



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 17, 2018 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants had filed an amendment increasing the monetary amount to \$18,461.10.

This matter came before me for a hearing February 14, 2019 at which time it was adjourned. An Interim Decision was issued February 14, 2019. This decision should be read with the Interim Decision.

The Tenants appeared at the hearing with Legal Counsel. The Landlord appeared at the hearing with Legal Counsel. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony and documentary evidence. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought the following compensation:

Item	Description	Amount
1	Computer	\$799.98
2	TV stand	\$296.99
3	Cat figure 8	\$19.31
4	Vacuum	\$54.99
5	Cat arch	\$24.73
6	Catnip card	\$23.63
7	Dehumidifier	\$259.99
8	Upright vacuum	\$56.99
9	Couch	\$1,759.98
10	Bed frame	\$1,182.13
11	Air mattress	\$99.97
12	Cat bed	\$31.99
13	Desk	\$1,499.00
14	Satchel	\$418.00
15	Cat condo	\$152.99
16	Firewood	\$24.99
17	Cat perch	\$34.99
18	Office chair	\$366.00
19	Rug	\$178.86
20	Shoe rack	\$33.99
21	Ottoman	\$59.99
22	Armoire	\$335.99
23	Cat tunnel	\$30.99
24	Heater	\$118.00
25	Shipping for heater	\$16.78
26	Cat scratcher	\$87.99
27	Bed frame	\$68.61
28	Camera system	\$299.00
29	Mattresses (2)	\$1,758.00
30	Laundry	\$60.00
31	Parka	\$219.99
32	Moving	\$1,681.89

33	Wage loss x 7 days @ 11.26 hours per day	\$3,609.13
34	Food lost in cupboards/fridge/freezer	\$700.00
35	Temporary accommodation	\$2,095.24
	TOTAL	\$18,461.10

The parties agreed there was a written tenancy agreement in this matter. I understood the parties to say the Tenants originally sublet the rental unit and then signed a tenancy agreement with the Landlord starting April 30, 2017. Both parties agreed this was a month-to-month tenancy. Both parties agreed rent was \$1,400.00 due on the first day of each month. Both parties agreed a \$700.00 security deposit was paid.

S.C. testified as follows. She moved into the rental unit in November of 2015. The rental unit flooded a few weeks later. The people living upstairs said this had happened before. The area needed to be “roto-rooted” once per year. A company that deals with flooding said the sump system had to be “roto-rooted” out otherwise the system would be overwhelmed.

S.C. further testified as follows. On November 19, 2017, the Tenants woke up to the rental unit flooding from heavy rainfall. The Tenants tried to contact the Landlord but were unable to. The Tenants purchased pumps and hired a company to get the water out. The Landlord sent his nephews to talk to the workers hired to get the water out. The workers required authority to address the issue but were told they had to wait until the Landlord returned from a trip. The rental unit continued to flood for 10 days. The water in the rental unit was no less than one inch deep and up to three inches deep. The entire rental unit started to smell like mold. Soft surfaces started to grow mold.

S.C. further testified as follows. The Tenants had to leave the rental unit November 22nd. Nothing further had been done about the flooding other than what the Tenants had done. Water was still coming into the rental unit and the Tenants could not remove it fast enough. The Tenants found a short-term rental until they could find a new place to live. The Tenants moved what they could into storage. The Tenants found a new place December 12th.

S.C. testified that all the Tenants’ possessions were brand new in 2015 because she moved to the rental unit from another province at that time. She said only the desk was not new.

S.C. testified about each item noted in the table above. Her testimony was that these items were damaged by the water. In relation to item #30, S.C. testified that the Tenants had to wash as much as they could and had nowhere to do this but the laundromat. In relation to item #32, S.C. testified that this was for moving belongings from the storage unit into the Tenants' new place.

In relation to item #33, the Tenants testified that this was for Tenant N.D.'s wage loss. They said this was based on the average wage he would have been paid. The Tenants testified that N.D. took time off to deal with the flooding of the rental unit and moving.

The Tenants called the witness who testified as follows. He is a drainage service plumber and works for the company called by the Tenants to deal with the flood. He has worked for the company for 12 years. He attended the rental unit in November of 2017 when it flooded. It was raining. The rental unit had been flooded. It looked like belongings had been removed but there was still furniture in the living room that looked water damaged. Pumps had been set up in the rental unit and outside. Water continued to come into the rental unit. He did an inspection and determined there was a blockage. He needed owner approval to get to the blockage. Two representatives for the Landlord attended and said the Landlord was out of the country and could not be reached.

