



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, FF

### **Introduction**

This is the Tenants' application for compensation for damage or loss and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Tenants testified that the Notice of Hearing documents, together with copies of their documentary evidence were mailed to the Landlord, via registered mail. The Landlord acknowledged receipt of the Notice of Hearing documents on December 16, 2010.

### **Issue(s) to be Determined**

Are the Tenants entitled to compensation for:

- increased heating costs;
- loss of use of a portion of the rental unit; and
- the cost of moving

as a result of a flood at the rental unit?

### **Background and Evidence**

The Tenant AD moved into the rental unit in October, 2008. The Tenant RD moved into the rental unit in April, 2009. The rental unit was a two bedroom apartment. Monthly rent was \$1,200.00. Rent did not include utilities.

The rental unit was subjected to flooding during the first week of November, 2009. The Tenants advised the Landlord, who contacted a restoration company. The restoration company removed all of the belongings from one of the bedrooms and took out 3 feet of

drywall in 2 corners of the room and a wall in the living room. They also sprayed for mould and put in de-humidifiers.

The Tenants testified that they had to share a bedroom from the first week of November until mid-December, when they moved to another of the Landlord's rental properties.

The Tenants testified that the rental unit had an outside wall, which is where the water was seeping from. They stated that their utility bill for November 25 to December 18, 2009 jumped to \$75.19 as a result of the dehumidifiers and the loss of insulation due to the holes in the walls. The Tenants' utility bills for the previous two billing periods were \$22.86 and \$22.89. The Tenants provided copies of utility bills in evidence.

The Tenants testified that they had to hire movers to help them move on December 18, 2010 and that it cost \$400.00. The Tenants provided a copy of the invoice in evidence.

The Tenants seek compensation from the Landlord, calculated as follows:

Cost of movers	\$400.00
Half-month's rent for November	\$600.00
Half-month's rent for December	<u>\$600.00</u>
TOTAL CLAIM	\$1,675.19

The Landlord testified that he did not receive copies of the utility bills or the mover's bill when he received the Notice of Hearing documents. The Landlord stated that when the Tenants first asked for compensation, the owner required proof of loss but the Tenants did not provide any.

The Landlord testified that the water was coming into the Tenant's apartment from a deck on the exterior wall of the apartment building. The rental unit is in a strata building. The owners of the rental unit were told by the Developers that the leak had been fixed. When the Tenants told the Landlord that there was flooding, the Landlord advised the Strata, who sent in the restoration company. It was out of the Landlord's control. The

Developer was being uncooperative, so the Landlord moved the Tenants into another building as soon as they could.

The Landlord stated that the Tenants were advised that they needed tenants' insurance and that they should have been covered under their insurance.

The Tenants testified that they did have tenants' insurance and that they pursued it. Their insurance company advised that the insurance only covered damage or loss of personal property and that there was a \$1,000.00 deductible. The Tenants lost some personal property, but it was not worth making a claim because of the high deductible.

### **Analysis**

Residential Policy Guideline 16 provides for claims in damages. The guideline provides, in part:

#### **Claims in Tort**

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

(emphasis added)

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law.

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, the landlord must repair the rental unit. Tenants' insurance generally covers damage or loss a tenant incurs as a result of an unforeseen event such as fire or flood. Damage to the tenant's property or other losses, other than loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant under Section 32 of the Act. In this set of circumstances, I do not find that

the Landlord has been negligent. Therefore the Tenants' application for compensation for the cost of the movers and the increased utility bill is dismissed.

Policy Guideline 16 also provides, in part:

### **Claims for Breach of Contract**

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

(emphasis added)

It is undisputed that one of the Tenants' bedrooms was not useable for a 6 week period. The Tenants shared the remaining bedroom. I find that the Tenants were deprived of the use of part of the premises for a 6 week period and that they are entitled to compensation for that loss. The Tenants seek to recover ½ of their monthly rent for a period of two months, which I find to be excessive. Although the Tenants lost the use of one of their bedrooms, they continued to enjoy full use of the remainder of the rental unit. Therefore, I award the Tenants \$450.00, calculated as follows:

$\$1,200.00$  (monthly rent) / 4 =  $\$300.00$  (approximate weekly rent)

$\$300.00 \times 25\% = \$75.00$  (reduction in value of tenancy per week)

$\$75.00 \times 6 \text{ weeks} = \$450.00$

The Tenants have been partially successful in their application and are entitled to recover the cost of the \$50.00 filing fee from the Landlord.

### **Conclusion**

I hereby provide the Tenants with a Monetary Order in the amount of **\$500.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims 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 *Residential Tenancy Act*.

Dated: May 11, 2011.

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Residential Tenancy Branch