



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITADEL WHATCOM LIMITED  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **INTERIM DECISION**

Dispute Codes      MNRT, MNDCT, RR, OLC, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on October 28, 2022, wherein the Tenants requested the following relief:

- monetary compensation from the Landlord in the amount of \$6,244.15;
- an Order that the Landlord make repairs to the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and;
- to recover the filing fee.

The hearing of the Tenants' Application was conducted by teleconference on February 3, 2023 and July 4, 2023. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No 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

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. 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) (RTA) 57(3)(c) (MHPTA) which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named two individuals as Landlord. A review of the tenancy agreement confirms the Landlord is a corporate entity. I therefore Amend the Tenant's Application to correctly name the Landlord.

Preliminary Matter

At the outset of the hearing on February 3, 2023 the Office Manager, D.Z., confirmed that the Landlord did not take issue with the quantum of the Tenants' claim for \$4,694.15; rather the only issue was whether the Landlord was liable for compensating the Tenants for this sum.

Preliminary Matter

The Tenants confirmed that the requested repairs were completed in December, such that they were no longer requesting an Order that the Landlord comply with the *Act*, *Regulations* or tenancy agreement, nor were they requesting an Order for repairs.

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

This tenancy began December 1, 2020. Monthly rent was \$1,218.00 and the Tenants paid a \$600.00 security deposit and \$600.00 pet damage deposit.

The Tenants claimed compensation for their out of pocket expenses while they were not able to reside in the rental unit due to flooding.

The parties confirmed the Tenants were not obligated to pay rent for the month of October 2022 such that they have already been compensated \$1,218.00.

The only issue before me was whether the Landlord was responsible for compensating the Tenants further for their out of pocket expenses.

The Tenant, J.H., testified as follows. He confirmed they moved into the rental unit December 1, 2020. The Tenants moved out of the rental unit on April 1, 2023. J.H. testified that they had Tenants' insurance the entire time they were in the rental unit, including the material time when they could not occupy the unit.

J.H. stated that they spoke to their insurer, but they did not make a claim for coverage due to information they claimed to have received from the Residential Tenancy Branch ("RTB"). J.H. further stated that their insurer informed them that there was no problem making a claim later once the decision of the RTB was obtained.

J.H. confirmed that they were offered an insurance payout of \$2,359.00 in March of 2023 (net as they would have to pay \$1,000.00 deductible), which was half of what they were claiming in the hearing before me. J.H. stated that they did not accept this payment based on the information they received from the RTB as well as the fact that this was only half of what they paid out of pocket.

J.H. also stated that they also paid to have a "toilet set" which was not going to be covered by their tenant's insurance.

J.H. stated that they believed the Landlord should be responsible for paying their expenses because they believe the Landlord did not properly maintain the property or the septic system. He further stated that to his knowledge the septic tank was 40 years

(based on the age of the house) and completely failed just before they moved out. J.H. further stated that the tank was pumped out just before they moved out as well as shortly after they purchased the property in the fall of 2021. J.H. stated that this was the reason they moved out as they were pumping the tank onto the lawn and they were worried they were going to get sick.

In response to the Tenants' claim D.Z. testified as follows.

D.Z. stated that she was aware the Tenants had spoken to their claims representative and that the Tenants' claim was approved and they were offered \$2,359.00 (less the \$1,000.00 deductible). D.Z. noted that if you add the free months rent the Tenants would have received a total of \$4,577.91, which D.Z. stated is a reasonable sum for their losses, and is very close to the amount of their claim of \$4,694.15.

In terms of the Tenants' allegation that the Landlord was negligent in terms of the maintenance of the septic tank D.Z. testified as follows. She stated that the tank was pumped on September 29, 2021. When the septic backed up in September of 2022, the Landlord also had someone come out and pump the tank. The Landlord was not informed there was any issue at the time. When the issues came back recently (February 2023) they noticed that there was a hole in the tank which was allowing ground water into the tank which is why it was filling so fast. When they found that out they had it pumped again and they had the tank repaired. They also found that there was a tremendous amount of groundwater surrounding the tank and they pumped that as well.

In terms of the Tenants' claim that they pumped septic contents on the lawn D.Z. stated that they had the local authority attend the property and they determined that everything was fine in terms of the tank itself as well as the pumping of the groundwater.

D.Z. confirmed the tank has been repaired, not replaced as that was all that was required.

D.Z. submitted that the Tenants' losses should have been covered by their own insurance, and that it was the Landlord's responsibility to repair the unit and bring it to a livable state, which the Landlord did. Further, the Landlord compensated them a free month in recognition of the Tenants' loss of use of the rental unit.

In reply J.H. disputed D.Z.'s claim that it was only groundwater being pumped onto the lawn.

### Analysis

The Tenants claim \$4,694.15 representing losses they incurred as a result of a flood at the rental property. The Landlord did not take issue with the quantum/amount of the claim, however the Landlord did not agree they were responsible for compensating the Tenants.

A landlord is not the tenants' insurer and a tenant is required to carry adequate tenants' insurance.

In this case the Tenants were offered compensation in the amount of \$3,359.00 from their insurer. As they were required to pay a \$1,000.00 deductible, the net amount available to the Tenants was \$2,359.00. The evidence confirms the Tenants were provided a free months' rent, in the amount of \$1,218.00 from the Landlord as compensation for their loss of use of the rental unit. In total the Tenants could have received \$3,577.00 in compensation had they accepted the sum offered to them by their insurer.

The Tenants claim compensation for accommodation as well as meals during the month they could not reside in the rental unit. I find that they were compensated adequately for their accommodation costs in that they were not required to pay rent. Even in the event the flood had not occurred the Tenants would have incurred food/meal costs. Arguably their costs increased somewhat due to not having the benefit of their kitchen and food stocks, however, I find the amount offered by their insurer to be reasonable in the circumstances.

For these reasons I dismiss the Tenants' claim for compensation from the Landlord.

On the second day of the hearing the Tenants alleged the flooding was due to the Landlord's negligence. In this respect the Tenants argued that the Landlord's did not adequately maintain and service the septic system and that it ultimately failed and required complete replacement after they moved.

The Landlord's representative gave affirmed testimony as to the maintenance of the system and its repairs. She stated that the Landlord had the tank emptied in 2021,

2022 and again in 2023. She acknowledged this was more frequent than normal, and that during the last service and inspection they discovered that the system was filling with ground water due to a hole in the tank, and upon discovery the Landlord repaired the hole such that the system continues to be in place without issue. I accept her testimony in this respect and find that the Tenants submitted insufficient evidence to support a finding that the Landlord was negligent in terms of the maintenance of the property or was otherwise responsible for the issues arising with the septic system.

### Conclusion

The Tenants' claim is dismissed without leave to reapply.

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: July 12, 2023

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Residential Tenancy Branch