



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' Application: MND, MNDC, FF

Tenant's Application: MNSD, MNDC, FF

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "*Act*").

The landlords are seeking a monetary order for damage to the unit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and recovery of the filing fee for their application from the tenant (the "Landlords' Application").

The tenant is seeking a monetary order for the return of double the pet damage deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and recovery of the filing fee for their application from the landlords (the "Tenant's Application").

The landlords' agent (the "Landlords") and the tenant and appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issues to be Decided

- Are the landlords entitled to a monetary order for damage to the unit?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to recovery of the filing fee for their application from the tenant?
- Is the tenant entitled to a monetary order for the return of double the pet damage deposit or security deposit?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to recovery of the filing fee for their application from the landlords?

Background and Evidence

The undisputed evidence established that the landlords and tenant entered into a one year fixed term tenancy starting on August 15, 2014 and ending August 31, 2015, with an option to continue the tenancy on a month to month basis. Rent in the amount of \$1,000 was due on the first day of each month. The tenant paid a \$500.00 security deposit on August 15, 2014. The tenant resided in the suite with his daughter. The date the tenancy ended is in dispute. On October 17, 2015, the tenant left a voice mail with his forwarding address. The tenant has not provided his forwarding address to the landlord in writing.

On June 3, 2015 a flood occurred on the property which resulted in significant damage to the tenant's suite requiring substantial repairs. In the interim, the property was uninhabitable for the duration of the tenant's fixed term tenancy ending August 31, 2015. The tenant has not been able to move back into the unit since the flood. The landlords argued that the tenancy was frustrated on June 3, 2015 as a result of the flood. The tenant's argued the tenancy ended August 31, 2015.

Tenant's Application:

The tenant is claiming the following expenses and amounts due to being displaced as a result of the flood damage:

Item	Amount
1.June rent and damage deposit	\$1,400.00
2.Long Distance charges calling the Residential Tenancy Branch	\$ 48.00
3.Eating out due to no kitchen	\$ 847.08
4.Extra driving due to displacement	\$ 458.46
5.Hotel with kitchenette for two days	\$ 172.50
6.Stop payment of rent cheques issued for July and August 2015	\$ 26.35
7.Swear jar .50 cents per swear word	\$ 1.50
8.Motor Home Rental	\$4,250.00
9.Rent abatement for loss of enjoyment and displacement	\$2,000.00
10.Tent destroyed by contractor	\$ 300.00
11.Hydro bill for June, July and August	\$ 159.48
12.Rent for August 2015 housing and security deposit.	\$1,680.00
13.Pain and Suffering	\$4,000.00
Total Monetary Claim	\$15,343.37

The tenant testified that the flood was caused by a cracked foundation. The tenant argued that the landlord knew of a pre-existing issue with flooding based on accounts from two previous

tenants. The tenant submitted a letter dated August 4, 2015 from the previous tenants who lived above this tenant's unit. Their written account supports the tenant's testimony about flooding having occurred in the past. This written account indicates that flooding occurred in the tenant's suite when the previous tenant lived there.

The tenant also submitted an email dated June 27, 2015 from a worker, who is a friend of the tenant and who completed the removal of the tenant's suite. The worker indicated that the flood in the tenant's unit was the third one in five years.

The landlords denied that there was a pre-existing flooding issue that they were aware of when the tenant moved in. The landlords denied even knowing about previous incidents of flooding. The landlords denied that there was a crack in the foundation. The landlords testified that the flooding occurred due to torrential rains which clogged city drains.

The tenant complained that the landlord did not use professionals to address the flood restoration and that the work being performed was sub-standard.

The landlords denied the tenant's allegations. The landlords testified about the steps that were taken in immediately responding to the flood. The landlords testified that they used proper professionals whose work was not sub-standard.

After the flood the tenant and his daughter moved into a hotel from June 3, 2015 to June 5, 2015. The tenant is seeking reimbursement for the cost of the hotel stay in the amount of \$172.50.

The landlords argued that the tenant did not mitigate his damages by obtaining tenant's insurance. The landlords argued that if the tenant had tenant's insurance, the cost of the hotel would have been covered by the insurance.

The tenant and his daughter then moved into a tent from June 5, 2015 to June 8, 2015. The tenant is seeking compensation in the amount of \$300.00 for damage to his tent. The tenant testified that the contractor ran over his tent.

The landlords argued that the tenant had not provided any receipt as to the value of the tent. Furthermore, the landlords argued that they are not responsible for damage the contractor may have done.

