bathroom area. The tenant used bleach in an effort to control the smell and then contacted the landlord when paying the rent around the first day of December 2015. The landlord was told there was a sewage stench; the landlord said he would spread some lime. The tenants thought that would solve the problem but the landlord did not return to the unit.

In January and April 2016 the tenants again asked the landlord to address the problem. In May 2016 the tenants moved the washing machine out of the house as they thought that perhaps that was the source of the smell. The machine no longer functioned. At this point the tenants' brother went into the crawl space and discovered the space was filled with sewage. The pipe was broken and all waste water and sewage was collecting under the house.

The tenants called the landlord to tell him about the sewage. Four days later the landlord came and dug a hole in the yard. On May 10, 2016 a septic service company came to the home and discovered that there were two septic tanks and both were completely plugged solid and backed up into the lines.

The tenants went 4.5 days without any water or plumbing services. The tenants have claimed compensation for the loss of water and toilet services during this time. The tenants are also claiming compensation for having had to breathe in sewage odours for six months. The sewage smells were unhealthy and toxic and the sewage had been leaking for months without the knowledge of the tenants.

The tenants also claimed compensation for the absence of screens on the windows. The landlord had told the tenants they could come to his business to make screens, but when they did the landlord told them they would not pay for the materials.

An outlet in the kitchen never worked and the landlord had been asked at the start of the tenancy to repair this. The outlet was mentioned to the landlord several times but it was not repaired.

In May 2016 the tenants told the landlord the washing machine had stopped working in March 2016. The tenants' brother went to the landlord's shop to tell the landlord. The tenants have requested compensation for the loss of use of the machine as it was not repaired.

The landlord responded that the tenants had mentioned the smell on several occasions but he could not recall when. Initially the landlord told the tenants that he assumed the pipes were freezing and that he did look under the house. When the landlord was at the home in December 2015 he could not smell anything. The landlord could not recall the other date the tenants had raised the issue with him. The landlord suspected the tenants were smoking in the home.

In May 2016 the tenants' brother agreed to fix the blockage. He was paid $100.00 but could not make the repair. A copy of a receipt issued for the payment was submitted as evidence.

The landlord then hired a septic services company and the repairs were completed on May 18, 2016. Invoices for this work were supplied as evidence. The landlord said he was not familiar with septic systems and how they operate.

When the landlord was asked why he did not call a septic service company in December 2015 the landlord said he had to wait for the snow to recede. The trap door was snowed in at that time.

The landlord said that the tenants could use the neighbours facilities during the time repairs were made, so they were not denied services.

The landlord said he had never smelled any odour and that once he knew the pipes were broken the repair was completed. The tenants' brother caused a delay of several days as he first tried to make the repair. The landlord feels the claim is frivolous. The tenant had come to their shop and yelled and swore; if the tenant had been a decent person the landlord would have provided some compensation. The tenant was unreasonable.

The landlord said that the tenants' brother did not come to their business and offer to do the screens. The landlord did not refuse this and said it would not be logical to refuse this. The landlord was always open to having the screens made.

The washing machine was left by a previous occupant and the tenant was told she could use the machine but it was not included as a service.

The landlord stated the outlet in the kitchen had never worked; there was no connection to the outlet.

The tenant pointed out that initially during the hearing the landlord said he looked under the home in December 2015; then the landlord said that there was snow and the trap door was frozen and he had to wait until it thawed.

Analysis

Residential Tenancy Branch policy suggests that damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment;
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- the loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have considered the evidence and find on the balance of probabilities that the landlord failed to comply with section 32 of the Act, which provides in part:

> ***Landlord and tenant obligations to repair and maintain***
>
> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*
>
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

The landlord has confirmed that on at least two occasions, the first in December 2015, the tenants had reported the smell of sewage. In relation to the steps taken to investigate the reported issue, I found the landlords' testimony contradictory. First the

landlord said he had investigated under the home; then later in the hearing the landlord said the crawl space trap door was frozen and that he had not been able to see under the house.

From the evidence before me I find that the landlord failed to take appropriate steps to respond to the smell of sewage. This may be the result of the landlords' lack of knowledge of septic systems and a belief that if he could not smell anything then a problem did not exist. However, it is clear that the landlord was informed on at least several occasions of the tenants concerns.

I find the landlords' suggestion that the delay in repair was due to the tenants' brother agreeing to make the repair does not relieve the landlord of his obligation to repair. Given the nature of the reported problem it would have been appropriate to hire qualified professionals who are prepared to deal with septic systems.

Once the landlord became aware of the sewage leak under the house he did take action. However, I find that the tenants did suffer a loss of use of the water and toilet facilities for 4.5 days. If the landlord had responded to the concerns issued in December 2015 it is possible the loss of services could have been avoided. It was the tenants who located the sewage leak and who had to reside in a home that had sewage smells seeping into the living space. I find that this entitles the tenants so compensation for the loss of value of the tenancy.

Therefore, pursuant to section 67 of the Act I find that the tenants are entitled to compensation in the sum of $96.12 for loss of use of the facilities over 4.5 days and an additional $400.00 for loss of quiet enjoyment of the rental unit during the month of May 2016.

The Act sets out the requirement to minimize a claim:

*Liability for not complying with this Act or a tenancy agreement*

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The tenants did not take any decisive action between December 2015 and May 2016. Even though the landlord failed to make repairs in a timely manner, the smell of the sewage over those months could have been dealt with more swiftly, rather than allowing the claim for compensation to grow over a period of six months.

In relation to the screens, outlet and washing machine I find that the tenants have failed to mitigate the claim made. There was no evidence before me that the tenants took any steps to appropriately deal with these matters in a timely fashion. A party cannot sit back and allow a claim to grow. For example, the tenants could have placed their concerns in writing and, in the absence of action by the landlord, made a claim earlier in the tenancy, in order to minimize the claim.

Based on these determinations I grant the tenants a monetary Order in the sum of $496.12. The balance of the claim is dismissed. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to compensation in the sum of $496.12. The balance of the claim is dismissed.

This decision is final and binding and 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: September 22, 2016

Residential Tenancy Branch