Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rockwell Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, ERP, RP, OLC

Introduction:

A hearing was convened on March 27, 2016 in response to an Application for Dispute Resolution filed by the Tenant 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 comply with the *Residential Tenancy Act (Act*) or the tenancy agreement; and for an Order requiring the Landlord to make repairs to the rental unit. At the outset of the hearing the Tenant withdrew the application for an Order requiring the Landlord to make repairs to the rental unit, as the unit has been vacated.

The Advocate for the Tenant stated that on March 06, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On March 06, 2017 the Tenant submitted 29 pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that these documents were sent to the Landlord, via registered mail, on March 06, 2017. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 10, 2017 the Tenant submitted 26 pages of evidence and a DVD to the Residential Tenancy Branch. The Advocate for the Tenant stated that these documents were sent to the Landlord, via registered mail, on March 08, 2017. The Agent for the Landlord acknowledged receipt of these documents and the documents were accepted as evidence for these proceedings.

The Agent for the Landlord stated that the Landlord received the DVD that was mailed on March 08, 0217 but was unable to view the contents of the DVD. The Advocate for the Tenant stated that she will print the photographs on the DVD; she will submit those photographs to the Residential Tenancy Branch; and she will re-serve those photographs to the Landlord.

The Advocate for the Tenant stated that the photographs were sent to the Landlord, via registered mail, on March 29, 2017. The Agent for the Landlord #1 acknowledged receipt of the photographs and they were accepted as evidence for these proceedings.

The Advocate for the Tenant stated that the photographs were sent to the Residential Tenancy Branch on March 29, 2017. The parties were advised that I did not receive those photographs but both parties agreed that it would be fair for me to rely on the digital images on the DVD.

On March 21, 2017 the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were sent to the Tenant, via registered mail, on March 21, 2017. The Advocate for the Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 22, 2017 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were sent to the Tenant, via regular mail, on March 22, 2017. The Advocate for the Tenant stated that these documents were not received.

The Agent for the Landlord stated that these documents were not served in a timelier manner because they were invoices and it took the Landlord time to obtain them. On the basis of the description of those invoices I find that they are highly relevant to the issues in dispute and that they should be considered as evidence in these proceedings. The Agent for the Landlord was directed to resubmit those 5 pages to the Residential Tenancy Branch and to re-serve those documents to the Tenant.

The Agent for the Landlord #1 stated that three of the documents submitted on March 22, 2017 we re-served to the Tenant on March 30, 2017. (One fax cover sheet and a photocopy of an envelope were not re-served) The Advocate for the Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 21, 2017 the Tenant submitted 11 pages of evidence to the Residential Tenancy Branch, which was a written submission. The Agent for the Tenant stated that these documents were sent to the Landlord, via registered mail, on March 21, 2017. The Agent for the Landlord stated that these documents were not received. As the proceedings were adjourned to provide both parties with the opportunity to re-serve evidence, I find it reasonable to allow the Tenant the opportunity to re-serve this evidence.

The Advocate for the Tenant stated that the 11 pages submitted on March 21, 2017 were sent to the Landlord, via registered mail, on March 29, 2017. The Agent for the Landlord #1 acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The hearing on March 27, 2017 was adjourned to allow the parties to exchange the aforementioned evidence. The hearing was reconvened on May 01, 2017 and was concluded on that date. At both hearing the parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for deficiencies with the rental unit and/or loss of quiet enjoyment of the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on June 15, 2016;
- the tenancy ended on March 16, 2017;
- heat in the rental unit is provided by a boiler;
- heat was included with the rent;
- the Tenant was responsible for paying for hydro; and
- the monthly rent was $950.00.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because the heating system was not working in the rental unit.

In regards to the claim that the heating system was not working the Tenant contends that:

- she did not turn on the heat in the rental unit until early September of 2016, at which time she noted that the system was not working;
- because the heat was not working she used a space heater to heat the rental unit;
- the Tenant sent the Landlord a letter, dated October 12, 2016 in which the Tenant informed the Landlord that the heat was not working;
- the Agent for the Landlord was in the rental unit in February of 2017 and the unit was warm because she was using her space heater;
- when the Agent for the Landlord was in the rental unit in February of 2017 he suggested she open the windows to eliminate nay odours from the flood; and
- she never refused to allow a technician into the unit to inspect the radiator.

