



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP, OLC, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make emergency repairs to the rental unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and for "other".

At the outset of the proceedings on October 29, 2015 the Tenant withdrew her application for an Order requiring the Landlord to make emergency repairs to the rental unit and for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement, as the rental unit has been vacated.

The Tenant stated that sometime in May of 2015 she personally served the male Landlord with the Application for Dispute Resolution, the Notice of Hearing, and the tabbed evidence package she submitted to the Residential Tenancy Branch with the Application for Dispute Resolution. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 06, 2015 the Landlord submitted a large tabbed evidence package to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence package was personally served to the Tenant on October 06, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 26, 2015 the Tenant submitted 30 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence package was personally served to the female Landlord on October 26, 2015. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Although the evidence submitted by the Tenant on October 26, 2015 was not served to the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence, in large part, because the hearing was adjourned and the Landlord had ample time to consider those documents.

At the hearing on October 26, 2015 the female Landlord stated that on October 26, 2015 she also received a "re-worded" Monetary Order Worksheet. The parties were advised that I did not

have a copy of an amended Monetary Order Worksheet. The Tenant stated that she did not serve the Landlords with an amended Monetary Order Worksheet.

After the hearing on October 26, 2015 I located an amended Monetary Order Worksheet, which had been submitted to the Residential Tenancy Branch by the Tenant on October 26, 2015. On the basis of the testimony of the female Landlord and the existence of the amended Monetary Order Worksheet, I find it reasonable to conclude that this document was served to the Landlord and that the Tenant simply forgot that it was served. This document has also been accepted as evidence as the Landlord has had ample time to consider it.

In my interim decision of October 29, 2015 the Landlord was given leave to submit evidence in response to the evidence that was served to him by the Tenant on October 26, 2015. The Landlord did not serve additional evidence.

There was insufficient time to conclude the hearing on October 29, 2015 so the matter was adjourned. The hearing was reconvened on November 26, 2015 and was concluded on that date.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

At the outset of the hearing on October 29, 2015 the Tenant was directed to clarify the incidents/events that occurred during this tenancy for which she is seeking compensation and she identified the following issues:

- flood in the master bedroom, commencing in January of 2013;
- flood in the second bedroom, commencing in September of 2014;
- sewer backup in May of 2013;
- mould in bedrooms;
- wet carpet in back bedroom; and
- rats in exterior shed.

Legal Counsel for the Landlord stated that the Landlord understands these are the issues in dispute.

The parties were advised that only issues relating to the aforementioned six issues will be considered during these proceedings.

Preliminary Matter #2

At the outset of the hearing on October 29, 2015 the Landlord and the Tenant were advised that, due to the large volume of documents submitted in evidence, the parties must refer to specific documents they consider relevant to the issues in dispute. They were advised that they must not assume that I will consider all the documents submitted in evidence, as it is readily apparent not all of those documents are relevant to the issues in dispute.

Issue(s) to be Decided

Is the Tenant entitled to compensation for a breach of her right to the quiet enjoyment of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant occupied the rental unit prior to the Landlord purchasing the property in November of 2005 and that the tenancy ended on January 31, 2015.

The Tenant stated that the rent at the end of the tenancy was \$625.00 per month. The male Landlord stated that rent at the end of the tenancy was \$624.00 per month. The written tenancy agreement, which was submitted in evidence, indicates the rent is \$624.00 per month.

The Tenant is seeking compensation, in part, as a result of water leaking into the master bedroom.

The Tenant contends that:

- she noticed water leaking into the master bedroom in January of 2013
- she immediately reported the issue to the Landlord;
- it was eventually determined that water was leaking through a crack in the building foundation;
- water leaked into the bedroom every time it rained;
- when it was raining particularly hard outside the entire floor of the 11'X11' bedroom could be covered by ½" of water;
- she would report the leak every time there was a large amount of water;
- she would not report the leak when there was only a small amount of water;
- that it would typically take her several hours to wipe up the water;
- the leak was repaired in June of 2013;
- the drywall was repaired after the leak was repaired, but the drywall was never painted;
- the carpet was removed from the master bedroom in late summer/early fall of 2012;
- the Landlord promised the carpet would be replaced once the foundation was repaired;
- the Landlord provided her with area rugs to use until the carpets were replaced;
- the carpets were never replaced; and
- at no time did she tell the Landlord that she preferred cement floors over carpeted floors.

