Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlords to return the tenants' personal property pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Landlord DB (the landlord) confirmed that the tenants handed the landlords a copy of the tenants' dispute resolution hearing package and written evidence package on July 14, 2018, I find that the landlords were duly served with these packages in accordance with sections 88 and 89 of the *Act.* The landlord confirmed that the landlords did not submit any written evidence for this hearing.

Preliminary Issues

This dispute involves family members who are at odds. The hearing was acrimonious and both parties have made serious accusations about each other. The police have been involved and there is a restraining order in place between some of the parties. As explained during the hearing to the parties and in this decision below, I am not able to determine all of the disputes here, as some are beyond the jurisdiction of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy or money owed to them? Should an order be issued against the landlords to return any of the tenants' personal property? Should any other orders be issued regarding this tenancy?

Background and Evidence

Tenant KB moved into a rental suite in a separate suite in the landlords' property where the landlords also live in January 2016. The parties agreed that no written tenancy agreement was completed for this tenancy. Tenant KB's monthly rent was set at $300.00, payable in advance on the first of each month. This was later revised to a payment on the 15th of each month. Tenant KB said that they paid a $250.00 security deposit when they moved into the property; the landlord denied that any such security deposit was paid.

By November of December 2017, the other tenant, Tenant DO, moved into the rental unit with Tenant KB, at the apparent suggestion of Landlord DB (the landlord). When this happened, the monthly rent increased to $500.00.

The landlord testified that the above terms reflected what was supposed to have occurred in this informal tenancy agreement with his daughter, and later with his daughter and her male friend, Tenant DO. The landlords said that rent payments from the tenants were sporadic.

On June 6, 2018, the rental suite was damaged by an overflow of what the landlord described as "grey water" and which the tenants and Witness DR, Tenant DO's mother, described as "sewage water" that required the tenants to vacate the rental unit until the premises could be cleaned and restored to habitable use. In their undisputed written evidence, Tenant DO maintained that this damage occurred because of the "landlord's not doing due diligence on preventative damage and preventative maintenance on a solid holding tank that had not been sucked in over 22 years and the lack of a one-way check valve told to me by the plumber all the damage was preventable."

The tenants alleged that the landlord suggested that the tenants rent a 5th Wheel, so that they could remain on the rental property until their rental unit was repaired. Rather than incur the advertised cost of renting a 5th Wheel from commercial sources, the

tenants rented a 5th Wheel from Tenant DO's parents at a rate of $50.00 per day. Witness DR confirmed this testimony, stating that she received these payments from Tenant DO.

The landlord testified that no agreement was reached whereby the tenants would live in a 5th Wheel on the property. The landlord said that the landlords were able to remain in their part of the home for about a week after the water damage occurred, at which time the insurance company and restoration company advised them that it was unsafe to remain residing in this building until it was repair and restored. The landlord testified that they had their own 5th Wheel, where the tenants could have resided rather than Tenant DO's rental of what the landlord described as a "pull trailer." The landlord said that Tenant DO rented the pull trailer without consulting with the landlords and brought it to the property where they located it close to their damaged rental suite.

The tenants confirmed that they had no tenant insurance to cover the damage caused to their possessions. The landlords testified that they had an insurance claim outstanding and that the insurance company had advised them that the landlords' insurance only covered the belongings in the landlords' part of the house unless the landlords agreed to assume responsibility for the damage to the tenants' possessions. The landlord confirmed that the tenants were in no way responsible for the backup of the water that damaged this home.

On June 20th, after a series of incidents and altercations between Tenant DO and the landlord, the tenants submit that the landlords evicted Tenant DO from the property without issuing a notice to end tenancy to the tenants.

At the hearing, the parties agreed that the landlords posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the door of the rental suite on July 3, 2018. Although the landlords knew that the tenants were no longer residing there when the 1 Month Notice was posted, Tenant KB confirmed that the tenants were still returning to the rental suite to access their possessions during this period. Tenant KB said that they likely received the landlords' 1 Month Notice on or about July 6, 2018. The effective date of the 1 Month Notice was August 6, 2018. The corrected effective date would be August 14, 2018. Tenant DO confirmed that they did not apply to cancel the landlords' 1 Month Notice, as by then it had become apparent that the relationship had deteriorated to the point where continuing to live there, even when the premises were restored, would be unrealistic.

The tenants entered into written evidence copies of a series of receipts for their payment of rent to the landlords. The landlord said that the tenants' last rent payment was May 15, 2018. After the flood, the landlord said that the landlords did not request additional rent payments. The tenants maintained that they paid rent on May 15, 2018 and June 15, 2018. However, both of these receipts were not signed by either of the landlords.

The tenants applied for a monetary award of $6,148.00. However, the Monetary Order Worksheet submitted by Tenant DO on June 20, 2018, in support of their application identified the following items, totalling $9,653.48.

