



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 09, 2021 (the “Application”). The Tenants applied as follows:

- To be paid back for the cost of emergency repairs made during the tenancy
- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing with the Legal Advocate and appeared for Tenant J.S. K.B., A.B. and J.P. (the “Agents”) appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The parties provided the correct rental unit address which is reflected on the first page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agents confirmed receipt of the hearing package and Tenants’ evidence and confirmed there are no issues with service.

The Tenant advised that they did not receive the Landlord’s evidence. The Agents advised that the Landlord’s evidence was not served on the Tenants because the

Tenants moved out of the rental unit and did not provide a forwarding address. The Agents said the security deposit was returned to the Tenants by e-transfer at the end of the tenancy. I asked the Agents why they did not email their evidence to the Tenants and the Agents said they assumed the evidence had to be sent by mail.

I found the Landlord failed to comply with rule 3.15 of the Rules by not serving their evidence on the Tenants and not taking sufficient steps to serve their evidence. I found the Agents should have sent the evidence by email to the Tenants given the security deposit was returned by e-transfer. I heard the parties on whether the evidence should be admitted or excluded. The Tenant submitted that the evidence should be excluded, and the Agents submitted it should be admitted. I excluded the Landlord's evidence pursuant to rule 3.17 of the Rules because I found it would be unfair to consider it when the Tenants have not seen it and could not respond to it at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to be paid back for the cost of emergency repairs made during the tenancy?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenant testified that there was a written tenancy agreement between the parties. The Agents did not know if there was a written tenancy agreement between the parties. The parties agreed on the following. The tenancy started in April of 2020 and was a month-to-month tenancy. Rent was \$1,100.00 per month due on the last day of each month. The Tenants paid \$1,100.00 for security and pet damage deposits.

The parties agreed the tenancy ended in March of 2022.

The Tenants sought compensation including \$119.00 for a BC Hydro bill and \$2,200.00 for two months of rent due to issues arising from a flood in the rental unit.

The rental unit is a town house with three levels including a basement. The basement of the rental unit flooded. The Tenants do not know for sure what caused the flood but say they were told by the District that it was due to the plumbing in the rental unit not being updated.

The Tenants point to three breaches by the Landlord in relation to the flood. First, issues with the plumbing in the rental unit. Second, termination or restriction of laundry and water in the rental unit. Third, breach of the Tenants' right to quiet enjoyment.

The Tenants took the following position. The Tenants noticed a flood in their basement on July 03, 2021. The Tenants had to vacate the rental unit quickly once they noticed the flood because it was sewage that had backed up. The Tenants had to stay with family because they could not stay at the rental unit. The smell from the flood was outrageous. The Tenants were not able to use the toilet, bath or sink when the flood occurred. Belongings in the basement were ruined. The Property Managers did not communicate effectively in relation to when the Tenants could return to the rental unit and when contractors would attend the rental unit. At times, the Property Managers told the Tenants that workers would attend the rental unit and nobody would show up or nobody would let the workers in to complete the work. It took two months for the restoration and repairs to be done to the rental unit. The Tenants returned to the rental unit at the end of July and the restoration was not complete. Dehumidifiers were placed in the basement and were running all of the time which caused a huge spike in the Tenants' power bills. The Tenants contacted the District who said they are not responsible for the flood or resulting issues.

The Tenants submitted emails, text messages, BC Hydro charges, a letter from the District and written submissions.

The Agents took the following position. The flood was caused by the District which was doing work in the area of the rental unit. The District admitted to J.P. that the flood was their issue. The flood had nothing to do with the plumbing in the rental unit. J.P. acted immediately when they found out about the flood and took steps to address it. J.P. hired a reputable restoration company to attend the rental unit to address the flood and resulting issues. The restoration company did the work required and did it properly. The restoration company employees were travelling four hours to attend the rental unit

given the location of the rental unit. The flood affected eight units in the rental unit complex. All other units remained occupied while the restoration company and District addressed the flood issue. The Property Managers did keep the Tenants informed of what was happening. It is the Property Managers' understanding that the Tenants only left the rental unit for a few days due to the flood.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the *Act* required the Landlord to maintain the rental unit.

Section 28 of the *Act* protected the Tenants' right to quiet enjoyment including use of the rental unit and freedom from unreasonable disturbance.

