



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIVE MILE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$13,499.11 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant and the Landlord's agent DL attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service. DL confirmed receipt of the notice of dispute resolution proceeding package and the Tenant's documentary evidence (collectively, the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to compensation of \$13,499.11 for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is an apartment in a multi-unit building owned by the Landlord. The Tenant commenced this tenancy on January 1, 2015 with a previous landlord. The tenancy is month-to-month. The Landlord purchased the building in 2017.

On September 9, 2019, the rental unit and several other units in the building were flooded. Due to the flood, the Tenant had to vacate the rental unit on September 29, 2019. The Tenant moved back into the rental unit on December 1, 2021 after the Landlord completed repairs and renovations.

The Tenant submitted a written timeline of events into evidence. The Tenant testified that in the summer of 2016, her sink would overflow and cause the kitchen to flood due to water from the roof. The Tenant explained that if the storm drains from the roof did not flow into the city drain, it would back up into the Tenant's sink. The Tenant testified that if there was a storm or rain, she would put the plug in the sink to block water from coming up. The Tenant testified that she had reported this issue to the building manager, who told the Tenant that a plumber looked at the issue and that it was fixed.

The Tenant testified that she raised this issue with the new building manager during their unit inspection after the Landlord had taken over.

The Tenant testified that in February 2019, her sink overflowed three times. The Tenant testified that she reported the floods to the building manager, and was told each time that a plumber came and had the issue fixed. The Tenant testified that she was at work and did not see the plumber, though she would receive updates via text messages

or phone calls. The Tenant submitted copies of her text message correspondence with the building manager into evidence.

The Tenant testified that in May 2019, she started noticing a smell coming from under her sink. The Tenant testified that she cleaned as much as possible but could not get rid of the smell. The Tenant submitted she contacted the building manager in July 2019 about the smell, and a plumber came to do an inspection on August 7, 2019. The Tenant testified that the plumber was not able to provide answers about what caused the smell.

The Tenant testified that after she returned from a vacation on August 28, 2019, she noticed debris in her sink, which indicated her sink had flooded again. The Tenant testified that a plumber did not come for about a week, and during this time, the sink continued to flood and smell.

The Tenant testified that on Saturday, September 7, 2019, her sink was overflowing and water was all over the kitchen when she returned home. The Tenant reported the flood to the building manager and was told that a plumber will be coming on Monday. The Tenant testified that weekend there had been a lot of rain and a big storm.

The Tenant testified that on September 9, 2019, there was a big flood in the building affecting multiple units on the first and second floors, including the rental unit. The Tenant testified that she came home to find the carpets wet and furniture floating in her apartment. The Tenant stated that she and her neighbours knew to plug their sinks when it was raining, but the water was pushed up to the second floor this time and had overflowed through the Tenant's hood fan and kitchen lights.

The Tenant testified that she had taken her belongings out of the kitchen at that time so none of her personal property was damaged. According to the Tenant, she was told by the restoration specialist who came to check her apartment that the smell she had noticed from May 2019 was from a broken sewage pipe leaking under the Tenant's apartment. The Tenant stated that the sewage contaminated the water that entered the units during the flood. The Tenant testified that she saw works open up the hallways and there was a lot of sewage underneath.

The Tenant referred to a letter dated September 16, 2019 from the Landlord indicating that the Tenant would need to move out of her apartment by September 19, 2019. The Tenant referred to another letter from the Landlord dated September 17, 2019 which

cancelled the previous request to vacate. The Tenant testified that she had taken time off work to prepare for the move. The Tenant testified she was told by restoration workers that it was unsafe for her to be in the rental unit due to contamination. The Tenant referred to a letter dated September 23, 2019 from the Landlord which asked the residents to vacate by no later than September 29, 2019.

The Tenant stated she had a couple of days to find a moving company and figure out where to live. The Tenant stated that she took time off work to move out and put her belongings in storage by September 26, 2019.

The Tenant testified that she emailed the Landlord to request reimbursement due to the flood, but the Landlord denied her request.

The Tenant explained that she was given a timeline of a few weeks or months to move back into the rental unit. The Tenant testified that she was offered another unit in the building for \$1,800.00 but found a different temporary apartment for \$1,500.00. The Tenant stated that she kept waiting until October 2021 when she was told that she could move back into the rental unit by December 1, 2021.

The Tenant stated that when she moved back into the rental unit, she found her kitchen had been renovated to half its previous size, which led to a previous dispute resolution proceeding (file number referenced on the cover page of this decision). The previous arbitrator had severed the Tenant's monetary claim and dismissed it with leave to re-apply.

In this application, the Tenant seeks monetary compensation as follows:

Item	Amount
Moving and Storage Fees	\$3,421.55
Loss of Wages	\$1,084.86
BC Hydro (October 5, 2019 to December 3, 2021)	\$276.49
Mail Forwarding	\$480.81
Difference in Rent Paid (February 2020 to November 2021)	\$7,036.00
Final Moving Expenses	\$1,199.40
Total	\$13,499.11

The Tenant stated that she did not have insurance and was not required to have insurance. The Tenant submitted calculations to show that she claims lost wages for

time taken off work to move out of the rental unit (September 17 and 29, 2019), to move items from storage into her temporary apartment (January 30, 2020), and to move back into the rental unit (November 30 and December 1, 2021). The Tenant explained she was told by the Landlord to keep BC Hydro going during the repairs and to keep mail forwarding. The Tenant submitted receipts in support of the amounts claimed.

In response, DL testified that the Tenant had reported issues with her kitchen sink backing up, which the Landlord had addressed. DL referred to records which indicate that the Landlord had paid plumbers on April 24, 2019 and March 6, 2019 for servicing the rental unit. DL testified the pipes are old and need ongoing maintenance or cleaning.