The tenant then moved into a motor home that was owned by the worker who wrote the email dated June 27, 2015 and who is also the tenant's friend. The tenant testified that the motor home had no running water and no kitchen facilities and that it was just used for the purpose of sleeping. The tenant submitted a receipt that was prepared by his friend documenting payment of \$4,250.00 as rent to occupy the motor home from June 8, 2015 to July 20, 2015. The tenant is seeking reimbursement for the rent paid to reside in the motor home.

The landlords argued that the receipt is not proof that actual money exchanged hands. The landlords testified that they don't believe that the tenant really paid for this expense out of his pocket. The landlords argued that the documents between the tenant and the owner of motor home were created after the fact. The landlords relied upon the fact that the tenant did not provide banking documents to prove actual payment of rent. The landlords also argued that the expense was unreasonable.

The landlords further argued that the tenant did not mitigate his damages by obtaining tenant's insurance. The landlords argued that if the tenant had tenant's insurance, the cost of alternate accommodation would have been covered by the insurance.

As a result of not having a kitchen, the tenant is seeking reimbursement for meals eaten outside the home. The tenant submitted receipts and testified that they total \$847.00.

The landlord argued that there is insufficient proof as the many of the receipts are illegible and pertain to groceries as well. The landlords argued that the tenant would have to pay for food regardless of the flood. Furthermore, the landlords argued that the tenant did not mitigate his damages by obtaining tenant's insurance. The landlords argued that if the tenant had tenant's insurance, the cost of eating out would have been covered by the insurance.

The tenant testified that he took his daughter to live with her grandparents in Kamloops for the summer while he was without a suitable home. The tenant is seeking reimbursement in the amount of \$ 458.46 for the cost of gas for the extra driving to visit his daughter at her grandparents. The tenant submitted receipts for these expenses.

The landlords argued that the gas expenses were not a proper expense as the driving did not flow from any breach of the *Act*, regulation or tenancy agreement on the part of the landlords. The landlords also objected to the gas expenses arguing that some of the receipts are illegible.

The tenant is also seeking reimbursement for the rent that the landlords collected for the month of June 2015; and to recover double the \$500.00 damage deposit. The tenant is seeking a total of \$1,400.00 for these amounts. The tenant indicated that these amounts don't add up to \$1,400.00 individually as the tenant deducted an amount to account for the rent for the first two days of June before the flood.

The landlords conceded that the tenant should be reimbursed for rent paid since June 3, 2015. The landlords opposed the tenant's claim for the return of his security deposit.

The tenant is seeking a rent abatement in the amount of \$2,000.00 for being displaced for the months of July and August 2015.

The landlords testified that they did not charge the tenant any rent for the months of July and August 2015. Therefore, the landlords argued that the tenant is not entitled to a rent rebate for those months.

The tenant is seeking to recover bank charges in the amount \$26.35 for issuing a stop payment on the rent cheques for July 2015 and August 2015. The tenant testified that because the landlord cashed the rent cheque for the month of June on June 4, 2015, the tenant could not trust the landlord to not cash the post-dated cheques for July and August 2015.

The landlords argued that they were entitled to cash the rent cheque on the day it was due, which was two days before the flood.

The tenant is seeking reimbursement for payment of the tenant's hydro bill in the amount of \$159.48 for each of the months of June, July and August 2015 when the tenant was not residing in the suite. The tenant testified that the hydro was used by the landlords for those months for the repairs and restoration. The tenant testified that he used minimal hydro as he would only use the bathroom facilities.

The landlords argued that the tenant had a duty to mitigate his loss by notifying the landlords about the hydro account. The landlords argued that they are not responsible for the hydro bills.

The tenant is seeking reimbursement in the amount of \$1,680.00 for the rent he was required to pay for his new rental unit for the month of August 2015 and the amount of his security deposit that he paid. The tenant argued that he would not have had to pay these amounts if the flood had not occurred. The landlords argued that the tenant's claim is unreasonable.

The tenant is seeking \$1.50 collected for swearing. The landlords argued that this is not a proper claim.

The tenant is seeking reimbursement in the amount of \$48.00 for long distance charges for calling the Residential Tenancy Branch. The landlord argued that these are not proper expenses that the landlords are not responsible for this expense under the *Act*.

The tenant is seeking compensation for pain and suffering in the amount of \$4,000.00. The tenant argued that the landlords should have fixed the flooding problem and knew that the suite would flood causing the tenant to have to relocate.

The landlords argued that there tenant has not provided sufficient proof to establish his claim for pain and suffering.