In response to the claim that the heating system was not working the Agent for the Landlord stated that:

- the boiler failed in early September of 2016;
- the boiler was repaired on September 14, 2016;
- he has no knowledge of any further reports to the Landlord regarding a problem with the heating system that were made after September 14, 2016;

- sometime in October of 2016 a technician inspected the boiler and concluded it was functioning properly;
- sometime in November of 2016 a technician inspected the boiler and concluded it was functioning properly; and
- sometime in February of 2017 a technician inspected the boiler and concluded it was functioning properly;
- sometime in November of 2016 the Tenant would not permit a technician into the unit to inspect the radiator in the unit;
- approximately one month ago an agent for the Landlord named “Dave” went to the rental unit and confirmed the radiator in the rental unit was working properly;
- he was in the rental unit two months ago and found it very warm;
- when he was in the unit two months ago the space heater was not working;
- when he was in the unit two months ago the Tenant had the windows open;
- when he was in the unit two months ago he suggested that the Tenant leave the windows open to eliminate any odours from the flood;
- when he was in the unit two months ago he noticed that the Tenant had furniture in front of the radiator, which might be why she is not getting sufficient heat; and
- the Landlord did not ignore any of the Tenant’s calls for assistance;
- the Landlord did not document any of the attempts to respond to the Tenant’s reports of no heat.

In regards to the claim that the heating system was not working the Advocate for the Tenant stated that:

- there was a hearing on November 21, 2016 during which the Tenant informed the Arbitrator and the Agent for the Landlord that her heat was not working;
- on December 21, 2016 she sent an agent for the Landlord a letter in which she reported that the heat was not working in her rental unit;
- on January 18, 2017 an agent for the Landlord named “Dave” went to the rental unit and confirmed the radiator in the rental unit was not working properly;
- the Agent for the Landlord’s testimony that he was not aware of a problem with heat in the rental unit is inconsistent with his testimony that a technician examined the boiler on several occasions after September 14, 2016; and
- the Agent for the Landlord’s testimony that he was not aware of a problem with heat in the rental unit is inconsistent with the fact he was present at the hearing in November of 2016 during which time problems with the heat were discussed.

The female Witness for the Tenant stated that:

- she is a personal friend of the Tenant;
- she went to the rental unit on a daily basis;
- the radiator in the unit was not emitting heat;
- the Tenant was using a space heater on a daily basis to heat the unit;
- she observed flood damage in the rental unit;
- the Tenant had to discard some personal items as a result of the a flood, including a mop, some shoes, and some furniture;

- the toilet was broken and had to be flushed using a string; and
- the refrigerator was rusty and stinking.

The male Witness for the Tenant stated that:

- is a personal friend of the Tenant;
- he went to the rental unit approximately 4 times per month;
- the radiator in the unit was always room temperature;
- the Tenant was using a space heater to heat the unit;
- on February 20, 2017 he observed damage to the ceiling, wall, and floor as a result of a flood;
- he observed mould in the rental unit; and
- he noticed the smell of rotting material in the unit.

The Tenant submitted a copy of the decision from this hearing, dated November 21, 2016. I note that there is nothing in this decision that indicates a problem with heat was discussed during this hearing.

A copy of the letter, dated October 12, 2016, was submitted in evidence. The Agent for the Landlord stated that the agent for the Landlord that this letter is addressed to no longer works for the Landlord, so he cannot say if this letter was received by that agent.

The Landlord submitted an invoice, dated September 14, 2016, that indicates the boiler was repaired .

The Landlord submitted no documentary evidence to show that the boiler was inspected or repaired after September 14, 2016.

The Landlord submitted no evidence from the agent for the Landlord named “Dave” regarding his observations regarding the radiator in the rental unit.

The Tenant submitted a letter from her sister, dated March 06, 2017, in which the sister declared the heat did not work in the rental unit and that the Tenant used space heaters to warm the unit.

The Tenant submitted the following hydro bills:

- $37.46 for the period between September 16, 2016 and October 17, 2016;
- $61.82 for the period between October 18, 2016 and November 16, 2016;
- $82.27 for the period between November 17, 2016 and December 15, 2016;
- $109.21 for the period between December 16, 2016 and January 17, 2017; and
- $93.40 for the period between January 18, 2017 and February 18, 2017.

The Tenant is seeking compensation for a portion of these hydro bills because she had to use a space heater as a result of the malfunctioning heating system. The Tenant submitted a hydro bill for the period between August 18, 2016 and September 09, 2016, in the amount of $14.52. The Agent for the Tenant stated that since the Tenant was not

using her space heater in during this period, the bill of $14.52 represents the amount of electricity used during a normal billing period.