The Landlord contends that:

- in 2007 a leak in the foundation was located, which was fixed in 2007;
- the Landlord was never informed of a leak in the master bedroom in January of 2013;
- the Landlord was informed of a leak in the master bedroom in July of 2013;
- the Landlord determined that water was leaking through a crack in the building foundation;
- the Tenant is now reporting a more severe problem than was reported in 2013;
- in 2013 the Tenant never advised the Landlord the floor needed to be dried or mopped;
- the Tenant never asked the Landlord to provide alternate accommodations;
- the crack in the foundation was repaired in July of 2013;
- the drywall in this room was repaired shortly after the crack in the foundation was repaired;

- the drywall repair was never painted as the Tenant told him she was going to have a relative paint the wall;
- the carpet was removed from the master bedroom in 2013;
- he provided the Tenant with area rugs to use after the carpets were replaced; and
- the carpets were never replaced because the Tenant told him she preferred the cement floor in that room so she could keep her plants in the room.

In an email from the Landlord dated June 01, 2013 the Landlord declared that the leak started a "few months ago" and that he helped the Tenant remove and recycle the carpet.

In her written submission at section 4-A, page 5 the Tenant declared that the carpet was removed in late summer/early fall of 2012 and that there was a plan to get new carpet after the leak was fixed in the summer of 2013.

Legal Counsel for the Tenant argued that the Tenant informed the Landlord of her desire to have the carpet replaced in the master bedroom in the letter located at section 4A, page 16 of the Tenant's evidence package. Legal Counsel for the Landlord argued that the verbal agreement not to carpet the floor occurred after the letter of July 02, 2013 was written.

The Tenant submitted five photographs of the master bedroom, which she contends demonstrates the nature of the flooding in that room. The Landlord contends that he was never informed that the leak was as severe as is demonstrated by the photographs and that he understood the problem was limited to a damp carpet.

The Landlord submitted a copy of a contract from a company that specializes in repairing basements (receipt #2). The "proposal date" of this contract is July 12, 2013 and it appears to be a contract to repair the foundation. The Landlord submitted a copy of an email, dated June 06, 2013, which indicates this company provided the Landlord with this contract on June 06, 2013.

The Landlord submitted copies of two emails, both dated April 23, 2013, in which two construction companies appear to be providing the Tenant with a quote for "foundation wall repair".

The Tenant submitted a copy of an email, dated March 26, 2013, in which she appears to be asking a general contractor for advice about a leak in a foundation wall. In this email the Tenant declares that she rents the basement suite and that she has been asked by the Landlord to "do the research, get estimates".

The Tenant submitted a copy of an email, dated April 08, 2013, in which a sales representative appears to be providing the Tenant with a quote for a "foundation repair". After this quote was discussed at the hearing the Landlord stated that he had been informed that there was some sort of a problem with water in April of 2013 but was not aware of the extent of the problem until July of 2013.

The Tenant is seeking compensation, in part, as a result of water leaking into the second bedroom.

The Tenant and the Landlord agree that:

- on September 01, 2014 the Tenant reported that the carpet in the closet of the second bedroom was wet;
- the Tenant removed her personal property from the bedroom into a storage area provided by the Landlord;
- the Landlord removed the carpet from the bedroom; and
- after running a hose near the exterior of the premises it was determined there was a leak in the foundation.

The Landlord stated that the leak was repaired sometime in October of 2014 but the carpet was never replaced because the Tenant informed him that she intended to vacate the rental unit. The Landlord subsequently stated that the leak was repaired sometime in November of 2014.

The Tenant stated that she thinks the leak was repaired sometime near the end of November of 2014.

The Landlord submitted a copy of a contract from a company that specializes in repairing basements (receipt #3). The "proposal date" of this contract is November 04, 2014 and it appears to be a contract to repair the foundation.