The tenant is seeking to recover the \$100 filing fee for their application from the landlords.

Landlords' Application:

The landlords argued that the tenancy was frustrated on June 3, 2015 when the flood occurred. The landlords testified that the flood was caused by clogged city drains due to heavy and

torrential rains. The landlords argued that the suite was uninhabitable as a result of the flooding. The landlords testified that the landlords spent \$50,000 to repair the damage.

The landlords are seeking a monetary order in the amount of \$17,650.00. The landlords indicated that item 3 on their summary of Landlord Receipts was a duplicate and should be ignored reducing the amount of their original claim by \$178.50.

The landlords are seeking compensation from the tenant as follows:

1. Storage of tenant`s belongings	\$ 168.00
2. Storage of tenant`s belongings	\$ 178.50
3. Storage of tenant`s belongings	\$ 210.00
4. Storage of tenant`s belongings	\$ 210.00
5. Extra Repair work cause by tenant`s interference with contractor and crew	\$ 9,922.50
6. Legal Fees	\$ 2,991.00
7. Non-pecuniary damages for mental anguish	\$ 4,000.00
8. Filing Fee	\$ 100.00
Total Monetary Claim	\$18,650.00

The landlords testified that they paid to have the tenant's belongings stored at a storage facility from June 8, 2015 to August 31, 2015. The landlords are seeking reimbursement for the amounts paid shown in items 1- 4 above.

The landlords submitted a number of statements from the contractor and a crew who indicated that the tenant interfered with the contractor and crew resulting in 9 days of additional work. The landlords are seeking the amount in item 5 above for the additional cost of 9 work days arising from the tenant's interference.

The tenant denied the allegations made against him by the landlords, the landlords' contractor and crew member. The tenant testified that he works full-time Monday to Friday 7:00 a.m. to 4:30 pm., and the contractor and crew were gone by the time he returned home from work. The tenant argued that, therefore, he could not have disturbed the contractor and crew to the extent claimed.

The landlords are seeking reimbursement of legal fees incurred in connection with the landlord and tenant issues. The landlords are seeking reimbursement for the amounts paid shown in item 6 above.

The landlords are seeking non-pecuniary damages for mental anguish and distress caused by the tenant. The landlords have submitted personal notes from the landlord H.G. as to the emotional distress caused by the tenant. The landlords are seeking the amount in item 7 above.

The landlords are also seeking the return of the \$100.00 filing fee for their application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

With respect to the tenant's claim for compensation pursuant to section 67 of the *Act*, the burden of proof is on the tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the landlords' claim for compensation pursuant to section 67 of the *Act*, the burden of proof is on the landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

I find that there is insufficient evidence that the items at 2, 4, 6, 7, 10 and 12 of the tenant's claim for expenses and amounts stem directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. I find that these expenses are too remote to be directly caused by a violation on the part of the landlords. I find that the tenant has not met their burden of proof and therefore, I dismiss these claims.

Similarly, I find that there is insufficient evidence that the landlords' claim for legal expenses stems directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. I find that these expenses are too remote to be directly caused by a violation on the part of the tenant. I find that the landlords have not met their burden of proof and therefore, I dismiss this claim.

Residential Tenancy Policy Guideline #34 (the "Policy Guideline") addresses the circumstances where a contract is frustrated. A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

I find that there is sufficient evidence that the flooding that occurred on June 3, 2015 left the tenant's suite uninhabitable for the duration of the tenant's fixed term tenancy.

Based upon the tenant's evidence, I accept that the unit has flooded in the past. However, I find that there is insufficient evidence that the cause of this flooding is the same as the previous flooding. Therefore, I find that there is insufficient evidence to satisfy me that the frustration is the result of the landlords' own deliberate or negligent act or omission. Furthermore, I find that there is insufficient evidence to satisfy me as to the exact cause of the current flooding to support a finding that the frustration is the result of the landlords' own deliberate or negligent act or omission. In making this finding, I have taken into consideration the fact that the opposing evidence led by the parties as to the cause of the flood was equally compelling making it impossible to draw any conclusions as to the cause. Similarly, I find that there is insufficient evidence that the landlords contemplated flooding at the time the contract was entered into.

Based upon the foregoing, I find that through no fault of either party, the flooding which was an unforeseeable event made it impossible to fulfill the tenancy agreement as originally intended. Therefore, I find that the contract was frustrated on June 3, 2015.

Pursuant to Policy Guideline #34, I find that the parties to the contract are discharged or relieved from fulfilling their obligations under the contract as of June 3, 2015.

