Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application 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 *Residential Tenancy Act (Act*), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The hearing was adjourned and reconvened on this date.

The tenants, an advocate for the tenants and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenants provided substantial documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had adjourned. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on July 01, 2006 for this basement suite and ended on May 01, 2016. Rent for this unit was $900.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of $450.00 on July 01, 2006.

The tenants' advocate provided statements on behalf of the tenants and stated the following points:

The tenants lived in this basement suite with a roommate. Although the tenancy agreement states rent was due on the first of each month tenants paid it on the 7th day as agreed by the landlord.

Starting in January 2008 the basement suite flooded repeatedly because the single sump pump was inadequate to cope with draining rain water when the rainfall was very heavy. Subsequent floods occurred in 2009, twice in 2012 and again in 2015 after heavy rain fall in the region. After the 2012 floods the tenant filed for dispute resolution and a hearing was held on March 15, 2012. At that hearing the Arbitrator ordered the landlord to fire a professional restoration company to do repairs in the suite and to hire a professional plumber to inspect the sump pump to evaluate the effectiveness of the pump and replace it if required. The tenant was ordered to reduce his rent by $225.00 per month until the repairs were completed. The Arbitrator also ordered a rent increase to be set aside and the tenants were awarded the amount of $2,865.00 for damaged furniture, labour costs and a retroactive rent reduction for three months plus the filing fee. This award was taken from the rent the tenants owed.

After this decision was made the tenants and landlord agreed that the tenants would perform the repairs on the basement suite and the landlord offered to pay for the materials used and for the tenants' labour costs at a discounted rate. These costs would be applied to rent.
The tenants attempted to get insurance for their belongings but were informed by an insurer adjuster that they would not cover flood damage unless the basement suite had two sump pumps, a main pump and a backup pump to prevent further flooding.

The landlord did not comply with the remainder of the decision and orders made at the March 15, 2012 hearing and get a plumber in to evaluate the sump pump to see if it was adequate to cope in heavy rain fall sessions.

In November, 2015 after heavy rain, the basement suite suffered another flood which soaked the floors, carpets, walls and furniture. The tenants and two friends attempted to deal with the flood water for around two hours by using an industrial vacuum and buckets to try to drain the flood water; however, as the sump pump had again failed the tenants' roommate had to call the fire department to assist with removing the flood water from the suite.

The tenants agreed the landlord did appear at that time and brought another industrial vacuum. The tenants returned to the suite after the fire service had left and cleaned up a bit more; however, the suite was so affected by the flood water that the tenants all had to leave. The tenant HP went to friends for a week and the tenant PB and their roommate found alternative accommodation for 32 days which was paid for by the tenant HP.

On or about November 15, 2012 the tenant HP returned to the suite and started to clean up and move all furniture from the two bedrooms and the den into the living room so the suite was ready for carpet removal.

As a result of the additional costs incurred by the tenant HP for alternative accommodation for his son and the roommate the tenants withheld the rent for November, 2015 and did not pay rent after that date. Utilities were paid to the upper tenants each month except for March and April, 2016. The tenant HP explained to the landlord about his additional costs; however, the landlord still attempted to evict the tenants on or around November 17, 2015.

Around November 20, 2015 the tenants informed the remediation company engaged by the landlord that as long as the carpets were cleaned and replaced in the unit the tenants would be satisfied to move back into the suite; however, due to the landlord's unwillingness to remediate the suite or compensate the tenants the tenants filed this application for dispute resolution.

On or about November 27, 2015 the tenant HP sent a text message to the landlord informing him that it had been 20 days since the flood and that the carpets had still not been replaced and that it was costing the tenant $90.00 a day to pay for alternative accommodation for his son and roommate. On or about December 05, 2015 the landlord served the tenants with a hearing

package containing 10 Day Notice to End Tenancy which the landlord claimed had been served early on November 18 but which the tenant had not previously seen.

On December 08, 2015 the tenant HP had to do further work in the unit to prepare it for the return of his son and roommate as he could no longer afford to pay for alternative accommodation for them. He cleaned the bedrooms, he had to remove all the nails from the plywood floors so they could walk safely as the carpets had not been replaced and he moved all the bedroom furniture back into those rooms and the den from the living room.

