



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, OLC, MNDCT, RP, RR, PSF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 12, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- an order for regular repairs;
- an order that the Landlords comply with the Act, tenancy agreement or Regulations;
- an order granting a rent reduction;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants, the Tenants' Advocate M.C., the Landlords, and the Landlords' Counsel H.F. attended both the original and reconvened hearings at the appointed date and time.

At the beginning of the original hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. The Tenants stated that only one of them was served with the Landlords' documentary evidence, however, the Tenant was able to share the materials with the other Tenant prior to the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlords provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to an order for regular repairs, pursuant to Section 32 and 62 of the *Act*?
3. Are the Tenants entitled to an order that the Landlords comply with the Act, tenancy agreement or Regulations, pursuant to Section 62 of the *Act*?
4. Are the Tenants entitled to an order granting a rent reduction, pursuant to Section 65 of the *Act*?
5. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
6. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on October 1, 2019. Currently, the Tenants are required to pay rent in the amount of \$3,100.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,550.00 as well as a pet damage deposit in the amount of \$1,000.00 which the Landlords continue to hold.

Heating

The Tenants are claiming that the heating system in the rental unit is inadequate as the basement does not receive any heat. The Tenants stated that they notified the Landlords of the issue, but that it has not yet been fixed. The parties agreed that the Landlords promptly provided the Tenants with electric space heaters as an additional heating source. The Tenants stated that their heating bill has increased as they are paying to operate a gas furnace and for electric heaters.

The Tenants are claiming \$1,317.50 for increased heating cost as a result of having to use electric space heaters for added basement heating. The Tenants provided a cost calculator relating to the operation of the electric space heaters which were provided by the Landlords to the Tenants.

The Landlords responded and stated that the new gas furnace was installed in 2018 as the Landlords decided to replace the aging oil furnace. The Landlords stated that the gas furnace was professionally installed and that there are three vents that supply the basement with heat. The Landlords stated that the Tenants did not mention that there was an issue with the vents, only that it was not warm enough in the basement. The Landlords provided electric space heaters to the Tenants to provide more heat in specific areas of the basement. The Landlords stated that the Tenants are responsible for heat and electricity consumption as it is not included in their rent.

The Landlords stated that the furnace has been maintained annually and that there have been no issues to report. The Landlords agreed to have the vents inspected. This was done between the original hearing and the reconvened hearing. During the reconvened hearing, the Landlords stated that of the three vents in the basement, one had a blockage while the other two were in good working order. The Landlords stated that they would have the blocked vent repaired. The Landlords stated that the Tenants should be using the dampeners on the vents upstairs, which would force more air flow to the basement. During the hearing, the Tenants stated that they were not sure what the dampeners were for.

The Landlords stated that they do not feel as though the Tenants are entitled to monetary compensation. The Landlords stated that the heating system was sufficient that if the Tenants want it hotter in the basement, then they should have to pay for the added costs of extra heating.

### Flood

The Tenants stated that on December 21, 2020 there was a big rainstorm which resulted in a fair amount of water and some leaves to collect by the back door of the rental unit. The Tenants stated that there is one drain at the back door, which was becoming blocked with leaves, resulting in the water pooling at the back door. The Tenants stated that they noticed the drain was blocked, which required the leaves to be continually cleared from the drain in order for the water level to dissipate.

The Tenants stated that the backyard slopes towards the back door which contributed to the rapid collection of water at the back door. The Tenants stated that there had been previous issues with the perimeter drain on the front side of the rental property in the past. The Tenants stated that the drainage at the rental property is not adequate.

The Tenants stated that one of them had to leave for work at 9:00AM and notified the other Tenant to keep an eye on the drain and clear leaves if necessary. The Tenants stated by 11:00AM the rental unit was completely flooded at which point they notified the Landlord.

The Landlords responded by stating that the Tenants are responsible for yard maintenance at the rental unit, which includes removing leaves from the rental property. The Landlords stated that they live next door to the rental unit. The Landlords stated that the Tenants should have notified them immediately about the potential of a flooding situation as soon as they noticed the pooling by the back door. The Landlords stated that the Tenants waited until the water had flooded into the rental unit before calling. The Landlords stated that they could have prevented the flood had they been made aware of the potential issue.

The Landlords stated that once they were notified of the flood, they attended to find 12 inches of water resting up against the back door. The Landlord stated he reached down and was able to wipe some leaves from the drain which immediately cleared the drain and allowed the water to escape. The Landlords stated that the Tenants were negligent by prolonging their notification to the Landlords. The Landlords stated that the drain is in good working order and that the front perimeter drain issues in unrelated to the back drain.