Given that I have found that the contract was frustrated on June 3, 2015, I find that the tenant is entitled to be reimbursed for the rent paid for the period between June 3, 2015 and June 30, 2015 in the amount of \$933.33.

As the parties are discharged or relieved from fulfilling their obligations under the contract as of June 3, 2015, I find that neither the landlord nor the tenant are entitled to compensation under section 67 of the *Act* arising from circumstances that occurred after the tenancy ended on June 3, 2015. Therefore, I dismiss all of the tenant's claims except for the return of double the damage deposit; reimbursement for the hydro bills for each of the months of June, July and August 2015; and the filing fee, which I address below.

For the same reasons, I dismiss all of the landlords' claims except for reimbursement of the storage fees; compensation for damage to the unit; and recovery of the filing fee, which I address below.

Tenant's Hydro Bills:

I find that there is sufficient evidence to satisfy me that the landlords used the hydro in the tenant's suite for purposes of the repairs and renovations in June, July and August 2015. Therefore, I find that there is sufficient evidence to find that the landlords are responsible for the tenant's hydro bills for each of these months. I find that the tenant's hydro for two days in June 2015 would be a nominal amount, therefore, I find that the tenant is entitled to reimbursement of \$159.48 from the landlords for payment of the tenant's hydro bill for each of the months of June, July and August 2015.

I do not agree with the landlords' submissions that the tenant failed to mitigate his loss by not telling the landlords about the hydro account. I find that the landlords knew or ought to have known that the tenant's hydro account was still activated as the landlord's contractors were using the hydro and the landlord did not have an account for the suite. Furthermore, I find that there is insufficient evidence to satisfy me that the amount of hydro used would have been any different if the tenant had mentioned that their hydro account was still activated. Therefore, I find that there is insufficient evidence that the tenant failed to mitigate his loss relating to the hydro bills.

Storage Fees Paid By Landlord:

As the parties' obligations under the tenancy agreement ended on June 3, 2015, I find that the landlords are entitled to be reimbursed the storage fees in the amount of \$766.50 paid for storing the tenant's belongings after June 3, 2015.

Damage Deposit:

Section 39 of the *Act* states that despite any other provisions in the *Act*, if the tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the deposit and the right of the tenant to the return of the security deposit is extinguished.

I find that there is insufficient evidence that the tenant gave the landlord their forwarding address in writing within a year after the end of the tenancy. In making this finding, I have taken into consideration the fact that the tenant testified that he left a voice mail message with his forwarding address on October 17, 2015. As the tenant has still not given his forwarding address to the landlords in writing and it is over a year since the tenancy ended, I find that the right of the tenant to the return of the security deposit is extinguished. Therefore, I dismiss the tenant's claim for return of double the security deposit.

Policy Guideline #17 explains that in cases where the tenant's right to the return of the security deposit is extinguished, and the landlord has made a monetary claim against the tenant the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In accordance with Policy Guideline #17, the tenant's security deposit in the amount of \$500.00 will be set off against the amounts owed by the tenant to the landlords.

Compensation for Damage to the Unit:

I find that there is insufficient evidence to support a finding that the landlords' are entitled to a monetary order for damage to the unit. In making this finding I have taken into consideration the fact that the landlords did not sufficiently advance this claim at the hearing. Therefore, I dismiss the landlords' claim for a monetary order for damage to the unit.

Filing Fees

As both parties' applications were partially successful, I find that neither party is entitled to recover their filing fee for their application from the other.

Monetary Awards:

In summary, I find that the tenant is entitled to the following monetary award:

Rent paid for June 3 to 30, 2015	\$ 933.33
Hydro bill for June , July and August 2015	\$ 159.48
Total Monetary Award	\$1,092.81

In summary, I find that the landlords are entitled to the following monetary award.

Storage Fees	\$ 766.50
Less Security Deposit	\$ 500.00
Total Monetary Award	\$ 266.50

In setting off the landlords' and tenant's monetary awards, I find that the tenant is entitled to a monetary order in the amount of \$826.31 as follows:

Tenant's Monetary Award	\$1,092.81
Less Landlord's Monetary Award	\$ 266.50
Tenant's Total Monetary Order	\$ 826.31

Conclusion

The tenant's application is partially successful.

The landlords' application is partially successful.

For the reasons given above, the tenant is granted a monetary Order in the amount of \$826.31 which must be served on the landlords as soon as possible. Should the landlords fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court 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: June 12, 2017

Residential Tenancy Branch