



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNDCT, OLC, FFT

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$11,793
- b. An order that the landlord comply with the Residential Tenancy Act, Regulations and or tenancy agreement.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on July 29, 2019. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenants are entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and or tenancy agreement?
- c. Whether the tenants are entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy began on March 1, 2016. The written tenancy agreement provided that the Tenants would pay of \$2150 per month payable in advance on the first day of each

month. The rent has been increased to \$2375 effective March 1, 2019. The tenant(s) paid a security deposit of \$1075 prior to the start of the tenancy.

The Tenants seek compensation for the reduced value of the tenancy caused by a flood that occurred in late January 2019. The rental unit was not finally restored until the middle of May.

The tenants gave a lengthy written submission which included a time line. Briefly the relevant facts are as follows:

- The tenants were away on holidays from January 28, 2019 to January 29, 2019. When they returned they discovered that a significant flood had occurred from a plumbing back up that had not been properly dealt with by the landlord.
- The flood occurred on January 21, 2019. The landlord entered the next day and began remediation work. The work was not done satisfactorily.
- They testified that when they returned the carpet was filthy and the smell was very bad.
- They attended the office on January 30, 2019 which was 9 days after the incident. The landlord had not retained the service of a carpet cleaning company and cleaner.
- The carpet cleaners attended on January 31, 2019. The smell was so horrible they had to leave the rental unit that night.
- They went to the office on February 5, 2019 to complain that no action had been taken about the dishwasher which had back up water in it, the carpets still smelled bad and the kitchen cupboards were rotting.
- The tenants returned to the office on February 13, 2019 to complain that the smell of the carpets and that the condo was unliveable. The dishwasher was broken and dried dirt water was left all over the kitchen. The landlord denied any type of compensation. They told us to clean the condo ourselves. As a result we booked carpet cleaners for the following day.
- The carpet cleaners attended on February 14, 2019 and did a deep clean of the carpets. Again they told us that there was not much more they could do about the smell because the underlay was full of particles that would not come out. They immediately e-mail the landlord and asked for a reduction of rent. The landlord denied this request.
- On February 16, 2019 a repair man on behalf of the landlord attended to patch a giant rotten hole under the sink that had black mould growing around it by placing a piece of melamine on it. We stopped the installation as they

were not treating the mould. They went to the office and told them this type of fix was not acceptable and the mould needed to be properly cleaned.

- Nothing happened for the next 13 days.
- On February 28, 2019 another person came to look at the kitchen and take photos.
- Nothing happened for the next 22 days. The condo smelled like rotten compost/pond water.
- The landlord gave them a contact number for their insurance and the restoration company.
- On March 22, 2019 the restoration company came and removed the rotten side of the kitchen, all cupboards of the west lower side and all flooring in the kitchen. The stove, sink, and dishwasher were moved into their living room. The flooring and gyprock both had asbestos and they taped off the kitchen.
- On March 28, 2019 the tenants asked for compensation but it was denied by the landlord.
- The tenants arranged with the carpet installers to attend on Saturday, March 30, 2019. The carpets were not cut properly and they left without doing any work.
- On April 1, 2019 the restoration company came to supervise the carpet installation and to help move the furniture including the stove, dishwasher etc. left in the tenant's living room. The carpet installers came and installed the carpet in the second bedroom and main living room and entryway.
- On April 3, 2019 the agent for the insurance company attended to measure the kitchen for insurance
- The kitchen cupboards were installed on April 25, 2019 and countertops installed on April 29.
- The tenants vacated the rental unit from April 30, 2019 to May 7 to get away from the construction. The floor was installed in the kitchen, sink installed and baseboards installed.
- On May 8, the tenants had to deal with the restoration company with respect to deficiencies.
- The dishwasher was finally installed on May 15, 2019. The final painting was done on May 16, 2019.
- The tenants seeks compensation for the following:
  - The tenant testified that she was actively involved in facilitating the restoration of the rental unit with the restoration company which is the landlord's responsibility. This put an additional burden on them as they both work night shift.

- They had to endure the disgusting smell of the back up from when they returned from Mexico at the end of January 2019 to the late March 2019. The carpets in the second bedroom were not replaced until March 29, 2019. They used the second bedroom as a media room and an office.
- They were without a stove, dishwasher and use of the kitchen for 47 days. The tenants claimed \$2350 for the cost of eating out. This was calculated at \$50 a day for 47 days. The tenants produced receipts for half of this amount. The tenants testified they would normally pay about \$1000 per month for food (or about \$1500 for the 47 days). The tenants did not provide evidence of any food expenses incurred during this period apart from the cost of eating out.
- They had to throw out a large number of their personal belongings. They are not making a claim for the personal belongings.

The landlord gave the following evidence in the form of a written submission and oral testimony:

1. Building managers entered the suite **on January 21st at 9:54 PM** right after they had received a phone call notifying them about the flood. Please refer to the “**We Entered Your Suite Today**” notice (***Tenants’ evidence Tab 5b***) and the **building manager’s overtime invoice (see pages 2 - 3)**. Building managers cleaned out the dirty water in the kitchen sink, removed water from the kitchen floor and extracted water from the affected carpet. **The contaminated area was disinfected with chlorine.**
2. Plumbing company Pacific West Mechanical was called immediately to eliminate the cause of the flood, and their work was performed the following morning on January 22nd. Please refer to the Building Manager’s Weekly Report (***see page 4***).
3. Restoration company Ecotech Restoration was called, and they came at 3 PM on January 22<sup>nd</sup> (the day after the flood). Water was extracted from the affected carpet, drying equipment was installed, and the affected area was treated with disinfectant Decon 30. Please refer to Ecotech Restoration’s report (***see pages 5 - 17***).
4. An insurance company is usually involved when a cost of restoration exceeds insurance deductible of \$10,000. A decision whether to proceed with the

insurance claim was delayed until an emergency invoice and a cost estimate was received from Ecotech Restoration. Please refer to the correspondence between the property manager and the insurance company. (**see page 18**).

