



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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. The parties were affirmed. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$11,536.00 as damage or loss due to a flood in the rental unit?

Background and Evidence

This tenancy commenced on March 1, 2016. The tenants owned the home and sold it to the respondent. The contract of purchase and sale provided as evidence included an agreement that the basement suite would be rented back to the vendors for a three month period of time. The tenants pre-paid rent in the sum of \$1,200.00 for each of the three months, ending May 31, 2016.

The landlord resided in the upper level of the home.

There was no dispute that on March 28, 2016 a pipe in upper level of the home burst, resulting in a serious flood to the lower level of the home. The upper level of the home was also damaged. A tenant was home at the time of the flood and telephoned the landlord. The landlord was able to return to the home within 30 minutes. The landlord did not know where the shut-off valve was; neither did the tenant. The value was eventually located and the water turned off.

The tenants have made the following claim as a result of the flood:

Three months' rent	\$3,600.00
Alternate living cost	1,800.00
Storage	599.55
Move piano	315.00
Canada post	165.85
Loss of income	2,500.00
Canada post	55.60
Loss of quiet enjoyment April and May	2,400.00
TOTAL	\$11,436.00

An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. "Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee. Therefore, claim for postal costs was declined.

The tenants confirmed that the landlord has returned \$1,800.00; given after the tenants filed for dispute resolution.

On the day of the flood the landlords' emergency claims service had an adjuster attend at the rental unit. That individual was at the hearing as a witness for the landlord and provided affirmed testimony.

The insurer arranged for a restoration company to commence work. Large fans were immediately installed in the rental unit. The adjuster testified that after a flood of this nature fans are routinely left running for a period of four to seven days, in an attempt to dry the structure. During this time testing for hazardous materials was completed.

Effective April 6, 2016 it was determined that the unit could not be sufficiently dried and that the restoration work must begin immediately. The tenants submitted a copy of a letter the landlord issued on April 6, 2016, asking the tenants to vacate. The landlord explained that the basement would need to be demolished as a result of the flood. The tenants submit this was the first request made that they vacate.

The tenants had insurance and were offered support for living costs equivalent to rent paid. The tenants supplied a copy of an email sent on April 8, 2016 by the tenants' insurer. The insurance representative wrote that they could not assist with locating new accommodation while the unit was habitable.

The tenants immediately began to seek out new accommodation and were able to vacate on April 18, 2016. It was not easy for the tenants to locate a home that could accommodate four adults, two children and a dog. The tenants said the landlord made

no effort to assist the tenants with this difficult move. The landlord just told the tenants to vacate, with no notice and did not seem to understand that the tenants should be assisted.

The tenants were asked by counsel what the landlord could have done to prevent the flood. The agent replied that the landlord was not at home at the time of the flood and when the landlord returned to the home she was not able to help. The tenants, when I asked directly, said that they could not prove the landlord did anything to delay the response to the flood.

The landlords' witness testified that there was moisture throughout the majority of the home. The work that was required to be completed was considered an emergency repair. If the landlord did not allow the restoration work to commence quickly the landlords' insurance coverage could be negatively impacted due to the potential development of hazards such as mold. A determination was made that there was a potential health risk due to microbial and mold growth. The landlord was advised that the tenants must vacate the unit as the emergency repair must proceed quickly. The landlord vacated the home immediately after the flood occurred.

The landlord provided detailed evidence setting out the adjusters reports issued on March 29 and May 16, 2016. The reports provided information on the extent of work being completed in the home; with a date of loss as March 28, 2016. The May 16, 2016 report indicated that the water damage was caused by a burst water supply line servicing the toilet in the upper portion of the home; the result of age related wear and tear. The cost of repair resulted in a \$120,000.00 claim.

When asked why they had remained in the home until April 18, 2016, the tenants said that the home had a roof, electricity and water; which was better than living on the street.

The tenants set out their claim for compensation and the landlord responded to each item.

Counsel for the landlord submits that as of the date of the flood the tenancy was frustrated. The landlord submits that the tenants would then be entitled to return of rent paid, from the time of the flood. As a result of the flood the unit could not be occupied and required a complete rebuild. The tenants had lived in the home for nine years and knew the home well. The landlord had occupied the home for less than one month. There is nothing to support the landlord did anything to exacerbate the situation or that the landlord was negligent. In the absence of any fault by the landlord there is no obligation between the parties.

Analysis

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

67 *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

In order to succeed in a claim a party must prove that the other party breached the Act. Damages flow from non-compliance with the Act.

From the evidence before me I find that the flood was the result of a burst water line due to age related wear and tear. The tenants provided no evidence that there was any other cause for the flood or that the landlord caused the flood by failing to meet the obligation to repair. Therefore, I find that there is no evidence that the landlord failed to comply with the Act in relation to the obligation to repair.

I have considered the extent of the flood and the damage caused. Residential Tenancy Branch policy suggests that a contract is frustrated where, without fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically change the circumstance that fulfillment of the contract as originally intended is now impossible. When a contract is frustrated the parties to the contract are discharged from fulfilling their obligations under the contract. While the test for determining that a contract has been frustrated is a high one, I find that in this case the flood rendered the home uninhabitable and, as a result, the tenancy agreement was frustrated effective March 28, 2016, the date of the flood. The lower level of the home required a complete emergency repair and was not fit for habitation, given the potential for mold growth and the need to remove wet building materials and the need to mitigate any further loss.

The tenants did not choose to remain in the home for any reason other than they could not locate a new residence. The landlord asked the tenants to vacate, based on the advice of the insurer; but the tenants did not relocate until April 18, 2016.

As the contract was frustrated effective March 28, 2016 neither party had any further obligations or rights under that contract. The landlord had not breached the Act; the flood was due to no fault of the landlord. The landlord was not required to assist the tenants in locating accommodation; that would fall to the tenants and any tenant insurance policy that might provide support.

The landlord has returned \$1,800.00 to the tenants. I find that the tenants are entitled to return of all rent paid from March 28, 2016 to the end of the tenancy, May 31, 2016, inclusive. Pro-rated daily rent is \$39.45.

Therefore, from March 28 to March 31, 2016 the tenants are entitled to compensation in the sum of \$157.80 plus the sum of \$1,200.00 for each of April and May 2016. The total

sum owed to the tenants is \$2,557.80. As the tenants have previously received \$1,800.00 I find that the tenants are entitled to the balance of \$757.80.

The balance of the claim is dismissed.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenants are entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary order in the sum of \$857.80. 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 tenancy was frustrated effective March 28, 2016.

The tenants are entitled to return of all rent pre-paid from March 28 to May 31, 2016, inclusive.

The tenants are entitled to filing fee costs.

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: November 25, 2016

Residential Tenancy Branch