Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRIME PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 10, 2018, wherein the Landlord sought monetary compensation from the Tenants as well as recovery of the filing fee.

By amendment filed October 3, 2018 the Landlord increased their monetary claim to include unpaid rent for October 2018 such that they sought the sum of $11,975.67 in compensation from the Tenants.

By further amendment dated October 4, 2018 the Landlord increased their monetary claim to $12,597.39 to included G.S.T. which they claimed had previously been missed.

The hearing convened by teleconference at 1:30 p.m. on October 19, 2018 and continued at 9:30 a.m. on November 30, 2018. Both parties called into the hearings at the scheduled times and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Tenant's Evidence filed October 17, 2018

On the first day of the hearing the Landlord stated that he received the Tenant's most recent evidence package two days prior to the hearing. Branch records confirm that these documents were uploaded on October 17, 2018. This package included a handwritten statement. As it was delivered contrary to the *Residential Tenancy Branch Rules of Procedure,* I informed the parties it was not admissible and would not be considered.

At the hearing on November 30, 2018, the Landlord's Agent claimed he did not have pages 2-10—2-24 of the Tenant's evidence package. A review of these documents confirm that documents 2-10—2-23 include internal email communications between the Landlord's Agent, L.C., another employee of the Landlord, H.A., as well as the Landlord's insurer. The Tenant, S.C., confirmed she obtained these documents from the Landlord. I reviewed the dates of these documents during the hearing and find that these documents would have been in the care and control of the Landlord; as such, there was no prejudice in me considering them.

The Tenant, S.C., testified that document 2-24 was a copy of the Canadian Meteorological website historical data for the temperatures in the community in which the rental unit was located. I informed the Landlord's agent of the temperatures noted at the material time and he took no issue with the information contained therein. I therefore find this document also admissible.

Preliminary Matter—Landlord's Amendment and Evidence of November 5, 2018

On November 5, 2018, the Landlord filed a further amendment seeking the sum of $13,199.00.

Rule 4.6 of the *Residential Tenancy Branch Rules of Procedure* provides that amendments must be received no later than 14 days prior to the hearing. As the hearing commenced on October 19, 2018, the Landlord's November 5, 2018 Amendment was not properly before me. I therefore decline to consider that amendment.

Similarly, and pursuant to my Interim Order of October 19, 2018 which prohibited the introduction of further evidence, I decline to consider the evidence which was attached to the Landlord's amendment of November 5, 2018.

No other 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 respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Delivery of Decision

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Due to winter holidays and other unforeseen circumstances, this Decision is being delivered more than 30 days after the conclusion of the November 30, 2018 hearing. I confirm that I have not lost any authority, nor is the validity of my Decision affected, by the timing of the delivery of this Decision as specifically provided for in section 77(2) of the *Act*.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Should the Landlord recover the filing fee?

Background Evidence

The Landlord's Agent, L.C., testified as follows. He stated that the Tenants moved into the rental unit on September 30, 2017. The rental unit is in a four-plex townhouse building; the units are all on the same level with numbers 31, 32, 33 and 34. The subject rental unit is #34 and shares one wall with unit #33. Monthly rent was payable in the amount of $1,000.00 and the Tenants paid a security deposit of $500.00 and a pet damage deposit of $500.00.

The Landlord's Agent testified that the claim arises from damage to the rental unit in the winter of 2017/2018. He stated that the Tenants turned their heat off in their unit over the Christmas holidays in 2017 such that the pipes in their unit froze and then burst on December 27, 2017.

The Tenants provided a handwritten statement to the Landlord's insurance company confirming liability for the burst pipes in their rental unit. This letter was provided in evidence.

L.C. stated that some days after the freezing in the subject rental unit the pipe burst in the Adjacent Unit: #33. He confirmed that this unit was vacant at the time and that the maintenance man left the heat on low assuming that the heat from the other units would

keep the water from freezing. L.C. stated that the claims are separated in terms of the amounts claimed for damage from the subject rental unit #34, and the subsequent damage to the Adjacent Unit #33.