The witness further testified as follows. There was a blockage in the line that takes water from the house. He does not know what the blockage was. It could have been anything including dirt, roots or a broken pipe. He needed access to the line to determine what it was. He needed to excavate to access the line.

The witness further testified as follows. He could not see evidence of recent maintenance on the pipes and did not think recent maintenance had been done. The issue could have been prevented if a plumber attended once a year to do maintenance on the pipes.

In answer to questions by legal counsel for the Landlord, the witness testified as follows. The Landlord would have known about a broken pipe if the Landlord got yearly maintenance done. Yearly maintenance is not mandatory but highly recommended. A homeowner cannot control whether a pipe breaks given the possible causes of this. Pipes break slowly. If a camera inspection is done on a pipe that is breaking you can see the crack in the pipe.

The Tenants and legal counsel confirmed the following. They have provided no documentary evidence that the items noted in the table above were in the rental unit at the time of the flood. They are relying on verbal testimony of the Tenants and witness. They have provided no documentary evidence that the items were new in 2015 and are relying on verbal testimony. The Tenants did not have tenant's insurance.

Legal counsel for the Tenants made the following submissions. The Tenants are relying on sections 7 and 32 of the *Residential Tenancy Act* (the "*Act*") as the basis for their claim. The Landlord did not comply with section 32 of the *Act*. The Tenants minimized their loss by getting pumps to stop the flooding. Policy Guideline 1 outlines the responsibilities of the parties for the rental unit. It does not speak to drainage but does speak to services and facilities and drainage is vital to the tenancy. Further, landlords are responsible for large maintenance projects and the Tenants should not be responsible for maintaining drainage. The evidence shows the Landlord did not maintain the drainage. The flood occurred because of this. The Landlord is responsible for the damage caused. All amounts claimed are reasonable. The Tenants are not seeking compensation for anything luxurious.

In their written submissions, the Tenants submit that the drainage failed due to lack of maintenance and the flooding and damage worsened due to the Landlord's casual approach to the repairs needed.

Most of the evidence submitted by the Tenants relates to the cost of purchasing the items claimed for. The Tenants submitted documentation showing earnings for Tenant N.D. from April 16th to 20th of 2018. The Tenants submitted documentation which appears to show the cost of the short-term rental for 17 nights. The Tenants submitted an invoice for the moving costs claimed in item #32.

The Landlord testified as follows in response to questions from his legal counsel. The property had flooded previously in 2014 or 2015 due to a root problem, but this was fixed. There have been no other floods other than the one at issue. He does maintenance on the home. He was out of the country when the flood happened. He found out about the flood from the Tenants and sent someone to go take care of it. He was told the Tenants had hired a plumber and he said he would be back in two or three days. He told them not to dig because he did not know what was going on. He wanted to hire a professional to change the outside pipe. He got back three or four days later and hired someone at that time to fix the issue. Some of the Tenants' possessions were still in the rental unit.

The Landlord testified that the flooding was caused by part of the pipe being broken. He does not know how it broke and did not know it was on the verge of breaking.

The Landlord further testified that he told the Tenants he had another empty unit they could move into while the issue was addressed but the Tenants told him to talk to their lawyer.

Legal counsel for the Landlord questioned S.C. who testified as follows in response. Some of the Tenants' possessions were still in the rental unit four days after the flooding started. The Tenants could not get a moving company to move their belongings because of the flooding. The Landlord did offer the Tenants another place, but she felt very disregarded by the Landlord because he allowed the rental unit to flood and did not allow the hired workers to excavate to address the situation. Further, she was concerned for her safety and did not think staying at another property of the Landlord's was safe. Initially only the kitchen, bathroom and living room flooded but by the end all corners of the rental unit had flooded.

I asked Tenant S.C. if there was any evidence or basis to believe the Landlord's other property offered to the Tenants was not safe. S.C. said the Landlord had no regard for the Tenants and they had already booked a short-term rental and were living in it.

Legal counsel for the Landlord made the following submissions. The Landlord was not aware of the flooding problem. It was caused by a broken or cracked pipe. There is no way the Landlord could have known or predicted this would happen. There is no evidence that the flood was caused by something the Landlord failed to do. The Landlord did not fail to comply with the *Act*.

