



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDCT, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on December 04, 2020 the Dispute Resolution Package was sent to the Landlord, via registered mail, at the service address noted on the Application which is her residential mailing address. The Tenants submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. As the documents were properly served to the Landlord, the hearing proceeded in the absence of the Landlord.

On December 15, 2020 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, on December 12, 2020. In the absence of evidence to the contrary I find that these documents were mailed to the Landlord and it was accepted as evidence for these proceedings.

The participants at the hearing were given the opportunity to present relevant oral evidence and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### Preliminary Matter

The Tenants submitted a Monetary Order Worksheet. At the hearing the Tenants were advised that the Worksheet did not upload properly and that I was unable to view it. The Tenants were given the opportunity to outline the claims made on the Worksheet.

### Issue(s) to be Decided:

Are the Tenants entitled to compensation for deficiencies with the rental unit?

### Background and Evidence:

The male Tenant stated that:

- The Tenants and the Landlord agreed to enter into a tenancy agreement, which was to start on October 26, 2020;
- The parties did not sign a written tenancy agreement;
- The Tenants were permitted to move into the unit on October 26, 2020;
- The Tenants agreed to pay monthly rent of \$1,400.00;
- The Tenants paid rent of \$1,400.00 for November of 2020;
- When the rental unit was initially viewed on October 24, 2020, a fire was burning and the windows were open;
- When the rental unit was viewed on October 24, 2020 the Tenants did not detect a smell of cat urine;
- Prior to viewing the unit, the Landlord informed the Tenants there was a smell of cat urine in the unit and that she intended to replace the carpeting;
- When the Tenants moved into the unit on October 26, 2020 the Tenants detected a strong smell of cat urine;
- On October 27, 2020 the Landlord agreed to pay the Tenant an hourly wage of \$25.00 to remove the carpets, to sanitize the subfloor, to paint the subfloor with Kilz, and to install laminate flooring;
- The Tenant removed the carpet throughout the unit and found mold on the subfloor of one of the bedrooms;
- The subfloor was dry in most areas, but under the window in one room it was wet and rotting;
- On November 03, 2020 the Tenants informed the Landlord that they would be vacating the rental unit, as the unit was unsanitary and the Tenant was unable to complete the amount of work needed to repair the flooring;
- The Landlord agreed that they could move;

- The Landlord promised to refund the rent for November of 2020, which she has not done;
- The Tenants were unable to find alternate accommodations in this community;
- The Tenants found alternate accommodations in a community that is approximately a two hour drive from the rental unit;
- The Tenants vacated the unit on November 07, 2020; and
- They moved into their new home on November 08, 2020.

The Tenants are seeking to recover the \$1,400.00 in rent they paid for November of 2020, which the Landlord promised to refund.

The Tenants are seeking compensation, in the amount of \$1,900.00, for the 76 hours the male Tenant spent removing carpet from the unit. This is based on the agreement he had with the Landlord, in which she agreed to pay him an hourly rate of \$25.00 for replacing the flooring in the unit.

The Tenants are seeking compensation for the cost of two area rugs, in the amount of \$109.88. The Tenants submitted a receipt to show they incurred these costs. The male Tenant stated that they incurred these costs because they needed something to cover the floor in their children's bedroom. The male Tenant stated that they discarded the rugs as they were contaminated by the dirty/moldy subfloor.

The Tenants are seeking compensation for storage costs, in the amount of \$106.72 for additional storage costs. The Tenants submitted a receipt for monthly storage costs of \$106.72, dated October 17, 2020. The male Tenant stated that they incurred these costs because they did not want to move their property into the unit until the flooring had been replaced.

The Tenants are seeking compensation for moving costs, in the amount of \$298.76 for renting a moving van and \$120.00 for fuel.

The male Tenant stated they are also seeking aggravated damages in an amount that is to be determined. He stated their legal counsel advised them to claim compensation for aggravated damages. He stated that he believes they are entitled to compensation for aggravated damages because of the heartbreak they endured as a result of the condition of the rental unit.

