



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants requested an Order that the Landlords make repairs to the rental unit as well as for compensation for loss under the tenancy agreement, the *Residential Tenancy Act*, or regulations, for authorization to reduce the rent for repairs, services or facilities and to recover the filing fee.

Both parties appeared at the hearing. 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 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. Are the Tenants entitled to monetary compensation from the Landlords in the form of a rent reduction?
2. Should the Landlords be ordered to make repairs to the rental unit?
3. Should the Tenants recover the filing fee?

Background and Evidence

T.J. testified that the Tenants first moved into the rental unit December 29, 2015. A copy of the Residential Lease Agreement dated January 1, 2016 was introduced in evidence. Pursuant to

the agreement the tenancy was for a fixed one year term ending January 1, 2017. Monthly rent is payable in the amount of \$1,650.00 per month.

The Tenants requested that the Landlords complete the following repairs:

- repair the dishwasher;
- remove mould from downstairs ceiling and repair ceiling; and
- fix the basement flooring which has come up because of flooding.

The Tenants also requested the following compensation:

Loss of food as a result of an inoperable fridge	\$70.00
Tenants' compensation for delivery cost for fridge	\$30.00
Increased hydro costs due to inoperable furnace	\$72.00
Inconvenience due to inoperable furnace	\$78.00
\$100.00 per month in compensation for the inoperable dishwasher	\$900.00
Increased cost of hydro and hot water due to malfunctioning clothes washer	\$200.00
Costs to attend laundromat due to malfunctioning clothes washer	\$150.00
Compensation for two hours of Tenants' time fixing the clothes dryer	\$40.00
Compensation for Tenants' time to clean the rental unit at start of tenancy	\$250.00
Compensation for Tenants' time to clean the rental unit due to water flood	\$60.00
Compensation for "Stress"	\$500.00
Filing fee	\$100.00
TOTAL CLAIMED	\$2,450.00

The Tenant testified that she and the other Tenant have five children aged 10, 10, 13, 14, and 15.

The Tenant further testified that five days into the tenancy the fridge stopped working and that for approximately 1.5 days the fridge did not work. The Tenants then purchased a new fridge, the cost of which was taken from the rent. The Tenant stated they picked up the fridge and as such seek \$30.00 in compensation for their time.

The Tenant stated that she did not realize the fridge had stopped working until the morning and as a result all the dairy products and meat were disposed of and she estimates the value of the spoiled food to be \$70.00.

The Tenant further testified that the furnace stopped working on January 8, 2016. Fortunately, the Tenants had two plug-in oil heaters which they used for a week. However, three of their children had bedrooms in the basement and the oil heaters were insufficient to heat the room

such that the three children moved into the living room. She testified that as a result of running the plug in oil heaters they incurred and increased hydro cost of \$72.00.

The Tenant stated that she noticed the dishwasher was leaking as of January 14, 2016 and that as it was malfunctioning she has been washing dishes by hand for seven people. As a result the Tenants seek compensation in the amount of \$100.00 per month for nine months of the tenancy for a total of \$900.00.

The Tenant also stated that the washing machine did not work properly. She stated that because the washing machine did not drain properly, they were required to rewash the clothes on a spin cycle after each wash. She stated that eventually it was determined that the motor was broken and that approximately a month and a half before the hearing the washing machine was finally fixed.

The Tenant stated that her husband also had to fix the dryer on March 22, 2016 as the heater burned out.

The Tenant confirmed that they moved into the property prior to meeting the Landlords and that the rental unit required substantial cleaning. She further stated that a move in condition inspection report was not conducted.

The Tenant testified that during the tenancy there were also four floods as a result of a crack in the foundation and that the water comes in from the corner of the right hand side of the basement in the rec room during heavy rain. She further testified that at the time of the hearing the issue has not been resolved. She claimed that as a result of heavy rain in the end of June and beginning of July within 10 minutes of the rain storm water was pooling out of the wood. She said that as a result the flooring has been peeling up and the basement smells musty. She confirmed she does not have a dehumidifier although she has attempted to dry the area out with heaters. Finally she stated that when the flood occurred the Landlord did not send in a restoration company, nor have the Landlords attended the rental unit to inspect the damage.

The Landlord O.L. testified as follows.

In terms of the Tenants claim for \$70.00 in compensation for the loss of food, O.L. stated that the Tenants could have put their food outside as it was cold in January.

