Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE DOWNTOWN REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on December 5, 2020, wherein the Tenants sought monetary compensation from the Landlord in the amount of $1,629.44 for costs incurred when the water line broke at the rental unit in July of 2020 as well as recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for teleconference at 1:30 p.m. on February 11, 2021. Both Tenants called into the hearing, as did D.S. the agent for the Landlord. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Evidence

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*"). At all times an Arbitrator is guided by *Rule* 1.1 which provides that Arbitrators must ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

The following *Rules* deal with evidence submitted by the Applicant, which in this case is the Tenant:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the application for dispute resolution;

b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

d) a detailed calculation of any monetary claim being made;

e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence.

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the Arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The Arbitrator must apply Rule 6.3 [*Whether to adjourn the dispute*

The parties agreed that all evidence that each party provided had been exchanged, however, the Landlord's Agent stated that she did not receive the Tenant's Amendment and water utility bills until shortly before the hearing. The Agent confirmed she was not seeking an adjournment, but rather wanted this evidence to be excluded.

The Tenants' original claim was for $1,629.44. They did not provide a Monetary Orders Worksheet detailing his amount, however, on their Application they indicated they were seeking compensation for hotel accommodation due to the water main breakage at the rental unit. The Agent confirmed she reviewed the Tenant's utility invoices and provided detailed submissions on this portion of their claim.

In all the circumstances, I find the evidence of the water utility should be considered and that the Tenants amendment to seek the increased water costs should be allowed. The Landlord did not seek an adjournment, and it was clear the Agent was prepared to deal with this material. I find there is no prejudice to allowing this evidence, as the Landlord confirmed she had an opportunity to respond to this evidence. I find that it is efficient to deal with this portion of the Tenants' claim at the same time as their claim for hotel accommodation. I also find this would have been reasonably anticipated by the Landlord. I also accept the Tenant's evidence that they were awaiting the most recent utility bill so that they could provide a comparison of usage during the material time and other times.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Name

Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

The Tenants named the Landlord's property management company as Landlord. A review of the tenancy agreement confirms that the Landlord is an individual, M.D. I therefore amend the Tenants' Application to accurately name the Landlord as M.D.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?

2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant, C.W., testified as follows. He confirmed that the tenancy began April 1, 2017. Monthly rent is $1,200.00 and the Tenants paid a $600.00 security deposit.

The Tenant stated that on July 15, 2020 the water main pipe to the rental unit burst. He stated that they could hear there was something going on with the water and discovered that the entire driveway was flooded. The Tenant stated that he shut off the water main from the house and then called the Landlord's Agent. The repairs were not completed until July 31, 2020 such that the Tenants did not have water from July 15, 2020 to July 31, 202. The Tenant testified that only came to the property on occasion and used the neighbours water hose to flush the toilet and wash their hands.

The Tenant stated that they stayed with friends as well as in a hotel for six nights when they had out of town guests. The Tenants provided copies of the costs of their hotel accommodation for the following dates:

July 15 and 16	$440.00
July 18	$133.40
July 19	$122.96
July 24 and 25	$343.34
TOTAL	**$1,039.70**

The Tenant stated that when the Landlord finally attended to this repair, it took only 20 minutes. He noted that had this been dealt with right away they would not have incurred these costs. He also confirmed that the Landlord did not offer to contribute to the above costs, nor did the Landlord offer them a rent reduction.

The Tenants also sought the sum of $237.00 for increased water usage as a result of the break. In this respect they provided copies of their utility bills for the following time periods:

These bills show the following usage:

April to June 2020	$205.52
July to September 2020	$403.67
October to December 2020	$205.52

In response to the Tenants' claims the Agent confirmed that the water main breakage occurred on July 15, 2020 and was not repaired until July 31, 2020. The Agent stated that they made an insurance claim and as such they were at the mercy of the restoration company in terms of the time it took to address this issue.

The Agent confirmed that the Landlord did not offer a rent reduction. She also stated that the Tenants did not ask for contribution to their hotel costs until they made this application. The Agent also claimed the Tenants were not displeased with the situation and read from text messages from the Tenants wherein they were good natured and positive in the circumstances.