The Tenants stated that the Landlords were required to arrange for remediation of the impacted areas in the basement of the rental unit. The Tenants stated that one of them occupies the basement while the other Tenant occupies the upper portion of the rental unit. The parties agreed that the Landlord provided a storage container for the Tenants to safely store some of their possessions to facilitate the remediation efforts required in the basement following the flood.

The Tenants stated that the remediation took until March 26, 2021 to be completed. The Tenants stated that they lost use of portions of the basement but were still required to pay the full amount of rent. The Tenants are seeking a compensation in the amount of \$483.90 for the loss of use of the basement in December 2020. The Tenants are seeking compensation in the amount of \$1,500.00 for January, February, and March 2021. The Tenants stated that the remediation should not have taken that long to complete. The Tenants stated that the Landlords took the opportunity to make some alteration to the basement which were not related to the remediation.

The Landlords stated that the remediation efforts were prolonged as a result of the Tenants not willing to completely vacate the basement of the rental unit. Furthermore, the Tenants were restrictive with what time the trades persons were permitted to start work. The Landlords made the Project Manager of the remediation company, E.A., available as a witness who stated that the trades persons start work at 8:00AM but the Tenants did not permit entry until 8:30AM. E.A. estimates that the remediation was delayed by one month as a result of the Tenants not removing all their belongings.

The Landlords stated that the alteration made to the basement included the removal of a wall and the addition of two closets, which were necessary to simplify the remediation efforts. Furthermore, the Landlords stated that this benefits the Tenants.

The Tenants are claiming for the added cost associated with the Landlord running dehumidifiers in the rental unit following the flood. During the hearing, the Landlords agreed to compensate the Tenants \$58.88. The Tenants were satisfied with this amount. The Tenants are also seeking compensation in the amount of \$300.00 for loss of quiet enjoyment of the rental unit during the remediation period.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants have applied that the Landlords comply with the Act, an order be made that the Landlords provide a service or facility, an order for repairs in relation to the heating system at the rental unit, as well as for monetary compensation for added heating costs.

In this case, I find that the Tenants have provided insufficient evidence that the heating system was inadequate. I find that the blockage of one vent in the rental property does not indicate that the heating system is faulty. I accept that the basement may have been colder than the upstairs. I accept that the Landlords promptly provided the Tenants with an additional heating source. I find that the Tenants could have mitigated the situation by using the vent dampeners upstairs to increase the hot air flow to the other vents in the basement.

Lastly, I find that the Tenants are responsible for paying for their own heat at the rental unit. As such, if the Tenants wanted more heat, I find it is reasonable to expect that the cost would also increase. In light of the above, I dismiss the Tenants claims relating to heating the rental unit without leave to reapply.

With respect to the Tenants' claims relating to the flood, I find that the Tenants provided insufficient evidence to demonstrate that the drain was faulty. I accept that once the leaves were cleared from the drain, the water drained, indicating it was working properly. I find that the Landlords have not breached any Section of the Act.

I accept that there was a large rainstorm on December 21, 2020 which caused a flood in the rental unit. I find this to be an act of nature. While I find that the Tenants were not the cause of the flood, I find that they were a contributing factor to the flood occurring, as they did not clear the leaves from the drain, nor did they immediately notify the Landlords as soon as they noticed the water was pooling at the back door which was likely to cause a flood in the rental unit. I find that the Tenants' actions to mitigate the

likelihood of the flood occurring were not as fulsome as they could have been. The Tenants should have reported their concerns to the Landlords immediately.

According to the Residential Tenancy Policy Guideline 6 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.

In this case, I find that the Tenants suffered a loss of quiet enjoyment of the rental unit as they were not able to use a portion of the basement for three months during the remediation efforts. I accept that the remediation took three months to complete, partly due to the Tenants inability to completely vacate the basement. I find that the Landlord made further alterations to the basement which were not related to the remediation which may have also delayed the remediation.

I find that the Tenants are entitled to some compensation for loss of use of a portion of the basement during the remediation. As I have found that the Tenants were a contributing factor to the flood occurring, I find that they are not entitled to the full amount of compensation that they are seeking. In this case, I award the Tenants compensation in the amount of **\$1,500.00** for loss of use and loss of quiet enjoyment of the rental unit during the remediation of the basement following the flood.

I accept that the parties agreed that the Landlords will compensate the Tenants \$58.88 for the cost of running the dehumidifiers. As such, I award the Tenants **\$58.88**. Having been partially successful, I find that the Tenants are entitled to the return of the **\$100.00** filing fee paid to make the Application. Pursuant to section 67 of the Act, I find the Tenants are entitled to a monetary order in the amount of \$1,658.88.

Conclusion

The Tenants have established an entitlement to monetary compensation and have been provided with a monetary order in the amount of \$1,658.88. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 21, 2021

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Residential Tenancy Branch