The Landlord submitted an email, dated November 11, 2014, in which the Landlord appears to be directing a contractor to repair the crack in the foundation.

The Tenant submitted photographs of the second bedroom after the carpet had been removed, which she contends demonstrates the nature of the flooding in that room.

The Tenant believes she is entitled to compensation for this event because:

- she had to help the Landlord carry the carpet out;
- she had to dry the floor every time it leaked, which she estimates was approximately 50 times;
- she reported the leak to the Landlord every time;
- she had to move her personal property, without the assistance of the Landlord;
- the Landlord did not help her dry the floor until sometime in mid-November;
- repairs to the drywall in the second bedroom were started in the latter part of November of 2014; and
- the repairs were not complete by the time she vacated the rental unit on January 31, 2015.

The Landlord contends that these factors should be considered when adjudicating this event:

- the Landlord helped the Tenant dry the floor every time the Landlord reported a leak;
- the Landlord thinks a leak was reported approximately 7 times;
- the Landlord provided the Tenant with storage space for her property;
- the Landlord helped the Tenant move her personal property;
- the repairs to the drywall in the second bedroom were started sometime in November of 2014;
- the drywall repairs were completed in early December of 2014; and
- the drywall repairs were not painted because the Tenant asked him not to make further repairs until she vacated the rental unit.

The Tenant is seeking compensation, in part, as a result of a "sewer backup".

The Tenant and the Landlord agree that:

- there was a flood in the rental unit in May of 2013;
- water from the flood impacted the kitchen, bathroom, utility room, and both bedrooms;
- the water originated from the drain in the utility room;
- the cause of the flood has never been determined;
- that the flood never re-occurred;
- that the Landlord compensated the Tenant for a dresser that was damaged during the flood; and
- that the Landlord paid to clean the Tenant's rug that was damaged during the flood.

The Tenant stated that:

- she believes the rental unit was flooded with sewer water;
- she speculates the water simply backed up from the drain;
- she owns a washing machine but she was not using it on the day of the flood;
- she asked the Landlord to help her clean/dry the water;
- the Landlord did not help her clean/dry the water; and
- later that night the Landlord's wife and son helped her move a rug from the rental unit.

The Landlord contends that:

- the water in the rental unit was not sewage;
- the Tenant's washing machine may have caused the flood;
- the Landlord went to the rental unit at around 3:00 p.m. on the day of the flood to help clean/dry the water;
- later that day the Tenant asked for help moving her carpet; and
- the Landlord's wife helped the Tenant move her carpet later that night.

The Tenant submitted photographs of the rental unit that were taken in May of 2013 after the water in the rental unit had been cleared.

The Tenant is seeking compensation, in the amount of \$20.00, for supplies used to clean after the flood in May of 2013. The Tenant submitted no receipts for cleaning supplies.

The Tenant is seeking compensation, in the amount of \$50.00, in compensation for a pair of shoes that were damaged during these floods. She stated that she never advised the Landlord her shoes were damaged prior to filing this Application for Dispute Resolution. The Tenant submitted no evidence to corroborate her claim that a pair of shoes was damaged.

The Tenant is seeking compensation, in the amount of \$130.00, for the cost of purchasing several plastic containers. The Tenant stated that she purchased these containers to store her clothing in after her dresser was damaged by water. The Landlord and the Tenant agree that the Landlord compensated the Tenant for her damaged dresser in November of 2014.

The Landlord argued that the Tenant should not be compensated for the plastic containers because she has already been compensated for her damaged dresser. The Tenant stated that it took her a while to replace her dresser as she was waiting to locate one that suited her needs.

The Landlord argued that the Tenant should not be compensated for the plastic containers because she still has the containers, which can be used for a variety of purposes.

The Tenant is seeking compensation for living with mould in the rental unit. The Tenant contends that:

- there was mould in both bedrooms;
- the Tenant reported the mould in the second bedroom to the Landlord in September of 2014;
- the Tenant never reported the mould in the master bedroom because she was not certain there was mould; and
- the Tenant did not submit any scientific evidence to establish there was mould in the rental unit.