#### Analysis:

On the basis of the undisputed evidence, I find that:

- The Landlord and the Tenants entered into a verbal tenancy agreement;
- The Tenants agreed to pay monthly rent of \$1,400.00;
- The Tenants paid \$1,400.00 in rent for November of 2020;
- The Tenants moved into the rental unit on October 26, 2020, at which time they detected a strong smell of cat urine;
- On November 03, 2020 the Tenants informed the Landlord that they could not live in the rental unit due to the condition of the unit;
- The Landlord agreed that they could move out of the rental unit;
- The Landlord agreed to refund the rent paid for November of 2020; and
- The Landlord has not yet refunded the rent for November of 2020.

Section 62(3) of the *Residential Tenancy Act (Act)* grants me the authority to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this *Act* applies. On the basis of the undisputed evidence that the Landlord agreed the Tenants could move out of the rental unit without paying rent for November of 2020, I find that the Landlord must refund the \$1,400.00 in rent paid for November of 2020.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if damage or loss results from a landlord not complying with this *Act*, the regulations or a tenancy agreement. The *Act* does not grant me authority to resolve all disputes arising between a landlord and a tenant. Rather, I only have authority to award compensation to a tenant if the tenant suffers a loss because the landlord failed to comply with the tenancy agreement or the tenancy legislation.

On the basis of the undisputed evidence, I find that the Landlord agreed to pay the male Tenant an hourly rate of \$25.00 for removing and replacing the flooring in the rental unit. I find this is an employment contract over which I have no jurisdiction, as it is not a contract governed by the *Act* or the tenancy agreement. I therefore dismiss the Tenants' application for wages, as it is beyond my jurisdiction.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(1) of the *Act* requires that a landlord provide and maintain residential

property in a state of decoration and repair 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.

On the basis of the undisputed evidence, I find that the at least some of the carpets needed to be replaced when this tenancy began, due to a strong smell of cat urine. I find that the Landlord therefore failed to comply with section 32(1) of the *Act* when she did not remedy the flooring issue prior to the start of the tenancy. I therefore find that the Tenants are entitled to compensation for costs arising from that breach.

On the basis of the undisputed evidence, I find that the Tenants purchased two area rugs to cover the floor in their children's bedroom. I find that this was a reasonable expense that is directly related to the need to replace the carpets after the tenancy ended. I therefore grant the claim for purchasing these rugs, in the amount of \$109.98.

I find that the Tenants have failed to establish that they incurred storage costs as a result of the condition of the flooring at the start of the tenancy. In reaching this conclusion I was heavily influenced by the storage receipt submitted in evidence, dated October 17, 2020, which shows they paid \$106.72 for storage for one month.

As the Tenants incurred this cost prior to them entering into a tenancy agreement for the unit, I cannot conclude that they incurred these costs as a result of the condition of the flooring at the start of the tenancy. As the receipt shows they had paid for one month's storage on October 17, 2020, I find that they were entitled to those storage facilities until November 17, 2020. On the basis of the testimony that they moved into their new home on November 07, 2020, I cannot conclude that they incurred additional storage costs as a result of the issue with the flooring. I therefore dismiss the claim for storage costs.

On the basis of the undisputed evidence and the text messages submitted in evidence by the Tenants, I find that the Landlord took reasonable steps to comply with section 32(1) of the *Act*. Specifically, I find that she told the Tenants she intended to replace and/or clean the carpets in an attempt to eliminate the smell of cat urine and she subsequently hired the male Tenant to remove the carpet and to replace it with new flooring.

On the basis of the text messages exchanged between the Landlord and the Tenants, I find that the Landlord continued to demonstrate a willingness to make all appropriate repairs after being informed of the need to do so by the Tenants. On the basis of those

text messages, I find that the Tenants opted to vacate the rental unit, at least in part, because they intended to move to another community for employment purposes. I find it reasonable to conclude that the Landlord would have remedied the problem with the flooring in a reasonably timely manner if the Tenants had not chosen to vacate the unit.

As the Tenants have failed to establish that they had to move out of the rental unit because the Landlord was not complying with section 32(1) of the *Act*, I find that the Tenants are not entitled to compensation for moving costs. I therefore dismiss the Tenants' claim for moving costs.

"Aggravated damages" are typically awarded for intangible damage or loss in circumstances where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. I do not find compensation for aggravated damages is warranted in these circumstances and none is awarded.

I find that the Tenants' Application for Dispute Resolution has some merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of \$1,609.98, which includes a rent refund of \$1,400.00, \$109.98 for two area rugs, and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: April 26, 2021

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Residential Tenancy Branch