The tenant filed additional evidence for the landlord's hearing; however, this was filed with the tenants' application and not the landlords and was not considered at the landlord's hearing. As a result the Arbitrator did not consider the tenants' evidence for the hearing held on January 06, 2016 concerning the cost of emergency repairs and the landlord's application was successful and an Order of Possession and Monetary Order were issued to the landlord.

The tenants applied for a judicial review of the January 06, 2016 decision and the matter was set aside to be heard at this hearing.

Further to this in January, 2016 a City Inspector attended at the suite and confirmed to the tenants that the suite was unsuitable for habitation. The tenants attempted to obtain a copy of the City report and this is still pending.

As of April 30, 2016 when the tenants vacated the suite the remedial work was still not completed and the carpets had still not been fitted in the suite.

As a result of the flooding the tenants suffered a significant monetary loss as follows:

Flood water damaged the tenants' furniture and possessions – $3,799.22. The tenant is only claiming for some of the larger pieces of damaged furniture and referred to their photographic evidence and estimates to replace this furniture. The furniture was approximately five years old and consists of the following items; a wardrobe that was so badly water damaged it warped the bottom of the wardrobe and it was no longer stable. The replacements costs for this wardrobe are $772.00; two five drawer chest units were badly damaged by water these were purchased

from a furniture shop and the tenant has provided a comparable estimate for similar furniture of $674.98 each; end tables and a coffee table were also damaged. These were purchased at home depot but the tenant could no longer find similar ones sold there so has provided an estimate from Lazboy furniture store showing the cost to replace the two end tables and the coffee table with a 12 percent discount is $1,676.79. The tenant testified that when these were purchased approximately five years ago the tenant paid $1,800.00 or $1,900.00 for these items.

The tenant testified that all this furniture was purchased after the flood occurred in 2011 and the tenants' furniture was damaged at that time. Currently the tenants have not yet replaced these items as they is unable to afford to.

Compensation for alternative housing - $2,400.00- The tenant HP testified that the tenant BP and their roommate CO had to move to rooms elsewhere after the flooding occurred. The tenant HP paid for this accommodation for 32 days. CO's accommodation was $1,120.00 and BP's accommodation was for $1,280.00. The tenant agreed that CO was not a tenant on the tenancy agreement but they did have intent to rent form presented at the Supreme Court hearing that shows that CO did rent a room and the landlord had signed this form. Therefore this proves the landlord was aware that CO lived in the unit with the tenants.

BP testified that they slept in this alternative accommodation for 32 nights and in the day time BP was working but he did return to the rental unit to collect clothing and personal items maybe three times in the 32 days. After the 32 days the tenant HP could no longer afford to pay for their accommodation so they both had to return to the rental unit on December 09, 2015.

Compensation for labour costs - $720.00 - Compensation for four people working to remove the flood water on November 07, 2015; the tenant seeks to recover $160.00; the tenant cleaned the unit and removed furniture and belongings from the bedrooms and den so the restoration company could remove the carpets on November 12, 2015; the tenant seeks to recover $180.00; for the tenant to clean the bathrooms and take the nails out of the plywood to make the flooring safe on December 08, 2015; the tenant seeks to recover $100.00; to return bedroom furniture and belongings on December 09 when the other tenants returned to the unit; the tenant seeks to recover $180.00.

The tenant testified that he had to do this work as the landlord only showed up on the day of the flood after the tenant had called him and he checked the sump pump. The fire service said the landlord had told them he had a restoration company coming later that day; however, they did not come for one or two days. The tenant had provided the landlord with a key to the unit so he could gain access. The restoration company only installed fans and dehumidifiers and a week later they returned to remove the carpets. The restoration company left there number with the tenants to call them when everything was dry and the tenants agreed that the restoration company would come back and replace the carpets after they had been bio-cleaned. The tenant would move everything out of the bedrooms so they could remove and replace those carpets first and then they would do the living room carpets. The tenant testified that they called the restoration company five or six times and when they got hold of them they were told that the landlord had said for them to ignore doing the work until after the tenants had vacated the unit. The tenant contacted the landlord on either November 27th or 28th to ask him when the restoration company was returning as the tenant was still paying rent for the other tenants to live elsewhere. The landlord said that the restoration company had been but that the tenants had not allowed them in. The tenant HP testified that this is untrue; the tenants wanted the restoration company to complete this work. At no time did the landlord provide a Notice of Entry to the unit for the restoration company to come and do the work. The tenant HP testified that in January, 2016 the restoration company did come and the tenants' roommate told them that the matter was now before the Supreme Court.

