



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION CLARIFICATION

Dispute Codes MND, MNR, MNSD, MNDC, O, FF

Introduction

The landlord applies for a clarification of the decision rendered in this matter dated February 23, 2018.

First, I must express my apologies for the delay in providing this response.

The landlord's request is composed in a letter attached to the formal clarification request. From that letter I determine four areas that the landlord wishes to have addressed. They are:

1. The determination of the habitability of the rental unit when a professional thought it was not habitable.
2. Whether consideration was given to the long term effect of a flood and asbestos and the landlord's liability in that regard.
3. Whether the award of \$1335.11 was reasonable given that typical storage in the area costs \$100.00 per month, and
4. The awarding of aggravated damages was unreasonable.

Area 1: The habitability of the rental unit

In my view this question was adequately canvassed in the decision, starting on page 6:

The landlord relies on a letter dated June 13, 2017 from a property restoration company indicating that upon inspection the home had been flooded by Category 3 water (which includes

rising water from rivers or streams) and which can carry contamination. Further, the letter states, asbestos was found in the drywall joint compound and so a hazardous materials abatement protocol would have to be initiated. It was the company's view that "due to the scope of the loss and the resulting damage from the flood occupancy is not acceptable."

The author of the letter did not testify. It is not clear whether it was meant that occupancy of just the basement of the rental unit was not acceptable or of the whole rental unit. There is no indication of what length of time or period occupancy would not be acceptable or whether occupancy would not be acceptable because the scope of the loss and resulting damage would make occupancy a health risk or simply because remediation would be easier if no one was living there.

The tenant's evidence establishes that though the landlord's side of the duplex suffered the same flooding, the landlord continued to occupy it, though spending some time in a trailer located on the property.

It is important to note that only the basement of the rental unit was affected by the flooding. The entire upstairs was not damaged. It may be that the landlord considered the upstairs to be a separate unit but the tenant rented the entire side under one tenancy, not just the basement. As between the landlord and her, the tenant was entitled to possession and to occupy the entire side.

In my view a reasonable homeowner would have continued to live in the rental unit but for brief times the hazardous materials extraction or other remediation might have warranted being away.

No further clarification is required.

Area 2: Consideration of the effects a flood and asbestos and liability.

It is assumed that the repairs conducted by the landlord would comply with safety requirements, thus negating the possibility of long term health effects from the flood or the asbestos removal and therefore the landlord's liability for such effects.

Area 3: \$1335.11 for storage

The tenant accounted for this total in her testimony and documentary evidence. The landlord did not offer objective, competing evidence about cheaper storage. Only evidence given at the hearing can be considered in the decision and so, while this may be relevant evidence, it is too late to bring it forward now.

Area 4: Aggravated damages not reasonable

Based on the evidence presented during this hearing it was my determination that the tenant's claim for aggravated damages was reasonable. In order to found such a determination it was necessary for the tenant to prove on a balance of probabilities that the landlord had acted in a high-handed manner (as per *Sahota v. Director of Residential Tenancy Branch, et al.* 2010 BCSC 750, cited in the decision). It was my finding that such conduct had been proved.

This decision clarification 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 30, 2018

Residential Tenancy Branch