Legal counsel for the Landlord made the following further submissions. The Tenants are claiming for moving costs but there is evidence they were planning to move anyway and so would have incurred this cost regardless of the flood. The Landlord offered to have the Tenants stay for free at another property while the issue was fixed but the Tenants simply told him to speak to their lawyer. The Tenants did not have insurance. There is no evidence about the possessions that were damaged and if they were in fact damaged. There is no evidence that the possessions were in fact new. There is no evidence that the Tenants minimized their loss in relation to the expensive items claimed for. The Tenants have failed to prove the amount or value of any loss. The Tenants did not minimize their loss as four days after the flooding started there were still belongings left in the rental unit.

In the written submissions of the Landlord, it is stated that the pipe that caused the flood had not flooded in the past and it was common practice for the Landlord to unclog the pipes every one to two years. They also state that the Landlord unclogged the drains approximately four to six months prior to the incident. The written submissions also state "At this time, no concrete evidence has been provided stating the cause of the clogged drain".

In reply, legal counsel for the Tenants submitted that a lack of tenant's insurance is irrelevant as the insurance company would have sought compensation from the Landlord in any event.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy Guideline 16 deals with compensation and states in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the

party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

It is the Tenants, as applicants, who have the onus to prove the claim on a balance of probabilities pursuant to rule 6.6 of the Rules of Procedure.

The witness testified that the flood was caused by a blockage in a pipe that takes water away from the rental unit. I accept that the issue was the pipe that takes water away from the rental unit as I did not understand the Landlord to dispute this. The witness did not know what the blockage was and acknowledged it could have been caused by anything including dirt, roots or a broken pipe.

The Tenants submit that the Landlord breached section 32 of the *Act* by failing to maintain the pipes. The position of the Landlord is that he did maintain the pipes.

I do not find it necessary to determine whether the Landlord did yearly maintenance on the pipes. There is no evidence before me that something was occurring with the pipes or rental unit that should have alerted the Landlord to an issue with the pipes. The Tenants have provided no evidence showing that the Landlord was required to have the pipes checked yearly or even that the Landlord was required to have the pipes checked in the absence of an indication that there was a problem. The witness testified that it is recommended that homeowners have yearly maintenance done on pipes to avoid issues; however, he acknowledged that this is not a requirement. In the absence of evidence showing the Landlord was required to do yearly maintenance on the pipes, I cannot find that the Landlord failed to comply with health, safety or housing standards required by law whether he did such maintenance or not.

Nor do I accept that the Landlord failed to provide and maintain the rental unit and property in a state that, having regard to the age, character and location of the rental

unit, made it suitable for occupation by failing to do yearly maintenance on the pipes. Up until the flood, the condition of the pipes had no affect whatsoever on the Tenants or their ability to reside in the rental unit. I cannot find based on the evidence provided that the rental unit was unsuitable for occupation because the pipes had not been maintained yearly.

I do accept that the rental unit was not suitable for occupation when the flood occurred. The Tenants testified that there was one to three inches of water in the rental unit. I did not understand the Landlord to dispute this or dispute that the rental unit was uninhabitable until the flood was addressed. I find the Landlord was required pursuant to section 32 of the *Act* to address the flood as soon as possible once it occurred.

I accept the testimony of the Tenants that they tried to reach the Landlord who was out of the country when the flood occurred. I did not understand the Landlord to dispute this and he acknowledged that he learned of the flood from the Tenants. I also accept that the Landlord sent someone to address the issue once he was aware of it as this was undisputed between the parties. I understand from the evidence of both parties that this occurred the day after the flood started.

I also accept that the witness asked the Landlord's representative for permission to access the line to address the issue based on the testimony of the witness. The Landlord acknowledged that his representative talked to the workers hired by the Tenants to address the issue and that they asked permission to do further work. Further, I accept that the Landlord did not give permission for the witness to access the line based on the testimony of the witness. The Landlord acknowledged that he responded to the inquiries saying he would address the issue when he returned from being out of the country.

I accept that the Landlord breached section 32 of the *Act* by failing to address the flood sooner. I do not find the fact that the Landlord was out of the country to be an excuse for failing to address the flood as soon as it was discovered. The Landlord should have had someone available and ready to deal with an emergency such as this immediately regardless of his location. In my view, this is clear from section 33 of the *Act*. When he learned of the flood, the Landlord should have sent someone who had authority to address the situation on his behalf. Further, the Landlord should have given the witness permission to do what was necessary to address the situation when asked. If the Landlord had concerns about what he was being told by the witness or his company, he should have had someone else attend and address the situation. Waiting three to four

days to address the flood was unreasonable and a failure to comply with section 32 of the *Act*.

