



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL
For the Tenant: MNSDS-DR, MNDCT, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- \$5,000.00 compensation for damage caused by the tenant, their pets or guests to the unit, site or property – holding the pet or security deposit; and
- recovery of the \$100.00 Application filing fee.

The Tenant filed a claim for:

- \$32,000.00 compensation for monetary loss or other money owed;
- the return of the security deposit and pet damage deposit in the amount of \$1,600.00; and
- recovery of the \$100.00 Application filing fee.

The Landlord, S.H. the Tenant, L.S., and two witnesses for the Tenant, W.M.L., and the Tenant's aunt, S.B., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their documentary evidence, to which they directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses, as well as confirming their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Tenants submitted an Amendment to their application, which corrected their address noted in the initial Notice of dispute resolution Proceeding. The Landlords acknowledged having received this Amendment. I advised the Parties in the hearing that the Landlords now had the Tenants' forwarding address as of the hearing date, September 3, 2020.

At the end of the hearing, the Parties showed signs of being able to resolve the matter between themselves. I gave them until September 25, 2020 to reach an agreement, further to the hearing on September 3, 2020. I have since been advised that the Parties were unable to reach an agreement, and therefore, I will decide these matters.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Is either Parties entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 15, 2019, ran to June 14, 2020, and was then to be on a month-to-month basis. However, the Parties agreed that the tenancy ended on April 17, 2020, due to a fire that destroyed the rental unit that day. The Parties agreed that the Tenants paid the Landlords a monthly rent of \$1,600.00, due on the fifteenth day of each month. They agreed that the Tenants paid the Landlords a security deposit of \$800.00, and a pet damage deposit of \$800.00.

The Parties agreed that they did not conduct an inspection of the condition of the rental unit prior to the tenancy starting. The Landlords had asked to use the residential property for their wedding near the start of the tenancy. The Tenants said that the Landlords were not there when the Tenants arrived to move in. The Tenant said: "They said they would send us what they wrote down to sign [on the condition inspection report], but we never received one."

The Parties agreed that the rental unit was located in a remote area and that the Tenants would, therefore, have a longer wait for such amenities as the police and fire department.

LANDLORDS' CLAIMS

#1 Appliances from [National Hardware Retail Outlet] → \$4,656.72

The Landlord said that they did not have contents insurance for the residential property, even though they had left furnishings and appliances for the Tenants to use. The Landlord pointed to the tenancy agreement that required the Tenants to have insurance coverage. The Landlord said:

The property was in possession and control of the Tenant at the time of the fire. It was burned to the ground. Before they moved in, we had a WETT inspection and a brand-new chimney. The WETT inspection was on June 4, and was sent to the tenants. They were required to, and they signed that they would have renter's insurance the entire time of the lease. She said they even had avalanche insurance. As for the . . . – all I'm asking for is not to pay the security deposit – just the \$800.00 deductible. We made sure all smoke detectors and fire extinguishers were in place; we were both fire fighters, so we made sure the house was cleared of debris. We took down trees that could have come down.

An internet search provides that a WETT inspection means:

A WETT inspection, which stands for Wood Energy Technology Transfer, includes a thorough inspection of all wood burning appliances such as stoves and open fireplaces, by a certified WETT inspector.

The Landlords said that pursuant to the tenancy agreement, the Tenants were required to have contents insurance for the rental unit. The Addendum to the tenancy

agreement, which was signed by the Parties, contains the following clauses:

1. Tenant must maintain and provide proof of contents insurance during the length of the tenancy.
- . . .
4. Tenants agree to observe and obey all fire regulations set out by the Province, [local] Regional District and/or other authority, including the use of open fires, smoking, fireworks, and any other restrictions that may be put in place.
5. Tenants understand that due to the location and distance from amenities that services may be delayed with longer than normal wait times.

The Landlords submitted a copy of an order sheet from a national hardware chain that includes the estimated costs of the following items that the Landlords said they lost in the fire:

Gas range	\$895.00
Refrigerator	\$1,395.00
Microwave	\$315.00
Washer	\$845.00
Dryer	\$845.00
Assembly	<u>\$79.99</u>
Subtotal	<u>\$4,374.99</u>
Delivery	\$59.98
Taxes	<u>\$221.75</u>
TOTAL	<u>\$4,656.72</u>

The Tenant said: “I’ve done some work – you can’t insure things that belong to other people. When you buy tenants’ insurance, it applies to your belongings only.”

The Landlord said:

Quick thing on that, the appliances listed – at end of tenancy, those are costs to be recovered. It’s not a big deal at this point, though. See the clause in the tenancy agreement – added it in that it had furniture, that they were in care of those and to take care of those while they lived there. The appliances came with the house, so if they are not there at the end of the tenancy, then we should be compensated for their absence.

The Addendum to the tenancy agreement has a clause that states:

2. Dining Room Table, Chairs and Hutch are remaining with the unit as per the tenants' requests and must be maintained in reasonable condition and remain property of the landlords.

