



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC; FF

Introduction

This is the Tenants' Application for Dispute Resolution, made June 6, 2016, seeking compensation for damage or loss and to recover the cost of the filing fee from the Landlord.

This matter was originally scheduled to be heard by teleconference on November 30, 2016, but had to be rescheduled for administrative reasons. The Hearing was rescheduled to take place at 1:30 p.m., December 8, 2016. The Residential Tenancy Branch advised both of the parties of the new Hearing time, date, and access codes.

The Tenant BL and his assistant dialed into the Hearing, which continued for 1 hour and ten minutes. The Landlord did not sign into the Hearing and the matter was decided in her absence.

The Tenant BL gave affirmed testimony at the Hearing.

BL testified that he served the Landlord with the Notice of Hearing documents by registered mail sent June 10, 2016. He stated that he also sent his documentary evidence by UPS courier on August 22, 2016. BL stated that the second package was sent by courier because of the impending mail strike. The Tenant provided the tracking numbers for both packages. BL testified that neither package was returned to him. I am satisfied that the Landlord was sufficiently served with the Notice of Hearing and documentary evidence. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenants.

The Tenants originally sought a monetary award in the amount of \$3,872.00. At the outset of the Hearing, the Tenant BL stated that the Tenants wish to amend their monetary claim to a reduced amount of \$2,605.21. I allowed this amendment, as there

was no prejudice to the Landlord and the Tenants had submitted the lower cost in a Monetary Order Worksheet, which was also served on the Landlord.

Issue(s) to be Decided

Are the Tenants entitled to compensation for loss under the Act, regulation or tenancy agreement?

Background and Evidence

BL gave the following testimony:

This tenancy began in August, 2015. The tenancy agreement was for a fixed term, ending July 31, 2016. Monthly rent was \$1,300.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$65.00 on June 24, 2015, which was returned to them at the end of the tenancy.

There was a flood in the rental unit on October 31, 2015, and another one followed on November 12, 2015. The first flood resulted from a water leak into both bedrooms of the rental unit after a night of heavy rain. The eaves trough and drainage to the side of the house were found to be the issue. On November 2, 2015, a construction company tore up the flooring in the two bedrooms and most of the main hallway, down to the concrete. Industrial fans and dehumidifiers were left in the rental unit to dry up the floors and the walls. The fans and dehumidifiers ran day and night until November 9, 2015, when they were removed. The Tenants paid full rent for the month of November, 2015.

The construction company told the Tenants that it might take four weeks for the damage to be remediated. The Tenants decided to stay in the rental unit. The Landlord verbally agreed to a rent reduction and hydro reimbursement, but later that same day reneged on the verbal agreement. Instead, the Landlord pressured the Tenants to sign a mutual agreement to end the tenancy, which she left in their mailbox.

On November 12, 2015, there was a second flood in the rental unit. The water damage was more severe than the first flood, flooding the kitchen. The second flood required more floors to be torn up. The Tenants stacked their furniture on an 8 x 7 foot patch of laminate in the living room and a 9 x 7 foot section in the den. On November 13, 2016, the eaves troughs and the side drainage pipes were serviced and replaced. The Landlord left for a 6 week vacation on November 14, 2015, without resolving the issues regarding compensation, what the timelines were for repairs, or where the Tenants

would live in the meantime. The Landlord suggested that the Tenants pay full rent for the month of December, 2015, and said that she would refund a pro-rated amount when the Tenants were able to move back in. The Tenants moved into alternate temporary accommodation at an Airbnb and filed an insurance claim for moving and storage costs.

By the end of November the drywall was repaired, but the Tenants had still not received clarification on a timeline for the rest of the repairs. The Landlord still wanted the Tenants to pay rent for December, but also wanted the Tenants to move out as soon as possible. The Tenants were able to find a new apartment effective January 1, 2016.

The Landlord had left her son "R" to act as her agent while she was away; however, had not left R with any plan of action for while she was away. The Landlord did not respond to e-mails from the Tenants and R did not cooperate with respect to arranging a move-out inspection, cancelling the inspection twice. The Tenants performed the inspection on their own and arranged to meet with R on his lunch hour to have the paperwork signed.

The Tenants hired a moving company and moved out of the rental unit on December 2, 2015.

The Tenants acknowledged that both parties felt frustration and emotional stress from the flood, but felt that the Landlord did not follow the Act. The Tenants stated that the landlord's loss of income could have been claimed through her own insurance company.

The construction company had to move the Tenants' Jeep T-tops in order to do repairs. The Tenants left a note for the construction company advising them to be wary of buckles on the T-tops, but the T-tops were damaged by the construction company when they moved them. The Tenant's insurance policy would not compensate for the damage because the damage was not caused by the flood. The Tenants submit that the construction company was the Landlord's agent, through contract, and therefore they seek compensation for this damage.

The Tenants seek compensation, calculated as follows:

Rent reimbursement for November, 2015	\$1,300.00
Cost of additional hydro for fans and dehumidifiers (calculation provided in evidence, along with hydro bills)	\$50.67
Tenants' insurance deductible	\$500.00
Damage to Tenants' property (Jeep T-tops)	\$638.90

(two estimates provided, lessor one used)	
Cost of serving documents and photographs	<u>\$115.64</u>
TOTAL CLAIM	\$2,605.21

Analysis

The Tenants provided documents in support of their monetary claim. I accept the Tenants' undisputed, affirmed testimony in its entirety.

Section 7 of the Act provides:

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.

[reproduced as written]

Section 67 of the Act provides:

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

[reproduced as written]

I find that the Tenants did what was reasonable to minimize their loss. The Tenant's documentary evidence shows that they attempted to come to an agreement with the Landlord, sought an early remedy, and used their insurance plan to pay for some of their costs.

The Tenants paid full rent to the Landlord for November, 2015. I find that the Tenants had only partial use of the rental unit from October 31, 2015 to November 12, 2015, and no use of the rental unit, except for storage, from November 13, to December 2, 2015. Therefore, pursuant to the provisions of Section 67 of the Act, I award the Tenants the amount of \$1,000.00 in compensation. I accept the Tenants' calculations with respect to additional hydro costs that the Tenants had to pay, and award them this portion as

claimed. I also find that the Tenants have proven their claim for the cost of the insurance deductible and award this portion as claimed. Likewise, I find that the Tenants are entitled to compensation for their damaged property and award them the lower of the cost estimates for the Jeep T-tops. There is no provision in the Act for recovery of the cost of service or document production. This portion of their claim is dismissed.

The Tenants' Application has merit and I find that they are entitled to recover the cost of the \$100.00 filing fee.

Conclusion

I hereby provide the Tenants with a Monetary Order for service upon the Landlord, calculated as follows:

Monetary award	\$2,189.57
Recovery of filing fee	<u>\$100.00</u>
TOTAL	\$2,289.57

This Monetary Order may be filed in the Provincial Court of British Columbia (small claims) and enforced as an Order of that Court.

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: December 18, 2016

Residential Tenancy Branch