In the claim before me the Landlord sought compensation from the Tenants for the following:

Remediation cost	$9,855.75
GST on the emergency work performed by K.D.R.	$152.40
GST on the repairs	$469.32
*10% of total insurance claim for "Landlord's efforts dealing with the matter"	$1,067.10
Rent for October 2017	$1,050.00
TOTAL	**$11,527.47**

The Landlord's Agent confirmed that the Tenants already paid $762.39 for the emergency plumbing when the pipes first burst. The Agent confirmed that an additional amount was claimed for GST because the contractor failed to include GST on the amounts.

The Landlord's Agent also confirmed the Landlord sought 10% of total damages (including the $9,855.75 remediation cost, plus $53.82 previously paid by the Tenant) as compensation for the Landlord's efforts dealing with the matter.

The Landlord's Agent claimed it was "common knowledge" that the residents must leave their heat on to ensure the pipes do not burst. He confirmed this was not set out in the tenancy agreement or in any addendum to the agreement although the Tenants would have known this requirement.

In response to the Landlord's claims, the Tenant, S.C., testified as follows.

S.C. stated that the question of liability should be split into "two parts". She confirmed that she turned the heat off when she left for the holidays on December 23, 2018. Because of that their pipes burst on December 27, 2017. S.C. confirmed that she would accept responsibility for damages resulting from those burst pipes, including:

- the emergency plumbing invoice in the amount of $762.39 which she has already paid;

- the purchase of plumbing parts from in the amount of $53.82 which again has already been paid; and,
- the drywall and painting costs associated with the damage from the bursting of the pipes on December 27, 2017.

The Tenant confirmed she was opposed to compensating the Landlord for any costs associated with the bursting of the pipes on January 6, 2018 in the Adjacent Unit. She claimed that when those pipes burst, water from that unit ran from that unit, under the Tenants' floor and damaged the subject rental unit. She disputed liability for these costs arguing that they originated from the other unit.

The Tenant confirmed that they returned on the 27th and saw that the pipes were frozen and that the water in the toilet was frozen. The Tenant confirmed she was upstairs when the pipes burst. The Tenant talked to the resident manager, H.A., about the pipes immediately after they burst in the subject rental unit such that she was able to contain the damage.

The Tenant stated that she went downstairs to turn off the water to stop any further damage. When she turned off the waterline water kept flowing. She was concerned that there was something going on in the other unit that was causing water to continue running. She called the resident manager and while the resident manager responded quickly, she didn't respond to the Tenant's concerns about the Adjacent Unit.

The Tenant stated that she was informed that the Landlord discovered that the pipes in the Adjacent Unit burst on January 6, 2018. The Tenant stated that she also saw water pooling in her unit which was coming from the Adjacent Unit. The Tenant confirmed that she was not aware if the Landlord checked on the Adjacent Unit between December 28 and January 6 such that the pipes could have burst before January 6.

The Tenant provided information as to the daily temperature for the community in which the rental unit was located at the material time (December 21, 2017 to January 14, 2018). She stated that at the time the pipes froze the temperature was consistently cold. She noted that it was cold enough to freeze the pipes in the adjacent unit irrespective of what was going on in her rental unit and the Landlord should have turned the heat on in the Adjacent Unit to ensure their pipes did not freeze. She also stated that she had only been in the community in which the rental unit was located for two months, having moved from another province. She stated that there is no proof that turning off the heat in her unit had any effect on whether the pipes in the adjacent unit froze.

The Tenant confirmed that she accepts responsibility for her own burst pipes and she has asked L.C. to provide copies of the bills for the drywall and the painting for the subject rental unit and she would be happy to pay them. She does, however dispute that she is responsible for the damage resulting from the Adjacent Unit as she believes the Landlord should be responsible for any costs associated with the vacant unit.