The Advocate for the Tenant argued that after deducting the "base rate" of $14.52 from the aforementioned hydro bills it is reasonable to conclude that the rest of the hydro bill was the cost of running the space heater. She argued, therefore, that the Tenant is entitled to recover the costs of running the space heater in the following amounts:

- $22.94 for the period between September 16, 2016 and October 17, 2016;
- $47.30 for the period between October 18, 2016 and November 16, 2016;
- $67.75 for the period between November 17, 2016 and December 15, 2016;
- $94.69 for the period between December 16, 2016 and January 17, 2017; and
- $78.88 for the period between January 18, 2017 and February 18, 2017.

The Agent for the Landlord argued that the hydro calculations presented by the Tenant do not reflect the increased use of lights that typically occurs during the darker months and the increased use of the stove that he alleges occurs during the colder months because people stay home more frequently.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because there were numerous "floods" in her rental unit. The Tenant is also seeking compensation for time she spent cleaning the rental unit after the floods and $271.22 to replace property that was damaged during the floods. The Tenant initially claimed compensation of $1,640.00 for cleaning but she reduced the amount of this claim to $720.00.

In regards to the claim for the floods the Tenant stated that:

- on December 07, 2016 the water in her sink backed up and overflowed into the rental unit;
- she verbally reported the flood to the building manager referred to as "Barry";
- Barry did not respond to her report;
- Barry did not "snake" the drain at any time after December 07, 2016;
- her neighbour snaked the drain on December 07, 2016 which repaired the problem for about one week;
- she continued to experience problems with her sink overflowing and with water leaking through the walls into the kitchen of the rental unit;
- she subsequently reported the problem with her sink to the office on several occasions, but the Landlord did not respond to her complaints;
- she reported the problem with the sink to Barry in a letter, dated January 29, 2017;
- she reported the problem with the sink to Barry in a letter, dated February 10, 2017;
- the sink regularly overflowed and water leaked into the unit between December 07, 2016 and February 06, 2017;

- there were approximately 36 “floods” between January 29, 2017 and February 06, 2017;
- she spent approximately one hour cleaning up after each “flood”;
- a plumber repaired a leak in a rental unit above her on February 23, 2017; and
- her rental unit did not floor after the leak in the upper rental unit was repaired.

In response to the claim for the floods the Agent for the Landlord #1 stated that:

- sometime in December of 2016 the Tenant informed Barry that her sink was backing up;
- Barry went to the rental unit and determined that the sink was filled with dishes;
- sometime after December 15, 2017 Barry “snaked” the drain and the water slowly began to drain from the sink;
- she does not know if Barry responded to any further complaints about the sink not draining properly;
- the Tenant phoned the office on several occasions but only to complain about Barry and not to report further problems with the sink;
- a plumber repaired a leak in a suite above the rental unit on February 02, 2017;
- she is not aware of any further attempts to respond to the flooding in the unit; and
- she understands there was no further flooding in the rental unit after the leak in the upper rental unit was repaired.

The Landlord submitted an invoice for a plumbing repair in the upper rental unit. The invoice is dated February 23, 2017, which the Agent for the Landlord #1 contends is the billing date. There is a post-it note on the invoice which indicates that the piping was leaking into the Tenant’s rental unit and that the service was on February 2/3/2017. The Agent for the Landlord #1 states that she is certain the plumber was called on February 02, 2017, which she bases on a purchase order for that date which was not submitted in evidence. The Advocate for the Tenant speculated that the person writing the post-it note inadvertently wrote 2/3/2017 when they meant to write 23/2017.

The Tenant submitted copies of the letters to Barry dated January 29, 2017 and February 10, 2017. The Agent for the Landlord #1 stated that Barry did not provide copies of those letters to the Landlord and that she first saw those letters after they were provided to the Landlord as evidence for these proceedings.

The Agent for the Landlord #1 stated that a notice was posted on January 31, 2017 that informed Tenants Barry was no longer acting as an agent for the Landlord. The Tenant initially stated that on January 31, 2017 she was aware that Barry was not working as an agent for the Landlord after that date. When she was asked why she gave Barry a second letter regarding her sink on February 10, 2017, she stated that she did not know he was no longer working for the Landlord when she wrote the letter.

The Advocate for the Tenant stated that she reported the problem with the sink overflowing to Barry in a letter dated December 21, 2016. A copy of this letter was

submitted in evidence. The Agent for the Landlord #1 stated that she did not see this letter until it was provided to the Landlord as evidence for these proceedings.

The Tenant submitted a list of items that were damaged during the floods and estimates for the cost of replacing those items. She stated that the food items on this list were damaged when they were left on the counter and the cleaning items were damaged after being used to clean the foul smelling water.