Reduction of rent for lost amenities and loss of quite enjoyment - $2,700.00. The tenant testified that the landlord has already received a Monetary Order for unpaid rent from November and December, 2015 and January, 2016 of $2,700.00 but this order was set aside at the Supreme Court and ordered to be reheard at this hearing. The tenant seeks a rent reduction from November, 2015 to April, 2016 for half the rent for each month to the amount of $2700.00. The tenant testified that the rental unit was in substantially the same condition as it was after the flood, the restoration company did not return to make the repairs or return the carpets as the landlord directed them not to do any further work. The tenant referred to his evidence from the restoration company in the form of an email dated November 20, 2015 in which they identified the work required and issues they had concerns with. This included items such as the flooring, baseboards and walls, and work to be completed in the bedrooms, living room and kitchen. None of this work was completed before the end of the tenancy and therefore the tenants claim

the value of their tenancy was significantly lowered. The landlord did not maintain the rental unit and allowed it to fall into disrepair, therefore severely diminishing the tenants' right to quiet enjoyment.

Compensation for aggravated damages - $3,000.00. The tenants' advocate stated that aggravated damages are sought as a result of the landlord's failure to maintain the suite in a good sate of repair and the landlord was negligent because he failed to take reasonable steps to prevent further flooding of the rental suite despite a history of floods occurring. These floods could have been reasonably foreseen and the landlord failed to comply with an Order from a previous hearing in March 2012 to hire a professional plumber to assess and evaluate the sump pump system and to follow the advice of that plumber and replace the pump if required. When the tenant agreed to do the remedial work to the suite in 2012 the plumbing work was not part of that agreement as the tenant is not a licenced plumber. Furthermore, the landlord did not reimburse the tenant for the loss of property resulting from the 2012 floods. The repeated flooding has caused significant monetary and labour costs to the tenants who have suffered significant and unnecessary distress. Had the landlord followed the Order issued in March 2012 this may have prevented the flood occurring in 2015.

The tenants' advocate states that the landlord is relying on a clause in the tenancy agreement that states the tenant must have his own renter's insurance and that the landlord is not responsible for damage to the tenants' belongings; however, the landlord may not contract out of the *Act* when it was his negligence in not affecting a proper repair or putting in a sump pump alarm or back up sump pump that caused the damage to the tenants' belongings.

The tenants also seek to recover the filing fee of $100.00.

The landlord testified that with regard to the tenants' claim for compensation for damage to his belongings. The tenancy agreement clearly states that the landlord is not responsible for the tenants' belongings and the tenant must get insurance. The landlord testified he has obtained a letter from an insurance company in which they have stated there is not a problem with the tenants getting insurance. The landlord testified that the tenants' furniture is more than five years old and the quotes provided are not for like for like items and are for more expensive furniture then the furniture belonging to the tenants. The landlord testified that further to this the

tenants have not provided any receipts showing the cost of the furniture when they purchased it and they have not replaced this furniture.

The landlord disputed the tenants' claim for alternative accommodation. The landlord testified that he does not believe the tenant BP or the roommate CO stayed somewhere else. The landlord testified that he lives three doors away and saw the tenants at the unit every day. BP was at the unit while the landlord was there and wanted to take a shower but the hot water tank had been turned off. The landlord testified that on the first day of the flood on November 07 he went to the unit to put a temporary pump in and was going back to put a second pump in but when he got there the fire service was there, the tenants had disconnected the first pump and the tenants and their friends were all outside. The next morning he went back to suck more water away.

The landlord testified that the letters provided concerning rent paid for these alternative rooms must be from friends of the tenants stating they stayed in these rooms. How could the tenant, BP, be staying in two places at the same time?

