



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with the Tenants' July 31, 2024, and August 9, 2024, Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package and was duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord did not serve the Tenants with or submit any evidence to the Residential Tenancy Branch. The Landlord confirmed that she did not serve or submit any evidence at the hearing.

Issues to be Decided

1. Are the Tenants' entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

2. Are the Tenants' entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?
3. Are the Tenants' entitled to authorization to recover the filing fees for these applications from the Landlord under section 72 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on May 15, 2021, with a monthly rent of \$2,780.00, due on the first day of the month, with a security deposit in the amount of \$1,390.00.

According to Tenant M.P., they are seeking compensation for the period January 17, 2024, to July 17, 2024, as follows:

- \$12,973.33 due to loss of use of two thirds of the rental unit.
- \$6,486.62 for loss of quiet enjoyment.
- \$4,904.88 in moving and storage fees.
- \$459.43 in extra BC Hydro utility expenses.

Tenant M.P. testified that on January 17, 2024, a pipe burst in the building's attic causing extensive flooding in their unit. She testified that a restoration company attended the property that same day and set up fans and dehumidifiers. She testified that they had to remove all of their belongings from the master bedroom, master bathroom and living and dining rooms during the initial phase of the water clean up and eventually had to have move a significant portion of their belongings into a temporary storage facility while restoration and reconstruction of two thirds of the apartment were undertaken. She further testified that they continued to live in the spare bedroom and use the second bathroom and kitchen facilities in the interim while they waited for the work to begin and continue to live in this limited space to date. Copies of pictures of the damage to the unit, a floor plan of the unit indicating what areas were usable and which areas were not usable, industrial fans and invoices for moving and storage expenses were submitted as evidence.

According to M.P. that the actual demolition and restoration work did not commence until May 1, 2024. She testified that the fans and dehumidifiers ran continuously day and night from January 31, 2024, to May 6, 2024. Pictures of the fan's run time which indicated a total of 923 hours of use and BC Hydro invoices were submitted as evidence. M.P. further testified that, despite her on-going communication with the Landlord and attempts to deal with the strata directly herself regarding the situation, the Landlord did not stay engaged during the restoration process and did not even attend the property until May 2024 when the strata insisted. She stated that the Landlord did refund the Tenants \$1,345.00 in rent for the period January 17 to 31, 2024 plus

\$1,155.00 of their security deposit but has not compensated them in any other way since this payment was made on January 30, 2024. She stated that they did initially withhold their rent starting in February 2024 because the Landlord told them they didn't have to during the restoration process. She stated that they subsequently paid it all retroactively in May 2024 after a conversation with the Residential Tenancy Branch.

Tenant M.P. testified that she never told the Landlord that they were moving completely out of the unit and that she was in daily communication with the Landlord regarding the status of the repairs and conditions inside the unit.

M.P. testified that she requested that the Landlord set up the washer and dryer on numerous occasions and that the appliances are still waiting to be installed.

In addition to the compensation for two thirds of the monthly rent for and loss of quiet enjoyment for the period noted above, the Tenants are requesting an Order for the Landlord to provide the services and living space agreed to but not provided authorizing them to withhold two thirds of the rent until such time as the restoration work, cleanup and inspection is completed.

The Landlord testified that the Tenant M.P.'s testimony is correct and that the pictures submitted of the condition of the unit are accurate. She testified that the M.P. offered to contact the strata about the issue as her English is not very good. She stated that she eventually met with the strata herself and viewed the apartment in May 2024 to discuss the situation and was surprised to find that the Tenants were still living unit because she had asked the Tenants to move out during the remediation process as the apartment was unsafe and had she thought they had in fact moved out because they had stopped paying rent following the flood.

The Landlord testified that it was her understanding that the strata had hired contractors to complete the restoration work and that the strata was running the project. She testified that she did receive text messages from the M.P. at first following the flooding and offered to stay on top of the work but later started preventing the work from getting done by refusing access to the contractors. She stated that she did not know why the M.P. was doing this. She further stated that the Tenants said they were moving their furniture out and would return when the unit was fixed.

The Landlord testified that she had not been advised by the Tenants that the washer and dryer were not set up for use by the Tenants.