Item	**Amount**
Fish Tank Stand and Fish	$500.42
Cell Phone Booster	334.88
Roomba Vacuum	458.61
Tires and Rims	3,209.21
5th Wheel Rental	1,470.00
Cleaning and Sanitizing of Clothes	140.00
Fuel for Driving to get Food	520.00
Replacement of XBox	673.22
Food and Water	1,541.22
Car Damage	805.92
Total of Above Items	**$9,653.48**

During the course of the hearing, both parties referred to ongoing police investigations launched by both parties about alleged incidents and illegal seizure of one another's property. The landlord testified that they have a valid countervailing claim that the tenants possess some of the landlords' belongings that match or exceed the value of the amount listed on the tenants' application for dispute resolution.

The landlord testified that a number of the tenants' belongings damaged in the flood were placed in the landlords' shed on the property. The landlord said that the only item of those listed by the tenants in their application for a monetary award that he saw go into the shed was the fish tank and stand. The landlord testified that the insurance claim that the insurance company has approved for payment to the landlord includes $390.98. The landlord said that if the tenants were to produce copies of the receipts for the original purchase of items such as the cell phone booster or the Roomba vacuum, these could be added to the landlords' insurance claim. The landlord said that he was

uncertain as to whether these items claimed by the tenants were placed in the shed; he did not know their whereabouts as there were some goods that the restoration company had removed for attempted cleaning and restoration.

At the hearing, Tenant DO maintained that a full copy of receipts and estimates for the replacement of items damaged or lost as a result of the flood or due to the landlord's alleged theft of these items was entered into written evidence. I noted at the hearing that none of the receipts were for the original purchase of these items; all were for the subsequent purchase of replacement items or for estimates for the replacement cost. Although Tenant DO searched for these records, he confirmed my understanding that the receipts for the original purchase of these items had not been entered into written evidence.

The tenants' Witness DR, Tenant DO's mother, confirmed that she purchased the Roomba vacuum for Tenant DO as a Christmas present. She said that she visited the rental suite after the flood and observed that the Roomba vacuum was covered in poop and that the cellphone booster and Tenant DO's XBox were destroyed by the flood. She said that she saw Tenant DO's tires and rims in the shed along with some clothing and other of the tenants' items there. She also noticed a carpet cleaner there.

Tenant Witness JC testified that he undertook work at the property following the flood to tear down damaged parts of the structure and conduct preliminary restoration of the premises. Witness JC said that he assisted in moving damaged items, including the fish stand and tank, electronic vacuum (Roomba vacuum) and cell phone booster plus some shoes and clothing into the garage for assessment and cleanup by the restoration company. This witness testified that the landlord was provided with a comprehensive list of what had been damaged and placed in the shed and that the landlord "physically saw" the tenants' contents that were damaged and placed in the shed. Rather than turning over the receipts for the vacuum cleaner and other items to the insurance company, Witness JC gave undisputed sworn testimony that the landlord said that he would not be handing these receipts over to the insurance company. This evidence coincided with that provided by the tenants.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous bills, receipts, invoices, estimates and letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are

reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlords caused the losses or damage.

I find that there is undisputed sworn testimony, supported by written and photographic evidence that some of the tenants' possessions were damaged to such an extent in the flood of June 6, 2018, that they could not be restored or repaired to the point where they would have any value. Although the tenants ought to have had their own tenants' insurance to cover these losses, I find that the tenants were neither negligent nor to blame for this flooding incident. There is in fact undisputed written evidence that the landlords were negligent in failing to properly maintain the solid waste holding tank. The landlord's submission of an insurance claim for at least one of these damaged items, the fish tank and stand for which the landlords will be receiving an insurance claim of $390.98, reveals that the landlords and, if the landlord's sworn testimony is correct, the landlords' insurance company have accepted that there is validity to the tenants' claim that they should be compensated for the losses they experienced as a result of the flood damage.

Based on the sworn testimony of the parties and the tenants' witnesses and the written documents presented, I find that the tenants have supplied sufficient evidence to demonstrate that they possessed the fish tank stand and fish, a cell phone booster, and a Roomba vacuum that were damaged in the flood of June 6, 2018. In this regard, I note that the Witness DR gave undisputed sworn testimony that she purchased the Roomba vacuum cleaner for Tenant DO as a Christmas present. Both of the tenants' witnessed confirmed that these items were damaged in the flood and left in the safekeeping of the landlord and the restoration company hired by the landlords and the landlords; insurance company. For these reasons, I allow the tenants' claims for each of these items, as I accept that the amounts cited in the tenants' claim represent reasonable estimates of their replacement value.

Based on the tenants' undisputed written evidence, I also accept that the tenants are entitled to a monetary award of $140.00 for the cleaning and sanitizing of their clothes.