The landlord disputed the tenants' claim for compensation for labour costs. The landlord testified that he had the restoration company there and they took out the carpets. It was the tenants who would not allow them to do any additional work. The landlord referred to emails from the restoration company; one dated November 20, 2015 in which someone from the restoration company emailed the landlord and said that "he was speaking to CO this week and there is some confusion on what is to be removed. CO and A are content with just having the carpeting removed and replaced, it has already been removed and bio-washed, we have also treated the panelling with an antimicrobial and as the water did not get very high, it only hit the bottom so this should suffice. The areas of concern are the flooring in the living room, the baseboards through the affected areas as well as the wall in the kitchen and walls in the master bedroom need to be removed as well as the flooring in the living room". The email goes on to ask the landlord to discuss this with the tenants and if the landlord would like them to complete the work and remove those areas or would he like to just complete the work that the tenants believe is sufficient. At 11.55 a.m. the landlord responded to that email and asked the restoration company to compete all the work so problems do not occur in the future. The landlord also states in his email that he had given the tenants a 10 Day Notice to move and to

not listen to them as the landlord wants the work completed. On November 20 at 2.08 p.m. the restoration company responded that he will speak to the adjuster but thinks they are better waiting for them to leave.

On December 07, 2015 at 10.28 the restoration company sent an email to the landlord asking for an update on the status of the tenants and when can the landlord let the restoration company know so that they can arrange for the emergency work to be completed. On December 07, 3.43 the landlord responded that the work needs completing ASAP and to just call or talk to the tenants and go in whenever possible to complete the work. On December 21, 2015 the landlord received an email from the insurance company about an update from the restoration company stating they have still not been granted access to complete the emergency remedial work and to contact the restoration company as soon as possible to allow them access to complete the work. On January 11, 2016 the landlord emailed the restoration company and asked if they had been able to get in to complete the work, On January 12, the restoration company emailed the landlord to say the work was not completed as he had reached out to CO for access and she told them not to worry about coming to complete it as they are in court with you and the work cannot be completed without access.

The landlord testified that he had a mutual agreement with the tenants that they would let the restoration company in to do the work and the tenants prevented access. The restoration company was to do all the work and the tenants did not have to do anything. The landlord agreed that he never gave the tenants a written notice of entry to gain access for the restoration company. The work was not completed until after May, 2016 and there remains some uncompleted restoration work.

The landlord disputed that the tenants removed any water from the unit on the day of the flood and it was the landlord who worked on it when he bought a new sump pump and vacuum and returned the next day to do more work.

The landlord agreed that the tenants are entitled to a rent reduction from February to April of $1,350.00.

The landlord disputed the tenants' claim for aggravated damages. The landlord testified that there were only three floods during the tenancy not five as stated by the tenants. The tenants were compensated for the first flood. When the second flood occurred in 2012 the landlord was on vacation and sent people into the unit to put in a temporary pump and left the tenants with a shop vac for them to dry out the carpets. The carpet was then replaced. It was the tenants who unplugged the temporary sump pump because it was too noisy. The plumber put in a new pump five days later after a minor flood occurred. The pump would not have failed again after only nine days and the landlord disputed that a second flood occurred in 2012. The landlord testified that the tenant did ask the landlord to put in a second back up pump but when the landlord asked his plumber the plumber said it was not possible and the water would have to be at two separate levels for a second pump to work. The pump that was put in complied with city regulations. The plumber replaced the pump again in 2015 because the city had a record rain fall and the pump overheated and burnt out. This occurred not through the landlord's negligence but through natural forces.

The tenants' advocate asked the tenant HP if he could explain why a second pump was needed. The tenant explained that in 2009 the plumber said that an alarm on the pump and a second back up pump should be installed to prevent flooding. When the landlord put in a temporary pump he also put holes in the ground to drain water; however, the tenants upstairs started to complain about the noise from this pump and threatened to call the police. The tenant had to shut it off to keep the peace but over the next three nights he woke every two hours to turn it on for short periods. The landlord did not put the permanent pump in until January 20, 2012. The tenant testified that he continued to ask the landlord to fit an alarm and second pump and on November 07, 2015 the landlord said he would do this but a week later the landlord said he wanted to demolish the house within two years and did not want to spend any more money on it.

The landlord testified that he never agreed to put in an alarm and second pump but might have said he was going to demolish the house.

The tenant testified that after he went to the city to ask them to inspect the unit the landlord did give the tenant a notice of entry saying an inspector was coming. If the landlord was so keen to get the restoration work done why did he not give the tenants a notice of entry at that time? The

landlord responded that he had an agreement for the tenants to work with the restoration company.

The tenant testified that he does not believe that CO would have told the restoration company not to do any work because of the Supreme Court action as they all wanted the restoration work done.