In terms of the claims relating to the furnace, the Landlord stated that the male Tenant initially told him that the furnace was "running slow". The Landlord confirmed that he arrived on the weekend and tried to repair it himself and when he could not do so, he hired the company who installed the furnace. He stated that approximately one week later the furnace was repaired as there was a delay in obtaining a required part. He also stated that he was aware that three of the children had to sleep upstairs because the basement was too cold but he was informed by the Tenants that "everything was okay" because they had space heaters.

The Landlord testified that the dishwasher never worked and that the Tenants were instructed at the start of the tenancy not to use it, and not to turn on the water. The Landlord claimed that the dishwasher was not part of the rental agreement.

In terms of the Tenants' claim for compensation for the washing machine, the Landlord testified that the issue with the washing machine was not that it wasn't working; rather, it was that it drained slowly due to the Tenant's failing to clean the filter.

In terms of the Tenants' claim for repairing the dryer, the Landlord stated that the washer and dryer are new (approximately four years old). He confirmed that he was aware the male Tenant had to unplug the lint on the back of the dryer. The Landlord stated that he believed that the two hours of labour claimed was excessive, and that in any case had the lint been regularly cleared out of the lint tray regularly the back wouldn't have plugged up as it did.

In terms of the Tenants' claim for cleaning the rental unit when they moved in, the Landlord stated that he already compensated the Tenants for this. Firstly, he stated that they allowed the Tenants to move in early, reduced the rent from \$1,700.00 to \$1,650.00 to accommodate their request for reduced rent, as well as breaking up the rent payments into two payments.

In terms of the Tenants' claims for compensation for flooding in the basement, the Landlord stated that he had the foundation inspected and there are no cracks. He further stated that there was some water during heavy rain, but it was easily cleaned up. He also stated that it may be possible that because of the severe rain the water came through a window.

Analysis

The full text of the *Residential Tenancy Act, Regulation, and Residential Tenancy Policy Guidelines*, can be accessed via the website: www.gov.bc.ca/landlordtenant. For the purpose of this my Decision I will reproduce some relevant sections of those documents.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and reads as follows:

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.

- (2) 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.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

With respect to major appliances, *Residential Tenancy Branch Policy Guideline 1* provides as follows:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I find that that the Tenants had a reasonable expectation that the appliances located in the rental unit would be functioning. I do not accept the Landlord's evidence that he told the Tenants not to use the dishwasher. Had that been the case, the Landlord could have easily included this on the rental agreement. Further, I find that the Landlords have failed to repair the dishwasher as required by the *Act*, the *Regulations* and the *Policy Guidelines*.

Therefore, I Order as follows:

1. The Landlords shall, by no later than November 15, 2016 repair or replace the dishwasher.

Additionally, I accept the Tenant's evidence that the rental unit has experienced flooding which has created mold in the basement as well as lifting of the basement flooring.

Clause 56 of the residential tenancy agreement provides as follows:

56. "The Landlord will use reasonable efforts to maintain the Property in such a condition as to prevent the accumulation of moisture and growth of mold, and to promptly respond to any written notices from the Tenant in relation to the accumulation of moisture and visible evidence of mold."

I accept the Tenant's evidence that the rental unit has experienced flooding. I am unable to determine whether this flooding has occurred due to the condition of the foundation or for some other reason. The Landlord claims he has had this inspected and determined the foundation is not the issue. In any case, I find that the Landlords have failed to attend to this required repair in an appropriate and timely fashion and that in failing to do so, the rental unit has been negatively affected creating mold, lifting of the flooring, as well as a musty smell in the basement. In failing to address this issue, the Landlords have breached their obligations under the *Residential Tenancy Act*, the Regulations, and the tenancy agreement.

Consequently, I also Order as follows:

2. The Landlords shall, by no later than November 15, 2016, retain the services of a restoration company to inspect and report on, as well as repair the water issues in the basement including the mould in the basement ceiling and the flooring.
3. The Landlords shall also, within seven days of receipt of same, provide to the Tenants a report from the remediation company regarding their findings as to the source of the water.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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.

I accept the Tenant's evidence that due to the malfunctioning refrigerator, they suffered a loss of \$70.00 in food. The Tenant confirmed she has a large family and I find it reasonable that she would have had dairy and meat products in such quantities, and which would spoil if not refrigerated. While it may have been possible for the Tenants to put their food outside in the cooler temperatures, I accept the Tenant's evidence that she was unaware the refrigerator had stopped working until the food had already spoiled. Accordingly, I grant their request for compensation in the amount of **\$70.00**.