DL testified that the flood on September 9, 2021 resulted from the storm drain backing up and was not related to the maintenance of pipes in the building. DL referred to engineering and restoration reports submitted into evidence by the Landlord, as well as news records of the weather conditions that day. DL stated that other buildings were flooded. The news article screenshots submitted by the Landlord are dated September 10, 2019 and indicate that there had been heavy downpour and flash flooding in the city.

DL stated that the storm drain backed up and started flooding the second floor first, then down to the first floor. DL stated that the storm drain was cross-connected with city pipes that the city came to fix after the Landlord completed renovations.

DL referred to a letter sent by the Landlord to the residents on September 11, 2019, which advised them about what had happened. DL referred to the letter sent by the Landlord on September 16, 2019, which included recommendations the Landlord had received from restoration and insurance. DL explained it was determined that the best course of action would be to have the tenants move out. DL stated the Landlord was ready to consider the tenancy frustrated by this point, but gave the tenants the option to come back when the renovation work was completed.

DL stated the Landlord wanted the tenants to return, but of the eight affected units, only two units saw tenants move back. DL stated that the length of the restoration was out of the Landlord's hands. DL stated that covid-19 hit, and with restoration crews working full-time and waiting for city permits, it took the Landlord two years to complete the eight units.

DL testified that the final city inspection for the rental unit had been scheduled for November 30, 2021. DL explained they received a call in the morning that the inspector wasn't coming that, and they had to beg the inspector to come because the Tenant was moving back the next day. DL stated that the city inspector did come and issue the permit that afternoon.

DL submitted that the Landlord had issued notices to advise the Tenant of every step. DL referred to a letter that the Landlord sent to the Tenant on October 16, 2019, which explained the Landlord was not going to provide compensation and that the Tenant needed to use her personal insurance for reimbursement. DL stated that the Landlord had advised the Tenant she could end the tenancy, but the Tenant did not agree.

DL stated that the Landlord had asked the Tenant to keep the BC Hydro account because Landlord needed it for restoration. DL confirmed that the Landlord agrees to compensate the Tenant for all BC Hydro bills during the time that the Tenant was not occupying the rental unit.

The Landlord submitted additional evidence including correspondence with contractors and insurance, and evidence that the Landlord had reimbursed the Tenant for seven days of September 2019 rent.

Analysis

1. Is the Tenant entitled to compensation of \$13,499.11 for monetary loss or other money owed?

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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

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

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss ("Policy Guideline 16") states as follows:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Based on the evidence presented, I am not satisfied on a balance of probabilities that the flood on September 9, 2019 occurred due to the Landlord's failure to comply with the Act, the regulation, or the parties' tenancy agreement.

First, I accept the Landlord's evidence regarding the unusual weather conditions on the day of the flood. I find there was a heavy downpour which resulted in flash flooding in parts of the city. I accept the Landlord's evidence that the flood was caused by the storm drain being overwhelmed due to the heavy rain.

Second, I accept the Landlord's evidence that the flood resulted in an insurance claim requiring significant restorations. According to the Landlord's letter to the Tenant dated October 16, 2019, the Landlord's insurance policy also covered the Landlord's loss of

rent caused by the flood. In my view, if the flood had occurred due to poor maintenance by the Landlord rather than due to a sudden and unforeseen event, the Landlord would likely not have been covered by insurance for its losses.

Third, I find the Landlord's records show that the Landlord had hired plumbers to service different units in the months leading up to September 2019, including the rental unit. I find the Tenant's evidence also confirms that the Landlord took steps to investigate and repair each time the Tenant reported her sink backing up. I find the building is old (the restoration report states that it was built in the 1960s), and would therefore be more susceptible to plumbing issues.

I note the Tenant also testified that there was an odour emanating from her sink. However, I find there is insufficient evidence to indicate that the cause of this odour was related to the cause of the flood.

Based on the foregoing, I find the Tenant has not established that the flood was caused by a failure on the part of the Landlord to meet its obligations to repair and maintain the building. In particular, I do not find the Landlord to have breached its obligations under section 32(1) of the Act, that is, to maintain the building 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. As noted above in Policy Guideline 16, the onus is on the party claiming compensation to provide evidence to establish that compensation is due.

Since I do not find the Landlord to have failed to comply with the Act, the regulation, or tenancy agreement, I conclude the Landlord is not liable to the Tenant for her moving expenses, storage fees, increased costs of alternative accommodations, mail forwarding, or lost wages under section 67 of the Act.

I find the Landlord agrees to compensate the Tenant for the cost of BC Hydro bills during the restoration period, since such utilities were not being consumed by the Tenant. The Tenant submitted copies of her BC Hydro bills from October 5, 2019 to December 3, 2021 to support the total amount sought (\$276.49). I find this time period closely approximates the time that the Tenant was away from the rental unit, and I do not find the Landlord to take issue with the total amount being claimed. Therefore, by consent of the parties, I order the Landlord to reimburse the Tenant \$276.49 for the Tenant's BC Hydro bills.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has been successful in obtaining partial compensation from the Landlord. I award the Tenant recovery of her filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
BC Hydro (October 5, 2019 to December 3, 2021)	\$276.49
Filing Fee	\$100.00
Total Monetary Order	\$376.49

Conclusion

The Tenant is entitled to compensation of \$276.49 plus \$100.00 for the filing fee from the Landlord.

By consent and pursuant to section 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$376.49**. This Order may be served on the Landlord, filed in the Provincial Court of British Columbia, 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: February 08, 2023

Residential Tenancy Branch