Analysis

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Section 27 of the Act states:

27 (1)A landlord must not terminate or restrict a service or facility if

(a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b)providing the service or facility is a material term of the tenancy agreement.

(2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a)gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 28 of the Act states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a)reasonable privacy;

(b)freedom from unreasonable disturbance;

(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d)use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the Act states:

32 (1)A landlord must provide and maintain residential property 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.

Residential Policy Guideline 34 – Frustration states:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

I find, based on the evidence submitted, the testimony of the parties and on a balance of probabilities that the Tenants are entitled to compensation for loss of access and use of two thirds of the rental property during the period January 17, 2024 to July 17, 2024.

I find that, while the Landlord was not responsible for the flood that occurred in the Tenants' rental unit on January 17, 2024, the rental agreement was frustrated and the Tenants lost access to two thirds of the property agreed to under the terms of the tenancy. I further find that, while the restoration schedule may have been outside of the Landlord's control, the Landlord was negligent in her attention to the situation and left the Tenants to deal with the property damage and living arrangements on their own

which may have resulted in delays to the projects completion and additional costs to the Tenants.

I find therefore, that as two thirds of the area agreed to in the tenancy agreement was not available to the Tenants due to frustration resulting from the water damage, the Tenants are entitled to compensation in the amount of \$11,008.80 based on a retroactive two thirds reduction of rent from February 1, 2024 to July 30, 2024 inclusive as a result of the frustration. I note that the Landlord did not indicate whether she has sought or is seeking compensation including compensation for lost rent or other associated costs through her property insurance or through the insurance held by the party responsible for the water damage.

I authorize the Tenants to continue to withhold \$2,319.10 rent each month based on two thirds of unusable space and the Tenants monthly storage fees until such time as the repairs are completed and the full unit is made available to the Tenants per the terms of the tenancy agreement. The Tenants must not in anyway delay or prevent the restoration process from being completed in a timely manner and must immediately resume paying their full rent upon receiving written notice from the strata, or other authorized party tasked with managing the restoration process, that the repairs have been fully completed and the Tenants may safely access the full rental unit including the washer and dryer facilities.

I find that while the Tenants right quiet enjoyment of the rental unit was affected by the fans and on-going repair work, the Tenants did not explain how the Landlord is responsible for the loss of quiet enjoyment and is therefore in breach of section 28 of the Act or how the work could have been completed without the use of fans and construction equipment and the associated noise, mess and inconvenience. This portion of the Tenants' claim is dismissed without leave to reapply.

I find that the Tenants were required to move and store their belongings in another location as the restoration repair work required them to do so and that the Tenants, who were living in the remaining available space, would not have had any where in the unit to store their belongings during the course of the restoration project. I find therefore that the Tenants are entitled to \$4,079.69 in compensation for moving and storage fees for the period February to July 2024.

I find, based on the testimony of the Tenants, the evidence submitted and on a balance of probabilities that the Tenants did incur extra utility expenses due to the use of industrial fans, dehumidifier and power tools during the period January to July 2024. I therefore award the Tenants compensation for these costs in the amount of \$459.43.

Based on the above, I find that the Tenants are entitled under section 67 of the Act to a total monetary award in the amount of \$15, 547.92 for their monetary or other loss.

Are the Tenants' entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

This issue regarding the Landlord's service of notice of rent increase was not heard.

The Tenants' application for an order for the Landlord to comply under section 62 of the Act is therefore dismissed with leave to reapply.

Are the Tenants' entitled to authorization to recover the filing fees for these applications from the Landlord under section 72 of the Act?

I find that, as the Tenants were partially successful in their first application, the Tenants are entitled under section 72 of the Act to the return of one of their application fees from the Landlord in the amount of \$100.00. The Tenants' request for the recovery of the filing fee for their second application is dismissed without leave to reapply.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$15,647.92** under the following terms:

Monetary Issue	Granted Amount
a monetary award for the return of double their security and pet damage deposit including interest under sections 38 and 67 of the Act	\$15,547.92
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$15,647.92

The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Tenants' application for an order for the Landlord to comply under section 62 of the Act is dismissed with 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: October 22, 2024

Residential Tenancy Branch