I decline the Tenants' request for compensation in the amount of \$30.00 for their time to deliver the replacement refrigerator. The Tenants were compensated for the cost of this appliance and I find that the time to discuss the delivery cost was at the time they dealt with its replacement. The Landlords may have made other arrangements for delivery and by failing to address this at the time the Tenants denied the Landlords an opportunity to mitigate this alleged loss.

I accept the Tenants' evidence that they suffered a loss of **\$72.00** for increased electrical charges associated with using plug in heaters when the furnace stopped working and I award them compensation accordingly. I also award them the claim for \$78.00 for the "inconvenience" of having the basement bedrooms unusable. While I was not provided with any evidence as to the size of the rental, the evidence suggests the downstairs area was unusable for a period of time such that two of the Tenants' children lost the use of their bedrooms and were relocated to the upstairs living room. I find that **\$78.00** is reasonable request for this obvious inconvenience and loss of usable space.

As noted previously I find that the dishwasher was included in the tenancy and therefore I Ordered the Landlords to make repairs to it, or replace it if necessary. I also find that the Tenants are entitled to compensation for the lack of use of a dishwasher and award them the sum of \$50.00 per month. As the tenancy began December 29, 2015 I award the Tenants compensation in the amount of **\$500.00** for the 10 months they have not been able to use the dishwasher.

Should the Landlords fail to repair or replace the dishwasher by November 15, 2016 as I have Ordered in this my Decision, the Tenants may deduct a further \$50.00 from the December 2016 rent.

I decline the Tenants' claim for increased electricity costs related to their claim that the clothes washer did not function properly as well as their claim for the costs to attend a laundromat. The Landlord submitted that the Tenants failed to clear the drain of the machine such that it drained slowly. Regular cleaning of the drain filter is necessary to ensure efficient operation of the clothes washer; a failure to do so, particularly with heavy use (such as in the case of a large family), may cause poor drainage and increased wear on the motor. In all the circumstances, I am unable to find that the issues related to the clothes washer were the result of the Landlords' actions, or neglect; accordingly, I find the Tenants have failed to prove their claim in this regard.

I similarly decline the Tenants' request for compensation in the amount of \$40.00 for the Tenant's husband to repair the dryer. Again, the time for the Tenants to raise this request was at the time the repair was necessary. The Landlord submits that this "repair" was necessary as the Tenants failed to regularly clear the dryer lint guard. The Tenants deny this. I am unable, on the evidence before me to determine the cause. As the Tenants bear the burden of proving their claim, I find this claim must not succeed. Further, I find that the Landlords may have chosen to hire a professional or attended to it themselves. In opting to do the repair themselves, the Tenants denied the Landlords the opportunity to mitigate this loss. For these reasons I deny their claim for related compensation.

I accept the Landlord's claim that the Tenants were compensated for their time to clean the rental unit at the start of the tenancy. Again, I find that the time for the Tenants to raise this issue was at the time they moved in, not seven months later when they filed their application for dispute resolution.

As I have found the Landlords failed to address the flooding in the basement in a timely and appropriate manner, I award the Tenants their request for **\$60.00** for the time spent cleaning the rental unit due to flooding.

The Tenants also seek \$500.00 in compensation for "stress". While I accept they have been frustrated by the issues with the appliances as well as the flooding of the rental unit, I find that they have submitted insufficient evidence to support their claim for \$500.00.

As the Tenants have been partially successful, I award them recovery of one half of the filing fee in the amount of **\$50.00**.

In summary, I award the Tenants the sum of **\$830.00** for the following:

Loss of food as a result of an inoperable fridge	\$70.00
Increased hydro costs due to inoperable furnace	\$72.00
Inconvenience due to inoperable furnace	\$78.00
\$50.00 per month in compensation for the inoperable dishwasher	\$500.00
Compensation for Tenants' time to clean the rental unit due to water flood	\$60.00
½ of filing fee	\$50.00
TOTAL AWARDED	\$830.00

The Tenants are granted a Monetary Order in this amount and must serve the Order on the Landlords. If necessary, the Order may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords are ordered as follows:

1. The Landlords shall, by no later than November 15, 2016 repair or replace the dishwasher.
2. The Landlords shall by no later than November 15, 2016, retain the services of a restoration company to inspect and report on, as well as repair the water issues in the basement including the mould in the basement ceiling and the flooring.
3. The Landlords shall also, within seven days of receipt of same, provide to the Tenants a report from the remediation company regarding their findings as to the source of the water.

The Tenants are awarded monetary compensation in the amount of **\$830.00**.

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: October 20, 2016

Residential Tenancy Branch