5. Meanwhile, following tenant's request to eliminate some smells and clean the affected carpet, a carpet cleaning company were invited to the tenants' suite 1903 and the carpet and rug were cleaned once again on January 31st. Please refer to the SmithWerks' invoice dated January 31<sup>st</sup> (**see page 19**).
6. The insurance claim was opened as soon as the emergency repair invoice, scope of emergency work report and cost of an estimate for final repair were received from Ecotech Restoration. To speed up the flood restoration, we would have normally proceeded with our contractors that we have on-site, but we could not do so because the kind of repair that had to be performed by a specialized contractor to avoid our liability in the future. Please refer to the ClaimsPro letter. (**see page 20**).
7. Ecotech Restoration was approved by the insurance company to proceed with the repair, and they performed the restoration under their schedule according to the recommended procedures.
8. On some occasions, Ecotech Restoration notified the landlord of their schedule, and the landlord provided the tenants with appropriate notices of a suite entry (please refer to **Tenants' evidence Tab 5b**); Other times, the restoration company contacted the tenants directly notifying them of the prospected work in tenants' apartments.

#### **For SECTIONS "D" of the tenants' claim**

We realize the tenants' frustration regarding the inconvenience caused by the flood and suite's restoration after the flood, **but considering the following, we believe that tenants are not entitled to be compensated by the landlord with a rent reduction and for food expenses.**

1. According to section 42 of Residential Tenancy Agreement (**see page 24**), **"tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause..."**. The tenants had to claim all these expenses, including the outside living expenses, if any, to **their private**
  - a. **insurance company**. Tenants were notified of the above via email (**see page 25**).

2. After the flood restoration, tenants' inconvenience was compensated by **a partly renovated apartment**:
  - a. Carpet in bedroom and hallway was replaced with new carpet (***Tenants' evidence Tab 4b***).
  - b. The vinyl kitchen floor was replaced with vinyl planks (***Tenants' evidence Tab 4b***) that were selected by the tenants (***see pages 27 - 28***) to the tenants' satisfaction.
  - c. Kitchen cabinets were replaced with new cabinets (***Tenants' evidence Tab 4b***).

### Law

Section 32(1) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

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.

Section 28 of the Residential Tenancy Act provides as follows:

### **Protection of tenant's right to quiet enjoyment**

**28** 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.

Policy Guideline #6 includes the following

**B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

...

**Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

**A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations. (my emphasis)**

Analysis

After carefully considering all of the evidence including the oral testimony of the parties, written submissions from both parties and photographs presented I made the following determinations:

- I determined the tenants' enjoyment of the rental unit has been significantly reduced because of the flood and the delays in remediating the problem associated with it. The tenants' loss of enjoyment was substantial and for an extended period of time.
- The loss of enjoyment of the rental unit included but is not limited to:
  - Having to live with the foul odour for about 7 weeks
  - The limitations to the use of the second bedroom for about 2 months until the carpets were finally installed in early April.
  - The limitation of the use of the living room for an extended period of time.

- The loss of use of the kitchen for 47 days.
- I determined the tenants' enjoyment was reduced by having to deal with contractors for an extended period of time. This was problematic as both work night shifts.

I do not accept the submission of the landlord that the tenants are not entitled to compensation because the tenant was compensated by a partly renovated apartment. The landlord has a legal duty to provide a rental unit that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The condition of the rental unit after the flood failed to comply with this legal standard.

I do not accept the submission of the landlord that tenants are not entitled to compensation because they failed to carry tenant's insurance for the following reasons:

- The insurance required that the tenants carry sufficient insurance to cover his property against loss of damage from any cause..." The tenants are not making a claim for their property loss.
- Further, had the tenants carried tenant's insurance this would not protect the landlord from the tenant's insurance company making a subrogated claims.

The tenants rented the rental unit for the sum of \$2375 per month. There were delays in the remediation of the problem. However, even if there were no delays attributable to the landlord, the landlord has not provided what was bargained for. The landlord is receiving full rent in exchange for a rental unit that does not meet the standards of the Act and tenancy agreement. The landlord is not providing that value because of the flood and the delays in restoring it and the tenants are entitled to the reduced value.

The tenants seeks reimburse of all of the rent paid for this period. I do not accept this submission as the tenants continued to live in the rental unit for most of the period. I determined the tenants are entitled to \$4150 which is approximately half of the rent for this period.

Further I determined the amount claimed by the Tenants of \$2350 for the cost of eating out for 47 days (@\$50 a day) is reasonable. However, the tenants testified they would normally incur food expenses of \$1000 a month (or \$1500 for the month and half). I determined the \$1500 should be deducted from the Tenants claim as it was an expense they did not have to incur. The tenants are entered to recover \$850 for the additional cost they have incurred for the loss of the kitchen for 47 days.



Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$5000 plus the sum of \$100 in respect of the filing fee for a total of \$5100 such sum may be deducted from future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 15, 2019

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Residential Tenancy Branch