#2 Insurance Deductible → \$2,500.00

The Landlords submitted a monetary order worksheet that included a claim for their insurance deductible; however, the Landlords did not claim this amount in their initial application, nor did they amend their application to give the Tenants notice of this claim. The Landlord said: "We expected that the Tenants should have contents insurance."

TENANTS' CLAIMS

#1 Return of Security and Pet Damage Deposits → \$1,600.00

The Tenant said that she expects to get the full amount of the deposits back, because the fire was not their fault, and the Landlord has no reason to keep the deposits.

The Landlord said that the Tenants' deposits should at least be used to cover the Landlords' deductible.

#2 Compensation for Monetary Loss or Other Money Owed → \$32,000.00

The Tenant said that she had contents insurance for six months, but that it had lapsed and was never reinstated.

The Tenant said:

I needed a WETT inspection; no insurance company would insure me without one. The main source of heat was the wood burning stove and it was a cedar house. They knew it failed the first inspection. The only way to get insurance was to get that WETT inspection done.

The chimney caused the fire. We are still waiting for the investigator's report, but I did submit the RCMP report given to the fire. The fire commissioner's report is

what I am waiting for. I went through everywhere – local fire department, the forestry department, and the investigator – I just have the RCMP report.

The RCMP report includes the following:

FIRE ORIGIN, LEVEL: CANNOT BE DETERMINED

FIRE ORIGIN, AREA: MASONRY CHIMNEY, FLUE PIPE, GAS VENT

...

IGNITING OBJECT : CANNOT BE DETERMINED

...

MATERIAL FIRST IGNITED: CANNOT BE DETERMINED

The Tenant said: "I uploaded the RCMP report – basically it doesn't say that was the cause, but that's the origin. I really want to know the cause."

The Landlord said:

I left all of the digging to the insurance adjuster. I want to know, but I'm out of province. By the time the inspector got there, there were literally ashes left. So whether they will ever be able to come up with the cause....

During the time we did open house showings to prospective renters, that is one thing that we do say: this is not a fire protected area. When [the Tenant, C.E.] wanted to build a blacksmith shop, we said the property is not protected, please don't burn under the house. It was not in writing, just verbal.

My big thing is that until recently, when talking to the adjuster, I thought that they had insurance. I didn't realize it until the last few days. I was trying to figure out what the \$32,000 [claim] was.

I asked the Tenant on what basis are they entitled to a monetary order from the Landlord. I said that they need to be able to link their loss to the Landlord's breach of the Act, Regulation or tenancy agreement.

The Tenant said:

I understand that I should have had insurance, but at the time of the six- months' payment, I could only pay so much, life got in the way.

[The Landlords] are responsible for cleaning and maintenance of the chimney and I'm responsible for cleaning the fire place, which I always did. I'm from Alberta and BC fires are very well known. I was very sure that everything was always taken care of for the fire place.

As for the fire alarm, they never went off. If I had been asleep, I probably wouldn't have made it out. The smoke detectors didn't go off. We never did a walk-through because of this wedding. They were supposed to send us something. This all could have been rectified.

Regarding the fire extinguisher, the Tenant said:

We just moved it; we didn't realize it was empty. It had never been touched again. The smoke detector and a carbon monoxide tester - they did work. The bottom would go beep, beep when you hit the test button. We didn't do much cooking. One of those things that are not thought of.

I asked the Tenant how they discovered that the rental unit was on fire.

The Tenant said:

We had picked up my girlfriend's daughter. We got back at 1:30 a.m., because she cleans at the college. I went up to the loft and she was getting something to eat. We started a fire in the fire place, and about 20 minutes later, embers were coming down from the ceiling. I grabbed the fire extinguisher to pull the pin and nothing was there - no hose; we ended up going to the other neighbour to get a hose to put it out.

The Tenants' witness said:

I have video pictures of where it started. The embers came down from the chimney onto the cedar roof and burned. In between the ceiling and the roof, the chimney is not three feet above the roof. It's not an approved chimney.

The Tenant said he was not a chimney inspector, but a friend of the Tenants.

The Landlord said:

It was a new chimney and a new WETT inspection had to be to today's

standards. It was legally to today's standard - a legal chimney. The only thing we did – we redid the whole place. The only thing that was older was the stove itself, and we put new stones and tile around it. It was inspected seven months before on June 4, 2019, when it was completed.

I asked the Tenant if the items they claimed are based on lost possessions that they had replaced.

Replaced? Not all. It's what . . .for instance tools that were there under the house. All those receipts were in there. He was working for [the Witness] at the time. A lot of this stuff was in there – I sent receipts that I put in. My mother's ring, the watch, the appraisals.

The Tenants said they stayed in three different hotels while looking for alternate accommodation. The Tenant submitted multiple receipts for hotel stays, food, possessions, etc. However, they did not list these amounts separately in a monetary order worksheet, but rather, they added up the receipts separately and included only the totals in the monetary order worksheet.