I accept that this breach caused some loss or damage to the Tenants. I accept based on the evidence provided that the Tenants were left to deal with the problem themselves and that Tenant N.D. had to take time from work to do so. I also accept that the Tenants had furniture in the rental unit when the flood occurred and that some furniture was still in the unit at least four days later. The testimony of the witness and Landlord supported this. I accept that the failure of the Landlord to address the flood immediately contributed to the water damage as the flood continued and the water in the unit was not dealt with. The testimony of the witness supports that there was water damaged furniture in the rental unit when he attended.

I accept that some of the items claimed for were in the rental unit when the flood occurred and were damaged due to the Landlord's breach. In relation to the larger furniture items claimed for, it is only reasonable that these types of items would have been in the rental unit.

However, the Tenants have failed to prove that the breach resulted in the amount of loss or damage claimed. The only evidence provided by the Tenants about their belongings being damaged is their verbal testimony. The Landlord disputed the testimony on this point. The Tenants provided no documentary evidence to support their claim such as photos or video. I do not accept that this was a situation in which the Tenants could not obtain such evidence as they were in the rental unit for four days after the flood started and their belongings were in the rental unit for eight days. The Tenants had ample time to collect evidence of the damage.

The Landlord submitted that the Tenants failed to mitigate their loss. I accept the Tenants' testimony that they were unable to move the larger furniture items in the rental unit immediately as this is reasonable in the circumstances.

I am satisfied that the Tenants failed to mitigate their loss in relation to the temporary accommodation costs claimed. In my view, the Tenants should have accepted the Landlord's offer to stay in another unit of his while the flood was addressed. I do not accept that there was any safety issue in doing so as there is no evidence or basis to support this.

Considering the above, I find the Tenants are entitled to compensation for damage to the larger furniture items claimed for. I do not accept that the Tenants are entitled to compensation for replacing the furniture with new items. I do not accept that the furniture, other than the desk, was all brand new in 2015 without some documentary evidence to support this. Tenant S.C. said the furniture was new because she moved from a different province. It is not unusual for people to move furniture between provinces. This statement is not sufficient to support a finding that the furniture was new in 2015.

I accept that the Tenants are entitled to compensation for water damage to the following:

Item	Description	Amount
2	TV stand	\$296.99
8	Upright vacuum	\$56.99
9	Couch	\$1,759.98
10	Bed frame	\$1,182.13
13	Desk	\$1,499.00
18	Office chair	\$366.00
19	Rug	\$178.86
20	Shoe rack	\$33.99
21	Ottoman	\$59.99
22	Armoire	\$335.99
27	Bed frame	\$68.61
29	Mattresses (2)	\$1,758.00
33	Wage loss	\$3,609.13

In relation to the wage loss, I only accept that Tenant N.D. spent two days dealing with the flood as this is all the evidence shows. I accept that the Landlord should have had someone there during those two days dealing with the flood. I assume from the evidence that the remainder of the days off were spent moving and dealing with the Tenants' personal belongings as the Tenants did not do anything further in relation to the flood itself. I am not satisfied that the Tenants are entitled to compensation for the entire time as I am not satisfied the Tenants would not have had to move their belongings even if the Landlord had addressed the flood sooner.

I decline to award compensation for laundry or moving costs. I am not satisfied that the Tenants would not have had to move their belongings and stay somewhere else while

the flood was being addressed even if the Landlord had addressed the flood sooner. I am not satisfied that these losses resulted from the breach versus the initial flood.

I decline to award compensation for the food in the absence of further evidence that there was \$700.00 worth of food in the rental unit at the time. Further, I am not satisfied that the Tenants could not have removed the food and stored it somewhere else during the four days they remained in the rental unit.

Considering the above, I award the Tenants \$1,031.18 for two days of wage loss. I award the Tenants a further \$3,000.00 for the damaged belongings. I am satisfied based on the evidence that the Landlord's breach resulted in damage in this amount. I cannot be satisfied that the breach resulted in further damage in the absence of stronger evidence on this point.

Given the Tenants were successful, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord must pay the Tenants \$4,131.18 and I issue the Tenants a Monetary Order in this amount.

Conclusion

The Landlord must pay the Tenants \$4,131.18 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 29, 2019

Residential Tenancy Branch