Although I have given consideration to the tenants' claim for the replacement of tires and rims that the tenants maintain were left in the shed and went missing by the end of this tenancy, these are items that were not damaged in the flood of June 6, 2018. Rather, I find that this part of the tenants' claim amounts to a claim that the landlords stole their possessions. As there is evidence before me that there are ongoing police investigations launched by both parties that the other parties have stolen items from one another, I make no finding on this aspect of the tenants' claim. One of the tenants is the daughter of the landlords and there is certainly a relationship that extends beyond that of landlord and tenant that exists between these parties. I find that it would be more appropriate to consider the alleged theft of tires and rims by the landlords in the context of the landlords' claim that they have attempted to have charges of theft laid against Tenant DO for other items in Tenant DO's possession. My jurisdiction is limited to the consideration of claims lodged in accordance with the *Act*. In this case, I find that claims of theft would more reasonably be considered as part of any criminal proceedings that are being investigated by the police and possibly through civil action through the Small Claims Court of British Columbia. As I do not find that the tenants' claim for reimbursement for the cost of replacing tires and rims in this case properly falls within the jurisdiction of the *Act,* at least at this time, I decline to make a finding on this matter. Once the police investigations have been completed and once all allegations of criminal activity have been determined, it is possible that the tenants may then have a claim for this item that could fall within the jurisdiction of the *Act*. For these reasons, I dismiss this element of the tenants' application with leave to reapply.

I have also given consideration to the tenants' claim for the replacement of Tenant DO's XBox that the tenants maintain was damaged in the flood and went missing after being returned to the tenants and left in the tenants' 5th Wheel. Once more the tenants' allegation amounts to an allegation that the landlords stole some of their possessions. While this item may have been damaged to an extent in the flood, Tenant DO testified that he was not certain whether this device was properly functioning after the flood. More importantly, I find that the allegation that the landlords took this device from the tenants' rented 5th Wheel was not supported by sufficient evidence that this was so. The tenants did not dispute the landlord's sworn testimony that there was no locking mechanism on the door of the 5th Wheel. Without a locking mechanism on the 5th Wheel, anyone could have entered the 5th Wheel to remove this item. I also note that the tenants did not supply any receipt for the original purchase of this device. Based on

the evidence before me, I find that the tenants have not substantiated their claim for the reimbursement of this item. I dismiss the tenants' application for a monetary award for the replacement of this item without leave to reapply.

I have also considered the tenants' claim for a monetary award for damage to Tenant KB's car. Since that tenant's uninsured vehicle was "keyed" while sitting on the landlords' property, the tenants asked for a monetary award to repair this vehicle. I find that the tenants have not supplied sufficient evidence that the damage was caused by the landlords or that this damage occurred in the context of their residential tenancy. A monetary claim for this type of damage to a vehicle stored on a parent's property does not fall within the jurisdiction of the *Act*. If the tenant believes that their parents caused this damage, the tenant may wish to explore other alternatives to obtain redress.

The remainder of the tenants' claim appears to involve the costs that the tenants incurred in residing on the property after they were forced out of their rental suite as a result of the damage caused by the flood on June 6, 2018. The tenants have asked for a monetary award of $1,470.00 for the rental of the 5th Wheel where they were residing from a few days after the flood until the landlord's 1 Month Notice was to take effect. Although the tenants maintained that the 5th Wheel rented from Tenant DO's mother was at the suggestion of or at least with the agreement of the landlords, the landlord testified that he knew nothing about this proposal until Tenant DO arrived at the property and began connecting the pull trailer to the utilities on the landlords' property. While Tenant DO and his mother said that they had agreed upon a $50.00 per day charge for rental of the 5th Wheel, the landlord said that the landlords have their own 5th Wheel, which would have provided more suitable accommodation had the landlords been consulted about this proposed arrangement beforehand. The tenants also supplied nothing in writing to confirm that they had actually paid anything to Witness DR for the rental of the 5th Wheel.

Under these circumstances, I accept that the landlords did remain responsible for some of the tenants' expenses once the rental suite the tenants were renting became uninhabitable. However, there is conflicting evidence as to whether the tenants actually paid any rent from June 15, 2018 until the end of this tenancy, which took effect on August 14, 2018. The landlord said that the last rent payment received from the tenants was on May 15, 2018, which would have covered their rental of the premises until June 14, 2018. I give little weight to the tenants' claim that they paid rent on June 15, 2018, as the rent receipt they entered into written evidence was not signed by either of the landlords. Tenant DO also referenced another receipt for this payment as part of the

tenants' written and photographic evidence regarding damage to their fish tank and stand at the hearing; that receipt was not part of the written and photographic evidence the tenants provided to the RTB in advance of this hearing. Based on a balance of probabilities, I find that the tenants' last rental payment to the landlords was made on May 15, 2018 for the period from May 15, 2018 until June 14, 2018.