Analysis

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

Before the Parties testified, I advised them of how I would be analyzing the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, as each Party is an Applicant and a Respondent, they each must prove:

1. That the other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Applicant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Applicant did what was reasonable to minimize the damage or loss.

("Test")

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

LANDLORDS' CLAIMS

#1 Appliances from [National Hardware Retail Outlet] → \$4,656.72

The Parties agreed that the fire inspector had not determined the cause of the fire, as of the date of the hearing. Accordingly, I find that neither of the Parties has provided sufficient evidence to establish that the other Party caused the fire and is, therefore, responsible for the other Party's losses for this reason.

However, the Tenants acknowledge that they were responsible for having contents' insurance for the duration of the tenancy. The Tenant said that they had insurance prior to the fire, but that they had let it lapse; I find this is the reason the Tenants did not have contents insurance, rather than it being the insurance company having required additional documentation, such as a new WETT report.

Further, the Tenants did not provide any supplementary evidence to support their claim that their policy would not have covered the Landlords' possessions that were lost in the fire. As a result, I find that the Tenants breached the tenancy agreement by not having proper insurance, and therefore, are responsible for the Landlords claimed losses. I find that the Landlords suffered the loss of much more than the appliances in the rental unit; however, as they only claimed for these possessions, I award the Landlords with recovery of the cost to replace the lost items from the Tenants, which is **\$4,656.72**, pursuant to section 67 of the Act.

#2 Insurance Deductible → \$2,500.00

As noted above, the Landlords submitted a monetary order worksheet that included a claim for their insurance deductible; however, they did not claim this amount in their initial application, nor did they amend their application to give the Tenants notice of this claim. I find that it would be administratively unfair to award the Landlords with compensation for which the Tenants were not given fair notice. As a result, I dismiss this claim without leave to reapply.

TENANTS' CLAIMS

#1 Return of Security and Pet Damage Deposits → \$1,600.00

The Tenants provided their forwarding address to the Landlords via service of their Amendment, which corrected their address, and which the Landlords said they had received. Pursuant to my note above, I find that the Landlords were provided with the Tenants' forwarding address on the day of the hearing, September 3, 2020, and the tenancy ended on April 17, 2020. Section 38(1) of the Act states the following about these dates:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlords applied for dispute resolution on May 4, 2020, and the Tenants did not provide them with their forwarding address until the Tenants applied for dispute resolution, themselves. Further, the Tenants acknowledged that the Landlords did not have the correct forwarding address until the Tenants submitted an Amendment to their Notice, which corrected the initial address provided.

I find that the Landlords were not required to return the \$1,600.00 security and pet damage deposits because the Landlords applied for dispute resolution to claim against the security and pet damage deposits, pursuant to section 38(1). Therefore, I find the Landlords complied with their obligations under section 38(1). However, I find that the Landlords are now required to reimburse the Tenants with the \$800.00 security deposit and the \$800.00 pet damage deposit. I award the Tenants with recovery of their **\$1,600.00** security and pet damage deposits from the Landlords pursuant to section 67.

#2 Compensation for Monetary Loss or Other Money Owed → \$32,000.00

I find that both Parties suffered significant losses in this unfortunate incident. However, as noted above, I have found that neither Party provided sufficient evidence to establish the cause of the fire; and therefore, I find there is insufficient evidence before me to determine that either Parties breached the Act, Regulation, or tenancy agreement in causing the fire. As such, the Tenants have failed the first step of the Test in establishing that the Landlords breached the Act, Regulation, or tenancy agreement.

Further, I find that the Tenants did not mitigate or minimize their losses by having had contents insurance at the time of the fire. Not only did this leave the Tenants without coverage for such a loss, but it breached the tenancy agreement Addendum, which I find to be part of the tenancy agreement. If the Tenants had had contents insurance, as was required by the tenancy agreement, they would have been eligible for compensation from the insurance company. I find that the Landlords should not be liable for compensating the Tenants for the Tenants' failure to obtain insurance.

As a result, I dismiss the Tenants' claim for compensation in this category without leave to reapply.

Summary

The Parties have been awarded the following amounts.

Landlords	\$4,656.72
Tenants	<u>\$1,600.00</u>
Difference	<u>\$3,056.72</u>

Based on the set off of the Parties' respective awards, I grant the Landlords with **\$3,056.72** from the Tenants, pursuant to section 67 of the Act.

Given that both Parties were partially successful in their claims, I decline to award either Party with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

Conclusion

The Landlords are successful in their claim for compensation from the Tenants in the amount of \$4,656.72, and the Tenants are successful in their claim for compensation

from the Landlords in the amount of \$1,600.00. The Parties provided insufficient evidence to prove their other claims on a balance of probabilities

After the amounts awarded are set off against each other, the Landlords are granted a Monetary Order under section 67 of the Act for the balance due by the Tenants to the Landlords in the amount of **\$3,056.72**.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 05, 2020

Residential Tenancy Branch