The Landlord contends that:

- a problem with mould was not reported until he was served with notice of these proceedings;
- he has never observed mould in the rental unit; and
- none of the professionals working in the unit reported the presence of mould.

The Tenant submitted a photograph of a piece of drywall which she found in the garage after it had been removed from the rental unit. The drywall appears to have some black marks on it that the Tenant believes is mould.

The Tenant is seeking compensation because there were rats living in an exterior shed located near to her front entrance.

The Tenant stated that:

- she believes she first noticed the rats in the spring of 2012;
- the Landlord allows her to store her bicycle in the shed;
- she reported the rats to the Landlord as soon as she noticed them;
- on one evening she left her front door open and she observed a rat run into her rental unit;
- on one occasion she has left her front door open during the night and she noticed garbage on the floor the next morning, which caused her to conclude that a rat had been in her rental unit;
- she purchased rat poison and placed it in the shed;
- she cleaned the shed approximately once per month in 2012, 2013, and 2014;
- she had to clean the shed once every month because the floor was “thick” with rat feces;
- she reported the rats to the Landlord every time she cleaned the shed;
- she did not keep horse feed outside of her rental unit; and
- the bag marked horse feed that can be seen in a photograph of her front entry contains twine.

The Landlord contends:

- the storage shed was not part of the tenancy, although he allowed the Tenant to store her bicycle in it;
- the Tenant never reported that there were rats inside her rental unit;
- the Tenant did report a problem with rats in the shed some time prior to 2013;
- when the Tenant reported the problem she told the Landlord she had already distributed rat poison;

- she never reported the problem again so he believed the problem was resolved; and
- the Tenant kept horse feed outside her rental unit which may have contributed to the problem.

The Tenant submitted a receipt for rat poison, dated 09/04/2012, in the amount of \$24.99.

The Tenant submitted photographs of the interior of the shed which the Tenant contends is a photograph of rat feces.

The Tenant is seeking compensation, in the amount of \$400.00, for having taps installed in the rental unit.

The Tenant stated that:

- during this tenancy the Tenant wished to replace her personal washing machine;
- the washing machine she wished to purchase required a different set of taps than her old washing machine;
- she asked the Landlord if she could install the type of taps that were need for the new washing machine;
- he agreed she could install the new taps;
- she paid \$400.00, in cash, to install the taps; and
- after the taps were installed the Landlord told her she could not use the new washing machine.

The Landlord contends that the Tenant never asked to replace her personal washing machine and he never agreed to pay for having new taps installed.

The Tenant is seeking aggravated damages, in the amount of \$10,000.00, as a result of the Landlord's failure to maintain the rental unit in a manner that complies with the *Act*.

The Tenant is seeking compensation for moving costs. She contends that she was forced to move out of the rental unit as a result of the Landlord's failure to maintain the rental unit in a manner that complies with the *Act*.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant was aware of a leak in the master bedroom prior to March 26, 2013. This conclusion is based on the emails, dated March 26, 2013, April 08, 2013, and April 23, 2013, in which indicate that the Tenant appears to be seeking a resolution to the problem.

I find that these emails refute the Landlord's testimony that he was not aware of a water problem until April of 2013, as I can find no logical reason to conclude that the Tenant would be investigating a repair to the foundation in March of 2013 if she had not yet reported the occurrence to the Landlord. In her email of March 26, 2013 the Tenant declares that she has

been asked by the Landlord to “do the research, get estimates” which, in my view, helps to establish that the Landlord had been informed of the leak sometime prior to March 26, 2013.

In adjudicating the claim regarding the leak in the master bedroom I was heavily influenced by the email dated June 06, 2013, in which a company that specializes in repairing basements provides the Landlord with a quote to repair the foundation. I find this email directly refutes the Landlord’s testimony that he was not informed of a significant leak in the master bedroom until July of 2013.

In adjudicating the claim regarding the leak in the master bedroom I was heavily influenced by the email dated June 01, 2013 in which the Landlord declared that the leak started a “few months ago”.