The Agent also stated that the cost of the hotels was very high and had the Tenants asked the Landlord to assist at the time they could have obtained less expensive accommodation. The Agent also testified that she called local hotels and confirmed they were available at the time in question and were much less expensive due to COVID-19 and the lack of people traveling.

In terms of the Tenants' claim for the increased cost of water, the Agent stated that the $237.00 claimed increase in water was actually for sewer based on the bills provided. She confirmed that the difference in the bills was $198.15. She denied this was due to the break in the water main. Rather, she stated that the Tenants also put in an above ground pool in June of 2020. Introduced in evidence was a copy of an invoice for $200.00 in water brought to the rental unit for the purposes of filling up the pool. The Agent noted that the Tenants could have topped the pool up during this time which would have contributed to any increased water consumption.

The Agent also noted that the Tenants had family members staying in the rental unit during the summer such that the increased usage could have been due to that as well.

In reply to the Landlord's submissions, the Tenant stated that the family visited during the breakage such that they did not use any water. He also stated that was why they rented a hotel as the needed a place to "clean everybody up".

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim. Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation. To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act* mandates the tenant's and landlord's obligations in respect of repairs to the rental unit and 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.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

> **8** (1) Landlord's obligations:
>
> (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
>
> (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following. The undisputed evidence is that on July 15, 2020, the water line to the rental unit suffered a breakage causing significant water to flood the driveway. Fortunately, the Tenant, C.W., was present at the time and therefore able to shut off the water to prevent further damage or loss. It is also undisputed that the repairs were not completed until July 31, 2020.

As noted above, the Landlord must maintain the rental unit in a condition *suitable for occupation by the tenant.* In this case, I find the rental unit was not habitable from July 15, 2020 to July 31, 2020 due to the lack of water. I accept the Landlord's representative's testimony that the repairs were not done sooner as the insurance company and restoration company did not attend to them until the 31st. Although the

Landlord may not be responsible for the delay, and while the Tenants clearly made the best of the situation and tried to be positive, this does not mean the Tenants were not negatively affected.

Although water was not available for over two weeks, the Tenants only rented alternate accommodation for six nights in the 16 days they could not reside at the rental unit. It is most unfortunate that this incident occurred while the Tenants had family visiting, as this undoubtedly affected their family time. In all the circumstances, I find the Tenants mitigated their losses by using their neighbour's water and staying in a hotel for only six days during the period of time when they did not have water at the rental unit.

I also find the Tenants have proven the actual amount required to compensate them for this loss by providing copies of the hotel receipts. I am not persuaded that these hotel amounts were unusually high. I therefore award the Tenants the **$1,039.70** claimed for their hotel accommodation during this period of time.

The Tenants also seek compensation for the increased water usage at the time of the break. I accept the Tenant's testimony that when the water line broke it flooded the driveway. I find it likely that a significant amount of water was lost at that time.

The Landlord submits that any increase in water usage is due to the Tenants installing an above-ground pool. I am not persuaded by this argument. The evidence confirms the Tenants paid to have the pool filled with water from an outside source. While there may have been some water used to top the pool up in the summer months, I find, on balance, that this would be significantly less than the regular usage had the Tenants had normal use of their water during the July 16-31, 2020 time period. I also accept the Tenants' evidence that the had out of town guests during the period of time when they did not have water at the rental unit. I also accept their testimony that they used their neighbours' water to flush their toilet and clean dishes, such that their usage in July would have been considerably less than normal. On balance I find any increased water use during the July to September 2020 billing cycle to be attributable to the initial break in the water line. I therefore find this amount to be recoverable from the Landlord.

The Landlord's agent aptly noted that the amounts claimed by the Tenants, $237.00, was in fact attributable to the charges for sewer. The increased water usage, as evidenced by the utility bills provided in evidence indicate the increased usage was $198.15 when compared to the preceding and following bills. I therefore award the Tenants the sum of **$198.15.**

As the Tenants have been substantially successful in their claim, I also award them recover of the **$100.00** filing fee.

Conclusion

The Tenants are entitled to monetary compensation from the Landlords in the amount of **$1,337.85** for the following:

Hotel accommodations July 15 and 16	$1,039.70
Increased water usage	$198.15
Filing fee	$100.00
TOTAL	**$1,337.85**

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: March 8, 2021

Residential Tenancy Branch