In reply, the Landlord's Agent confirmed that the Landlord was not seeking compensation for any of the damages to the Adjacent Unit (noting that they were over $40,000.00), only those related to the burst pipes in the subject rental unit. He noted that while the walls were damaged (as acknowledged by the Tenant), the water also damaged the laminate flooring.

The Landlord's Agent also noted that the Landlord sought compensation for loss of rent for October 2018. Notably the Tenants did not dispute these amounts.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website**:** **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;

- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I will first deal with the Landlord's monetary claim for damages to the rental unit.

The Tenants acknowledge that they turned the heat off in the rental unit which in turn caused the pipes to burst on December 27, 2017.

The Landlord seeks the sum of $9,855.75 for remediation costs. The Tenants confirmed they are agreeable to paying the costs associated with the pipes bursting in the rental unit on December 27, 2017, but dispute any amounts claimed related to the pipes bursting in the Adjacent Unit on January 6, 2018.

The Tenant, S.C., testified that as she was home when the pipes burst in her unit she was able to contain the water damage. She further confirmed she was agreeable to paying the cost of drywall repairs and painting associated with the pipes bursting in her unit. The Tenant disputed any claim related to damage to the flooring alleging that it occurred as a result of the burst pipes in the Adjacent Unit on January 6, 2018, not the pipes bursting in her unit.

The Landlord's Agent testified that the claim before me includes only damages incurred as a result of the pipes bursting in the subject rental unit. He further testified that the cost of repairs from the adjacent rental unit exceeded $40,000.00. I was not provided with any documentary evidence related to that claim; however, the amount suggests the water damage was far more extensive than that which occurred in the subject rental unit.

Internal communications between the Landlord's Agent, L.C. and H.A., confirm that as of January 6, 2018 L.C. was enquiring why the water had been turned on in the vacant Adjacent Unit. Testimony from L.C. suggests the Landlord relied on occupation of the other units in the four-plex to provide residual heat to the vacant unit. In any case, I find

that the Tenant is not responsible for the burst pipes in the Adjacent Unit, as it is the Landlord's responsibility to monitor and care for vacant units.

In further communication between L.C. and H.A., sent at 2:04 p.m. on January 6, 2018, H.A. advises L.C. as follows:

> I received a text this morning from the tenant in #34KV saying she could hear water running still and that her floor was starting to lift, she assumed #33KV may have some leaking. I arrived an hour later to the entire unit damaged and flooded. I have attached photos on what I had seen.
>
> Since this unit is empty, would you prefer to wait until insurance is involved before actively getting someone in there to start the repair process? Or should this be dealt with ASAP since the adjoining tenant is affected? I attached photos of #34KV in the email chain we have had in regards to their units damage and work, to keep the 2 issues separate.

This communication confirms that on January 6, 2018 the Adjacent Unit was damaged and flooded. It also confirms the Tenants' position that water escaped from the Adjacent Unit to their unit.

The Landlord submitted in evidence an invoice dated January 19, 2018 detailing the remediation work done and which included the following summary:

O&P Items	Total	%
CLEANING	150.32	1.53%
GENERAL DEMOLITION	1,023.50	10.38%
DRYWALL	418.92	4.25%
FLOOR COVERING - WOOD	3,280.45	33.28%
TRAVEL	972.00	9.86%
PAINTING	1,948.58	19.77%
O&P Items Subtotal	7,793.77	79.08%
PST	28.24	0.29%
Overhead	782.20	7.94%
Profit	782.20	7.94%
GST	469.34	4.76%
Total	9,855.75	100.00%

This summary does not differentiate between the work completed as a result of the December 27, 2017 burst pipe in the rental unit, or the January 6, 2018 flooding in the Adjacent Unit. The balance of the invoice also fails to provide details such as dates work was completed.

The Tenant, S.C., conceded that some amount of drywall repair and painting was required a result of the burst pipe in their rental unit; she simply asked for a breakdown.