RTB Policy Guideline 06 outlines the right to quiet enjoyment and when tenants may be entitled to compensation when this right is breached.

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept based on the letter in evidence that the District takes the position that they are not liable for the flood or resulting issues on the basis “that a sewer back up and/or disruption of services might be related to services owned by the District”.

I find based on text messages that the Property Managers were communicating with the Tenants by July 06, 2021 about a restoration company attending the rental unit to address the issues caused by the flood. I find based on emails that the Landlord communicated with the Tenants July 08, 2021 about remediation occurring July 13, 2021. I find based on emails that the restoration company did not attend the rental unit July 13, 2021 as planned and that this was communicated to the Tenants by the Property Managers on July 13, 2021. I find based on text messages that there were people at the rental unit July 16, 2021 cleaning and tearing out items affected by the flood. Further, I find the plan was for the drywall to be fixed the following week; however, it had still not been done by July 21, 2021.

I accept based on an email that the Tenants’ personal belongings were damaged or destroyed due to the flood. I accept based on an email that the Tenants stayed at another location for the majority of July due to the flood in the rental unit. I accept based on text messages that the Tenants could not use their washer and dryer for a period of time due to the flood.

I find there is a lack of compelling evidence about what caused the flood and who is responsible for causing the flood. The documentary evidence does not show that the flood was caused by an issue with the plumbing in the rental unit. Although the District maintains they are not liable for the flood issue, I do not understand their letter to be stating that the flood was not caused by the District. Further, even if the flood was not caused by the District, there is insufficient evidence to show it was caused by something the Landlord did or did not do. Given this, I am not satisfied the Landlord breached the *Act, Residential Tenancy Regulation* (the “*Regulations*”) or tenancy agreement or that such a breach caused the flood. In the circumstances, I do not find the Landlord

responsible for the immediate consequences of the flood, such as belongings of the Tenants being damaged or destroyed.

However, I do find that the Landlord may be responsible for compensating the Tenants if the Landlord did not take reasonable steps to address the flood and resulting issues in a timely manner or otherwise breached the *Act*, *Regulations* or tenancy agreement.

I do not accept that the Property Managers failed to communicate effectively with the Tenants regarding updates about the flood and restoration. I find the emails and text messages in evidence show that the Property Managers were in continuous contact with the Tenants and responded to the Tenants in a timely manner. It may be that plans changed or the Property Managers were not able to provide specific information immediately upon being asked; however, this is to be expected given the Property Managers and Landlord were dealing with a third party restoration company, insurance companies and the District, as shown in the evidence.

However, I accept based on the evidence provided that it took approximately one month, from July 03, 2021 to August 05, 2021, for issues resulting from the flood to be addressed. I find one month to address a basement flood and resulting issues to be slightly longer than reasonable. In the absence of further evidence showing the Landlord took all reasonable steps to have the flood and resulting issues addressed as soon as possible, I am satisfied the Tenants have shown they are entitled to some compensation given the time it took to address the flood and resulting issues. In the circumstances, I award the Tenants \$275.00 being one quarter of their rent for one month. I arrive at this amount because I am not satisfied the Landlord caused the flood, I am satisfied the Landlord took steps to address the flood and resulting issues, but I am not satisfied that one month to address the flood and resulting issues was reasonable. Further, I am satisfied the flood and resulting issues impacted the Tenants' use and enjoyment of the rental unit for approximately one month because the documentary evidence supports this.

I accept based on the evidence provided that dehumidifiers were running in the rental unit for a period of time. I also accept that the Tenants' power bill increased due to the use of dehumidifiers in the rental unit. I agree the Tenants are not responsible for paying for the cost of running the dehumidifiers and I award the Tenants the \$119.00 sought for this.

The Tenants raise the issue of the Landlord terminating services and facilities which I understand to be water to the rental unit. From the evidence submitted, it seems that the District was responsible for the water shut offs and therefore I am not satisfied the Landlord is responsible for compensating the Tenants for this issue.

Given the Tenants were successful in the Application, they are awarded \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$494.00 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Tenants are entitled to \$494.00 and are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial 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 *Act*.

Dated: May 25, 2022

Residential Tenancy Branch