The Tenant submitted numerous photographs of water leaking into the rental unit and the sink overflowing, which the Advocate for the Tenant stated were taken between December 07, 2016 and February 15, 2017.

The Agent for the Landlord #1 argued that the Tenant has exaggerated the number of times her rental unit flooded.

The Tenant contends that the unpredictable nature of the flooding and the resulting need to be vigilant interfered with her quiet enjoyment of the rental unit.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because her refrigerator was not working properly. The Tenant is also seeking compensation of $12.07 to replace food that was ruined as a result of the problem with the refrigerator.

The Tenant stated that the refrigerator was rusty; that it smelled; and that it did not properly cool her food. She stated that the problem with the refrigerator was reported to the agent for the Landlord known as Barry, in writing, on December 21, 2016 and that the refrigerator has never been replaced. In the Tenant's written submission the Tenant contends that the refrigerator alternated between freezing her food and not keeping it cold enough.

In the letter from the Advocate for the Tenant to Barry, dated December 21, 2016, the Advocate reports that the refrigerator is "extremely rusted and old, resulting in a smell that permeates all of her food. The Agent for the Landlord #1 stated that she did not see this letter until it was provided to the Landlord as evidence for these proceedings and that the Landlord was not previously aware of a problem with the refrigerator.

The Tenant stated that the refrigerator was never repaired or replaced during her tenancy. The Agent for the Landlord #1 stated that the rental unit has been renovated since this tenancy ended and that the refrigerator has not been replaced as the Landlord did not believe it needed replacing.

The Tenant submitted no evidence from an appliance technician to establish that the refrigerator did not function properly. The Tenant submitted a digital image of the exterior of the refrigerator, which shows it is rusted.

The Tenant submitted a list of items that were damaged as a result of the malfunctioning refrigerator and estimates for the cost of replacing those items. She stated that the items on the list were simply representative of the food that spoiled and were not intended to represent a complete list of the food that spoiled.

The Tenant is seeking compensation for loss of the quiet enjoyment of her rental unit, in part, because she was unable to use her parking space. The Tenant is also seeking compensation of $245.00 for being unable to use her parking space between September of 2016 and March of 2017. The Landlord and the Tenant agree that the Tenant paid a monthly parking fee of $35.00 for these seven months.

In regards to the claim for parking the Tenant stated that:

- when this tenancy began she was assigned parking space #22;
- in September of 2016 Barry told her she was no longer able to park in space #22 and he threatened to tow her if she parked in that space;
- in January of 2017 the Agent for the Landlord told her she could park in space #25;
- she was never told she could park in space #23;
- she did park in space #25 for three days but stopped doing so after Barry told her she would be towed if she continued to park in that space;
- she typically parked on the street due to a fear of being towed.
- her vehicle was towed from space #25 on January 25, 2017;
- she was not charged a fee for being towed from space #25;
- on, or about, February 01, 2017 the Agent for the Landlord #2 told the her she could park in space #25 without fear of being towed; and
- by that point she was so frustrated by the parking dispute that she simply parked on the street.

In regards to the claim for parking the Agent for the Landlord #1 stated that:

- when this tenancy began the Tenant was assigned parking space #22;
- between September of 2016 and the end of the tenancy she was permitted to park in space #23 and #25;
- she does not know when space #23 and #25 were assigned or when she was asked to move from #23 to #25; and
- she believes the Tenant was able to park in space #25 in spite of being towed on January 25, 2017.

In regards to the claim for parking the Agent for the Landlord #2 stated that:

- Barry had the Tenant's vehicle was towed from space #25 on January 25, 2017;
- the Tenant was not charged a fee for being towed from space #25; and
- she started managing the building on February 01, 2017; and
- on February 01, 2017 she told the Tenant that she could park in space #25 without fear of being towed.

The Tenant is seeking compensation for a breach of her right to the quiet enjoyment of the rental unit, in the amount of $997.50, which is based on the aforementioned deficiencies.

Analysis:

I find that, on the balance of probabilities, the radiator was not working in the Tenant's rental unit from early September of 2016 until she vacated the unit on March 16, 2017. I therefore find that the Landlord breached section 32(1) of the *Act* when it did not ensure that the radiator in the rental unit was functioning properly.

In concluding that the radiator in the rental unit was not working properly I was heavily influenced by the testimony of two witnesses and the written declaration of the Tenant's sister, all of whom corroborate the Tenant's testimony that the radiator in her unit was not working.