The tenants' advocate questioned the landlord about the restoration company and why the landlord did not contact then directly to go in and start the work. The landlord responded to this questioning and stated that the deal he had was for the tenants to work with the restoration company and that he wanted the work done so asked them to talk to the tenants directly. Due to this he did not think it was necessary to issue a Notice of Entry. After the 10 Day Notice was given to the tenants the landlord thought they would be out within 10 days and therefore the restoration company could have gone in and completed the work. After that the tenants were acting unreasonable and swearing at the landlord. The tenants' advocate asked the landlord how often he went by the house after the flood. The landlord responded that he goes for a walk in the mornings and evenings and he saw the tenants at the unit. The advocate asked the landlord that he said he complied with the order from the March, 2012 hearing and replaced the pump in January, 2012. Hut how could he have complied if the pump was replaced before the order was made. The landlord responded that the pump had been changed in January, 2012 and he verbally asked a plumber if a second pump could be added and he said it could not work with the existing system and that system would all have to be changed. The tenants' advocate asked the landlord if the plumber had made some recommendations as to how the landlord could remediate and prevent future flooding by changing the system. The landlord responded yes he did. These recommendations were made over the phone the plumber was aware of the system but did not come out to look at it again. The system is all up to code.

The landlord asked the tenant if the tenants called the landlord while he was on vacation and did the landlord say it was costing him too much for the phone call. The tenant responded yes. The landlord asked the tenant if he said he had employees looking after it and that there was nothing he could do from there. The tenant responded that the landlord asked the tenant not to call again and that he had set up some workers to come and look. The landlord asked the

tenant if he had a shop vac on November 07, 2015. The tenant responded yes they used this and some buckets to clean up.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Flood water damaged the tenants' furniture and possessions – $3,799.22. generally in claims of this nature it can be said that the landlord is not responsible for damage to the tenants' belongings, however, where a landlord is shown to be negligent or has not met his duty of care towards the rental unit and the tenants, then the landlord can be held responsible for this damage. I have considered the evidence before me and find that there had been previous floods in the unit of which the landlord was fully aware. In the March 15, 2012 decision the landlord was ordered to engage a plumber to evaluate the effectiveness of the sump pump and replace it as required. The landlord agreed that as the sump pump had been previously changed in January of 2012 he did not get a plumber out again and only took advice over the phone. It is irrelevant if there was room to fit a second pump or not, the landlord testified that his plumber said that as there was not room to fit a second pump that the system would have to be changed. As the landlord did not act upon this advice and did not fit an alarm or a backup pump to prevent further flooding then I must conclude that the landlord did not comply with a previous Order and breached his duty of care to avert further flooding issues in the basement unit. As a result of this the tenants again suffered damage to their belongings.

With this in mind I must consider the question of compensation. The tenants agreed that their furniture was five years old as it had been replaced after a previous flood. The landlord disputed this but presented insufficient evidence to show the tenants' furniture was older than five years. I am satisfied that the tenants' furniture did suffer from water damage due to the flooding. I therefore direct the parties to #40 of the Residential Tenancy Policy Guidelines which provided guidance of the useful life of building elements and which states that furniture has a useful life of 10 years. I must therefore deduct 50 percent of the tenants' claim for depreciation. The landlord also argued that the tenants have not provided estimates for a true similar item; however, I find the tenants' claim to replace the wardrobes are of a similar item and therefore the tenants are

awarded the amount of $386.00. For the tenants' claim for two five drawer chest units; I find the tenants are entitled to recover $674.98. With regard to the end tables and coffee table; while the landlord argues that these originally had been purchased at home depot and the replacement items are estimated costs to replace the items from a more expensive furniture store, the tenants did receive a 12 percent discount on these items and therefore I find the tenants are entitled to recover the amount of $838.39. The total amount for this section of the tenants' claim is limited to **$1,899.37**.

Compensation for alternative housing - $2,400.00; I am satisfied from the evidence before me that due to the flooding the tenant had to empty the bedrooms to allow access for the restoration company to come and remove the carpets. Due to this the tenants BP and the roommate CO were unable to sleep in their rooms and had to find alternative accommodation. While tenant HP did not incur any costs while he was out of the unit for a week the tenant HP did have to pay for the tenant BP's and their roommate's alternative accommodation for 32 days. The landlord argued that he saw the tenant BP at the unit every day; however the photographic evidence shows the bedroom furniture piled up in the living room and with the further corroborating evidence in the form of letters from two people who provided rooms to the tenant BP and the roommate CO then I find in favour of the tenants' claim to recover the amount of **$2,400.00**.