The Landlord's Agent submitted that all amounts claimed in the Application before me related to the December 27, 2017 burst pipe in the rental unit, and were separate and apart from any costs associated with the January 6, 2018 flooding in the Adjacent Unit. However, the invoice provided by the Landlord did not provide a breakdown by date to determine when the work was done and to which incident it related. Further, the

evidence before me suggests that all the remediation was done at the same time such that I find it likely some of the remediation costs claimed actually relate to damage caused by the flooding in the Adjacent Unit.

I am unable, based on the evidence before me, to determine precisely what amount of the claimed remediation costs relate to the December 27, 2017 burst pipe in the rental unit, or the January 6, 2018 flooding in the Adjacent Unit.

While the burst pipe in the rental unit had a more direct and obvious impact on the subject rental unit, the Tenants were home at the time and able to contain the damage quickly. The flooding in the Adjacent Unit appears to have been much more extensive and costly to repair and remediate due to the fact the unit was unoccupied. Further, it is likely the water seeping under the wall from the Adjacent Unit, while perhaps not as readily apparent, was more problematic in terms of the damage to the rental unit floor.

I therefore find that one half of the cleaning and general demolition costs relate to the flooding in the Adjacent Unit on January 6, 2018 and I discount the Landlord's claim accordingly.

I find the drywall and painting costs are more likely related to the December 27, 2017 burst pipes in the rental unit as the walls needed to be cut into to expose and repair the pipes. I award the Landlord the amounts claimed for these items without any deduction.

I find that only 25% of the flooring costs relate to the December 27, 2017 burst pipe in the rental unit and I therefore discount the Landlord's claim accordingly.

I similarly discount the claimed travel costs by 50%.

The invoice indicates the Landlord was charged $497.58 in P.S.T. and G.S.T. As I have allowed approximately 54% of the above amounts, I discount the Landlord's claim for these taxes by 46%. I realize this is not exact, but a nominal amount based on the information provided to me.

To summarize, I find the Landlord is entitled to **$4,529.20** for the following remediation costs:

item	claimed	discount	allowed
cleaning	$150.32	50%	$75.16
demolition	$1,023.50	50%	$511.75
Drywall	$418.92	none	$418.92

Wood floor	$3,280.45	75%	$820.11
Travel	$972.00	50%	$486.00
Painting	$1,948.58	none	$1,948.58
PST	$28.24	46%	$15.24
GST	$469.34	46%	$253.44
Total Awarded			**$4,529.20**

The Landlord claims 10% of the total insurance claim for their "efforts dealing with this matter". Such administrative costs are not recoverable under the *Residential Tenancy Act* and I therefore dismiss this portion of the Landlord's claim.

I accept the Landlord's evidence that although the Tenants paid the invoice from K.D.R., they did not pay the GST of **$152.40**. This was not disputed by the Tenants. I therefore find that amount is recoverable by the Landlord.

The Landlord also sought a further $469.32 as GST on repairs. As this amount was already considered in the remediation costs calculation I decline the Landlord's request for additional sums related to the GST.

As noted, the Tenants did not take issue with the Landlord's claim for unpaid rent for October 2017. I therefore award the Landlord the **$1,050.00** claimed.

As the Landlord has only been partially successful, I find they should bear the cost of the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **$5,731.60** calculated as follows:

Remediation costs	$4,529.20
GST on the emergency work performed by K.D.R.	$152.40
Rent for October 2017	$1,050.00
TOTAL	**$5,731.60**

I authorize the Landlord to retain the Tenants' $500.00 security deposit and $500.00 pet damage deposit towards the $5,731.60 amounts awarded. The Landlord is granted a Monetary Order for the balance due in the amount of **$4,731.60**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that court.

The Landlord is at liberty to make further application for monetary compensation related to the end of this tenancy, including but not limited to, any amounts claimed in the November 5, 2018 Amendment which were not specifically dealt with in this my Decision.

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: December 31, 2018

Residential Tenancy Branch