I find that the damage to the rental unit was such that it was reasonable to expect that the tenants would have had to find somewhere else to live after the June 6, 2018 flood. As the tenants could not live in the rental unit after the flood, they made arrangements with Tenant DO's parents to rent their 5th Wheel/pull trailer and move it to the landlords' property and reside there. The landlord gave sworn testimony that he had never agreed to pay for the tenants' costs in renting the 5th Wheel/pull trailer nor for its placement on the property by Tenant DO. I find that no rent was paid to the landlords once the 5th Wheel/pull trailer arrived on the property. While there was agreement between the parties that an oral tenancy agreement between the parties existed prior to the flood of June 6, 2018, there was no agreement that a landlord/tenant relationship between the parties continued after the flooding incident for the placement of the 5th Wheel/pull trailer of Tenant DO's parents on the landlords' property. I find that there is insufficient evidence that any rent was exchanged between the landlords and the tenants after June 6, 2018. In fact, it appears that any rent that was paid by the tenants after that date was paid by the tenants to Witness DR, Tenant DO's mother. For these reasons, I find that the landlords are not responsible for the rent that the tenants maintain that they paid to Witness DR for the rental of the 5th Wheel/pull trailer. I dismiss this aspect of the tenants' claim without leave to reapply.

The tenants' May 15, 2018 rent was paid on the expectation that the tenants would remain residing in the rental suite until at least June 14, 2018. I find that the flooding incident of June 6, 2018 basically ended the landlord/tenant relationship as no further rent was exchanged between the parties after that date. The tenants' rent payments for their accommodations after that date were paid to Tenant DO's mother, although the landlord testified that they placed those accommodations (i.e., the 5th Wheel/pull trailer) on the landlords' property without the landlords' explicit permission to do so. After reviewing RTB Policy Guideline 34, I find that it is highly likely that the aftermath of the flooding incident ended the oral tenancy agreement between the parties due to that agreement being frustrated as per paragraph 44(1)(e) of the *Act.* However, the landlords chose to issue the 1 Month Notice on July 9, 2018, leading to the ending of the tenancy agreement pursuant to paragraph 44(1)(a)(iii), 47 and 55 of the *Act* on August 14, 2018.

Under these circumstances, I find that the tenants are entitled to a monetary award equivalent to the rent they paid from June 7, 2018 until June 14, 2018, as they did not receive the full value of their tenancy agreement for those days. This results in a monetary award to the tenants pursuant to paragraph 65(1)(f) of the *Act* due to the loss in the value of their tenancy agreement, in the amount of $133.33 (i.e., $500.00 x 8 days/30 days = $133.33).

I have also considered the tenants' claims for the recovery of fuel for driving to get food and for food and water. Although I accept that the tenants likely incurred some extra costs for food and water in the immediate aftermath of the flood, the tenants chose to bring a 5th Wheel to the rental property and continue living on the same property where they had previously been residing. Once they connected the 5th Wheel to the landlord's utilities, the tenants should have had similar access to an appropriate replacement for eating and cooking that they had in their previous rental suite. If that were not the case, the tenants would have known about the restrictions they would be facing before they opted to live in this 5th Wheel. As I also accept the tenants' undisputed claim that the landlords imposed some restrictions on their access to power and other services and required them to provide power to aid in the restoration of the rental suite, I find that the tenants' costs may have increased somewhat had they continued to reside in the 5th Wheel as opposed to living in the rental suite they had committed to rent from the landlords. For these reasons, I allow the tenants a monetary award of $250.00, a somewhat nominal amount to compensate them for extra food, water and other costs they would have incurred as a result of having been displaced from the rental unit by the flood.

As mentioned at the hearing, I find no basis for compensating the tenants for damage that they maintain was caused to Witness DR's 5th Wheel, when the landlord moved it from the location where it was placed on the property by Tenant DO. This is an issue between Witness DR as the owner of the 5th Wheel, the person she rented it to, Tenant DO who delivered it to the property, and anyone causing damage to the 5th Wheel, a matter that would more properly be directed at that person through the court system. As the landlord said that he never authorized the placement of the 5th Wheel on his property, I find that I have no authority to consider any claim with respect to this aspect of the tenants' claim.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which compensates the tenants for their losses and damage arising out of this tenancy.

Item	**Amount**
Fish Tank Stand and Fish	$500.42
Cell Phone Booster	334.88
Roomba Vacuum	458.61
Cleaning and Sanitizing of Clothes	140.00
Recovery of Rent Paid from June 7, 2018 until June 14, 2018	133.33
Food, Water and Other Additional Costs	250.00
Total Monetary Order	**$1,817.24**

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 06, 2018

Residential Tenancy Branch