



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC RR FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated June 28, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing in person. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenants testified that Landlord was served with the Application package by registered mail on June 30, 2017. A Canada Post receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlord is deemed to have received the Application package on July 7, 2017. The Landlord did not submit any documentary evidence in response to the Application.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
- Are the Tenants entitled to an order that rent is reduced for repairs, services or facilities agreed upon but not provided?
- Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on April 1, 2016. The parties agreed the tenancy ended when the Tenants vacated the rental unit on or about May 31, 2017. During the tenancy, rent in the amount of \$1,335.00 per month, which included parking, was due on or before the first day of each month. The Tenants paid a security deposit of \$650.00 and a pet damage deposit of \$650.00, which were not at issue in this hearing.

The Tenants' claim was summarized in the Application. The Tenants claimed \$2,629.39 for "compensation due to loss of use, decreased value and loss of quiet enjoyment" of the rental unit from February 19 to May 31, 2017. A calculation setting out how the amount sought was determined was provided in a type-written document submitted by the Tenants. The amount was based on a percentage of rent paid each month while the Tenants occupied the rental unit after the floods.

The Tenants testified that floods occurred in the rental unit on February 19 and 26, 2017. The source of the flooding was an adjacent rental unit. The Tenants advised the strata and the restoration company of flooding, and remediation efforts began immediately. Fans were installed for a few days to address moisture, and portions of walls and flooring were exposed. Although the walls in the rental unit were repaired in March 2017, flooring had not yet been replaced at the end of the tenancy. Photographs depicting the condition of the rental unit after the floods were submitted into evidence by the Tenants.

The Tenants testified to the impact of the flooding. They confirmed they had to move out of their bedroom and into the living room as a result of the flooding. According to K.M., the Tenants did not return to their bedroom until May 2017. In addition, K.M. testified that she had to stay at a friend's home on several occasions due to the disruption caused by the flooding. K.M. also testified that the Tenants had to deal with workers coming into and out of their home on a regular basis.

In reply, the Landlord agreed that the flooding occurred as alleged, and that the floors had not been replaced at the time the Tenants vacated the rental unit. However, the Landlord advised that, despite his best efforts, delays were caused by the strata and his insurer. He also suggested that the Tenants ought to have had insurance to cover the losses claimed. The Landlord also suggested the damage to the flooring was not as significant as claimed by the Tenants.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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.

In this case, the burden of proof is on the Tenants 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 Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

Further, section 28 of the *Act* states:

*A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

[Reproduced as written.]

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

*It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the*

*landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.*

[Reproduced as written.]

While I accept that the Landlord took steps to address the damage caused by the flooding, I also find the Tenants experienced a loss of use of portion of the rental unit that amounted to an unreasonable disturbance. Specifically, it was not disputed that the Tenants were unable to sleep in their bedroom for several months, and that flooring throughout the rental unit had not been fully replaced more than three months after the floods occurred. However, the Tenants continued to reside in the rental unit despite the disruption. Accordingly, I find it reasonable in the circumstances to grant the Tenants a monetary award in the amount of \$850.00. Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, the Tenants are granted a monetary order in the amount of \$950.00, which is comprised of compensation for loss of use of a portion of the rental unit in the amount of \$850.00 and \$100.00 in recovery of the filing fee.

#### Conclusion

The Tenants are granted a monetary order in the amount of \$950.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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, 2017

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Residential Tenancy Branch