I find that the Landlord’s evidence regarding the date the leak was reported was inconsistent. The Landlord initially stated that the leak in the master bedroom was not reported until July of 2013 and, when faced with evidence that refutes that testimony, he stated that he had been informed of a problem with water sometime in April, but he simply did not understand the extent of the problem at that time. Whether or not the Landlord was intentionally misleading the proceedings when he testified that the leak in the master bedroom was not reported until July of 2013, I find his evidence in this regard is unreliable.

As there is no evidence to refute the Tenant’s testimony that the leak was reported in January of 2013 and I find her evidence more reliable than the Landlord’s evidence regarding the date the incident was reported, I find it reasonable to conclude that the leak was reported in January of 2013.

I favour the submission of the Landlord, who contends the leak in the master bedroom was repaired in July of 2013, over the submission of the Tenant, who contends the leak in the master bedroom was repaired in June of 2013.

In determining the date of the repair I was heavily influenced by the contract from a company that specializes in repairing basements (receipt #2), which was submitted in evidence, which has a “proposal” date of July 12, 2013. Typically a “proposal date” is the date the contractor offers his/her services to a prospective customer. On the basis of the email dated June 06, 2013, however, I find that this quote was provided to the Landlord on June 06, 2013. I therefore find it reasonable to conclude that the “proposal date” in this contract either refers to the billing date or the date of the repairs.

I therefore find it reasonable to conclude that water periodically leaked into the master bedroom between sometime in January of 2013 and sometime in July of 2013, which is approximately six months.

On the basis of the photographs submitted in evidence I find that, at times, a significant amount of water entered the master bedroom. In the absence of evidence to suggest that the photographs are fraudulent, I find they speak for themselves.

Although the Tenant has not submitted evidence to clearly establish how often water entered the master bedroom, I accept the Tenant’s testimony that it happened frequently. Given that the photographs submitted in evidence indicate that a significant amount of water entered the rental unit on at least one occasion, I find it reasonable to conclude that the crack in the foundation

was reasonably large and would have resulted in water leaking into the bedroom on more than one occasion.

On the basis of the testimony of the Tenant and the photographs submitted in evidence, I find that the Tenant would have had to spend considerable time drying the master bedroom after water leaked into it. Although the Landlord contends that he was never advised there was a need to dry the bedroom I find that an inspection of the rental unit at the time of water egress would have demonstrated that remediation was required.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which requires a landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline #6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find that there was an unreasonable delay in repairing the crack in the foundation that resulted in water leaking into the master bedroom. Given the quantity of water that leaked into the bedroom, I find that the problem should have been rectified within one month of being reported.

I find that the need to dry the master bedroom whenever water leaked into it was an unreasonable disturbance that breached the Tenant's right to the quiet enjoyment of the rental unit. I find that the breach reduced the value of this tenancy by approximately 10% per month, which is approximately \$62.40 per month. This award is in compensation for the time spent cleaning/drying, rather than the loss of use of the bedroom. I therefore find that the Tenant is entitled to compensation of \$374.40 for the six months water leaked into the master bedroom.

The undisputed evidence is that the carpet was removed in the master bedroom as a result of the water egress, although neither party was able to declare precisely when the carpet was removed.

The Tenant contends that it was removed sometime in late summer/early fall of 2012. Although she makes reference to this time period in emails exchanged with the Landlord the Landlord's

email responses dispute that assertions. I therefore find that the Tenant has submitted insufficient evidence to meet her burden of establishing when the carpet was removed.

On the basis of the email sent by the Landlord on June 01, 2013, in which he declared that the leak started a "few months ago" and that he helped the Tenant remove and recycle the carpet, I find that the carpet was removed at least a "few months" prior to June 01, 2013. For the purposes of adjudicating this claim, I find it reasonable to interpret the term a "few months" to be four months. I therefore interpret the Landlord's version of events to be that the carpet was removed on, or about, February 01, 2013.