Compensation for labour costs - $720.00- The tenants seek to recover costs for labour to extract flood water on November 07, 2015 and to clear and replace furniture in the bedrooms and to remove nails from the plywood flooring for safety reasons. The landlord argues that the tenants did not clear the flood water and had the tenants allowed access to the unit for the restoration company the restoration company would have done all the work. I am not persuaded by the landlord's arguments that the tenants and two friends did not clear some of the initial flood water. The flooding could have been prevented had the landlord taken steps as described above to prevent further flooding in the unit and on a balance of probabilities I find that had the tenants woken up to flood water they would have taken steps to remove some of the water and then as this proved impossible they contacted the fire service to assist. Furthermore, I am not persuaded by the landlord's argument that the tenants prevented the restoration company entering the unit. While the emails between the restoration company and the tenant indicate that there was some confusion about the work, it is still the landlord's responsibility to coordinate with the restoration company and to serve the tenants with a Notice of Entry for the restoration

company to entry the unit to do the work. This confusion appears to be aided by the landlord informing the restoration company that the tenants would be vacating the unit after a Notice to End Tenancy was served. Consequently, I find in favor of the tenants' claim to recover **$720.00** for labour costs.

Reduction of rent for lost amenities and loss of quite enjoyment - $2,700.00 – the tenants testified that the landlord's decision, order of possession and monetary order issued at the January 06, 2016 hearing were contested in the Supreme Court by the tenants and thereafter set aside to be heard at this hearing. While the tenants have not provided a copy of that Supreme Court decision, the landlord did not dispute that this occurred and did actually provide a copy of the tenant's petition to Supreme Court in his evidence. As such I will address all the rent owed from November, 2015 to April, 2016 of $5,400.00. The tenants seek a rent reduction of 50 percent for the loss of use of all areas of their rental unit as the flood damaged was not all repaired for the duration of their tenancy. I find that the landlord did little to prevent these continuing floods when there was heavy rainfall, and failed to ensure the unit was adequately protected from flooding. Furthermore, the landlord failed to ensure that the damage was repaired in a timely manner by coordinating with the restoration company and that this did indeed devalue the tenancy. Consequently I find a retroactive rent reduction in compensation of 50 percent for six months is a fair and equitable form of compensation. However, as the tenants did not actually pay any of this rent to the landlord I find the rent owed for the period between November, 2015 and April, 2016 of **$2,700.00** will be deducted from the tenants' monetary award.

Compensation for aggravated damages - $3,000.00- The tenants seek to recover aggravated damages due to the landlord's failure to maintain the basement unit in a good state of repair which resulted in the tenants' loss of quiet enjoyment of their rental unit. I refer the parties to #16 of the Residential Tenancy Policy Guidelines which provides guidance on the types of damages which an arbitrator may award. This guideline states, in part, That In addition to other damages an Arbitrator may award aggravated damages. 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, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

I find that the landlord was negligent because he failed to take appropriate action to avoid further flooding even after ordered to do so at the hearing in March, 2012 and despite a history of flooding in this basement unit. I am also satisfied that the flooding and damage caused by the flooding could have reasonable been foreseen, given the history of flooding when there was heavy rain and due to the landlords inability to comply with a previous Order. I am satisfied that the flooding occurred on five occasions and this resulted in significant monetary loss and unnecessary distress to the tenants. Had the landlord followed the previous order made on March 15, 2012 it could have prevented the flooding that later occurred in November, 2015. However, I find the amount of aggravated damages claimed to be extreme in light of the other compensation claimed by the tenants. The tenants are therefore entitled to recover the amount of **$1,500.00** for the distress, disruption and loss of quiet enjoyment of their rental unit caused by the flooding.

As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **$100.00**. A Monetary Order has been issued to the tenants for the following amount, pursuant to s. 67 and 7291) of the Act:

Damage to furniture	$1,899.37
Alternative housing costs	$2,400.00

Labour costs for the tenants	$720.00
~~**Rent reduction for six months**~~	~~**$2,700.00**~~
Aggravated damages	$1,500.00
Filing fee	$100.00
Less unpaid rent for six months	($2,700.00)
Total amount due to the tenants	**$3,919.37**

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$3,919.37**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The decision and Orders made on January 08, 2016 are set aside.

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: January 11, 2017

Residential Tenancy Branch