On the basis of the undisputed evidence, I find that the carpet in the master bedroom was never replaced and the repaired drywall was never painted. In my view the absence of carpet in this room and the damaged/partially repaired wall reduced the value of the tenancy by 10%. I therefore find that the Tenant is entitled to compensation for the 24 months between February 01, 2013 and January 31, 2015, in the amount of \$1,497.60.

In determining that the Tenant is entitled to compensation for living without carpet in the master bedroom I placed no weight on the Landlord's submission that the Tenant told him she preferred the cement floor in that room so she could keep her plants in the room. As the Tenant did not acknowledge telling the Landlord that she preferred cement floors and there is no evidence to corroborate the Landlord's submission that the Tenant told him she preferred a cement floor, I find that the Landlord remained obligated to provide the Tenant with a carpeted master bedroom.

On the basis of the undisputed evidence, I find that water leaked into the second bedroom on September 01, 2014 and the leak was not repaired until sometime in November of 2014. On the basis of the email, dated November 11, 2014, I find that the Landlord did not direct a contractor to begin the repair the crack in the foundation until November 11, 2014. I find this email lends credibility to the Tenant's testimony the leak was not repaired until sometime near the end of November and I find it reasonable to conclude that the Tenant was without the use of this room for the majority of this month.

On the basis of the photographs of the water in this room, I find it reasonable for the Tenant not to have placed personal property in the room until the problem with water egress was resolved. I therefore find that she is entitled to compensation for being without the use of this room for the months of September, October, and November of 2014, in the amount of \$468.00. This award is based on the fact this is a two bedroom unit and my determination that the inability to use one room reduces the value of the tenancy by 25%, which is approximately \$156.00 per month.

In addition to compensation for the loss of the use of this bedroom for three months, I find that the need to dry the bedroom whenever water leaked into it was an unreasonable disturbance that breached the Tenant's right to the quiet enjoyment of the rental unit. I find that the Tenant is entitled to compensation for the time spent cleaning/drying this room for these three months, in the amount of \$50.00. This award is less than the amount of compensation granted for cleaning/drying the master bedroom, in part, because the room would have been easier to clean since it was empty of property and did not have a carpet and, in part, because the Landlord helped clean/dry the room at various times.

On the basis of the undisputed evidence, I find that the carpet was not replaced in the second bedroom prior to the end of the tenancy in January of 2015. On the basis of the undisputed

evidence, I find that repairs to the drywall in this room were started in November of 2014 but still required painting by the time the tenancy ended in January of 2015. Although the Tenant had the ability to use the second bedroom for December and January, the absence of carpet in the room and the partially repaired wall, in my view, reduced the value of the tenancy by 10%. I therefore find that she is entitled to compensation for the reduced value of the tenancy for December of 2014 and January of 2015, in the amount of \$124.80.

On the basis of the undisputed evidence I find that water flooded the rental unit from the drain in the utility room on one single occasion in May of 2013 and that neither party knows the cause of the flood. In the absence of evidence that shows the Tenant was responsible for the flood, I find that she is entitled to compensation for the time she spent drying/cleaning the rental unit, in the amount of \$50.00. This award includes compensation for cleaning supplies used, although no receipts were submitted to establish the cost of those supplies.

I find that the Tenant submitted insufficient evidence to corroborate her claim that a pair of shoes was damaged during the floods. In reaching this conclusion I was heavily influenced by the fact she did not advise the Landlord of this damage prior to filing this Application for Dispute Resolution. As the Tenant informed the Landlord of damage to other personal property, I find it reasonable to conclude that she would have informed him if her shoes had sustained significant damage.

In adjudicating the claim for replacing a pair of shoes I was also influenced by the fact a photograph of the shoes was not submitted in evidence. A photograph would have, in my view, helped to establish that the shoes were actually damaged and needed to be replaced.

While I accept that the Tenant needed to store her clothing somewhere while she was waiting to replace her damaged dresser, I find there was no need for her to purchase plastic bins to store her clothing. I find that the Tenant could have mitigated her losses, as is required by section 7(2) of the *Act* by simply storing her property in cardboard boxes. I therefore dismiss the Tenant's claim for the cost of plastic bins.

In adjudicating the claim for the plastic bins, I find that the Tenant has not suffered any significant loss, as she still owns the plastic bins which she can use for a variety of purposes.

As the Tenant submitted insufficient evidence to establish that her shoes were damaged, I dismiss her claim for compensation for the shoes.

I find that the Tenant has submitted insufficient evidence to corroborate her claim that there was mould in the rental unit. In reaching this conclusion I was heavily influenced by the absence of an inspection report or other scientific evidence that corroborates the Tenant's claim or that refutes the Landlord's submission that there was no mould in the rental unit.

In adjudicating this claim I have placed little weight on the photograph of a piece of drywall which the Tenant found in the garage after it had been removed from the rental unit. Although there appears to be some black marks on the drywall, I have no scientific evidence to corroborate the Tenant's suspicion that the marks are mould.

On the basis of the undisputed evidence, I find that the Tenant was permitted to use an exterior shed for the purposes of storing her bicycle. I am not aware of any health, safety or housing standards that require an exterior shed to be "rodent proof" nor did the Tenant submit any

evidence of such health, safety or housing standards. I therefore find that the Tenant has failed to establish that the Landlord breached section 32(1) of the Act when he did not ensure the exterior shed was free of rodents. As the Tenant has failed to establish that the Landlord breached section 32(1) of the Act, I find that she is not entitled to compensation because there were rodents in the shed.

In adjudicating the claim for compensation for rodents I could not conclude that the Tenant was entitled to compensation for loss of quiet enjoyment of the rental unit as a result of rodents in the shed. In my view there should be a reasonable expectation that rodents will be present in an outside shed. In the event the Tenant did not want to use the shed as a result of rodents, she had the option of storing her bicycle in an alternate location. In reaching this conclusion I was influenced, in part, that rodents are not likely to damage a bicycle.

In adjudicating the claim for compensation for rodents I placed no weight on the evidence that the rats entered the Tenant's rental unit on two occasions. I find that the Tenant could have easily mitigated this disturbance by keeping the door to her rental unit closed.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed to install taps to accommodate her new washing machine. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's claim that the Landlord agreed to install the taps or to refute the Landlord's claim that he did not agree to install the taps. As the Tenant has failed to establish that the Landlord agreed to install the taps or was under a legal obligation to provide the taps, I dismiss her claim for compensation for installing the taps.

Residential Tenancy Branch Policy Guideline #16, with which I concur, reads, in part:

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

☐ The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

☐ The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

☐ They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

I find that the Tenant has been reasonably compensated for the breach of her right to the quiet enjoyment of the rental unit and I do not find that the award needs to be augmented by awarding aggravated damages.

In determining that aggravated damages are not warranted I was heavily influenced by the fact the Landlord did make necessary repairs to remedy the problem with water leaking into the rental unit, albeit the repairs could have been made in a more timely manner.

In determining that aggravated damages are not warranted I was further influenced by the absence of evidence to show that the delay in repairing the leaks does not appear to be malicious or reckless. On the basis of the evidence presented by the Landlord, including his testimony and demeanour at the hearing, I find that the delays were more likely due to the nature and the cost of the repairs, rather than a disregard for the comfort and concerns of the Tenant.

I find that the significant problem of water leaking into the rental unit was resolved prior to the Tenant moving out of the rental unit. I therefore find that there was no immediate need for the Tenant to vacate the rental unit as a result of water egress.

Although the walls had not been fully repaired and the bedrooms had not been carpeted by the time the Tenant vacated the rental unit, I find that the Tenant did not need to vacate the rental unit as a result of those deficiencies. Rather, the Tenant could have filed an Application for Dispute Resolution seeking an Order requiring the Landlord to repair these deficiencies and the Landlord would have, in all likelihood, been order to repair the deficiencies in a timely manner.

As I am not satisfied the Tenant needed to vacate the rental unit, I dismiss her claim for compensation for the cost of moving.

Conclusion

The Tenant has established a monetary claim, in the amount of \$2,564.80, in compensation for the loss of quiet enjoyment of her rental unit and I grant her a monetary Order for this amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province 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: December 01, 2015

Residential Tenancy Branch