In concluding that the radiator in the rental unit was not working properly I was further influenced by the letters dated October 12, 2016 and December 21, 2016, in which the Landlord was informed that the heat was not working. I find it illogical to conclude that a Tenant would report a problem with the heat if the heat was actually working.

In concluding that the radiator in the rental unit was not working properly I placed little weight on the Agent for the Landlord's testimony sometime in October of 2016, November of 2016, and February of 2017 a technician inspected the boiler and concluded it was functioning properly. Even if I accepted that the boiler was functioning properly in the residential complex, that would not establish that the radiator in the rental unit was functioning properly. I find it entirely possible that the radiator in the unit was not functioning properly because of a mechanical problem with the radiator itself.

In concluding that the radiator in the rental unit was not working properly I placed little weight on the Agent for the Landlord's testimony that when he was in the rental unit in February of 2017 the rental unit was warm. I find that this testimony has little evidentiary value because there is no evidence to corroborate the Agent for the Landlord's testimony that the space heater was not working at the time or to refute the Tenant's testimony that the space heater was working at the time.

In concluding that the radiator in the rental unit was not working properly I placed little weight on the Agent for the Landlord's testimony that when he was in the unit two months ago he noticed that the Tenant had furniture in front of the radiator, which might be why she is not getting sufficient heat. I find that this testimony is inconsistent with his earlier testimony that the unit was warm when he was in the unit in February of 2017 even though the space heater was allegedly not working. If the furniture was preventing the radiator from heating the rental unit properly, I would expect that the unit would not have been warm in February of 2017 if the space heater was not running.

In concluding that the radiator in the rental unit was not working properly I placed little weight on the Agent for the Landlord's testimony that when he was in the rental unit in February of 2017 the windows were open in the rental unit. As both parties agreed that the ventilating the room to eliminate odours from a flood was reasonable, I find that this testimony does not refute the Tenant's submission that the heat was not working.

In concluding that the radiator in the rental unit was not working properly I placed little weight on the Agent for the Landlord's testimony that approximately one month ago an agent for the Landlord named "Dave" went to the rental unit and confirmed the radiator in the rental unit was working properly. I found this testimony to be of little evidentiary value because there is no evidence, such as a declaration from "Dave", to corroborate the Agent's testimony or to refute the Tenant's testimony that "Dave" confirmed the radiator was not working.

In concluding that the radiator in the rental unit was not working properly I placed little weight on the Agent for the Landlord's testimony that sometime in November of 2016 the Tenant would not permit a technician into the unit to inspect the radiator in the unit. I found this testimony to be of little evidentiary value because there is no evidence, such as a declaration from the technician, to corroborate the Agent's testimony or to refute the Tenant's testimony that she has never refused access to a technician who attended to investigate her heating concerns.

In concluding that the radiator in the rental unit was not working properly I was influenced by the absence of any documentary evidence that establishes it was inspected by a qualified technician to ensure it was working properly.

On the basis of the undisputed evidence I find that the Tenant used a space heater to heat the rental unit. As heat was included in the rent and I have concluded that the radiator was not functioning properly in the rental unit, I find that the Landlord is obligated to compensation the Tenant for the cost of using the space heater.

I accept the Tenant's submission that the "base rate" of $14.52 is a reasonable representation of the amount of hydro used prior to using the space heater in September of 2016. I therefore find that it is reasonable to reduce the hydro bills submitted by $14.52 and conclude that the remainder of the bills represents the cost of running the space heater. I therefore find that the Tenant is entitled to compensation for the costs of running the space heater in the following amounts:

- $22.94 for the period between September 16, 2016 and October 17, 2016;
- $47.30 for the period between October 18, 2016 and November 16, 2016;
- $67.75 for the period between November 17, 2016 and December 15, 2016;
- $94.69 for the period between December 16, 2016 and January 17, 2017; and
- $78.88 for the period between January 18, 2017 and February 18, 2017.

I accept the Agent for the Landlord's submission that hydro costs are typically higher

during the winter months than they are in August, which is when the base rate of $14.52 was established because people typically use more lights. I do not accept his submission that hydro costs are typically higher during the winter because people use the stove more often, as food consumption is not typically seasonal. In the absence of any evidence to establish how much hydro costs fluctuate during the winter due to lights, I cannot conclude that the "base rate" would be significantly different.

Section 28 of the *Act* stipulates that a Tenant is entitled to the quiet enjoyment of the rental unit. I find that the Tenant's right to the quiet enjoyment of the rental unit was breached as a result of the heat not working in the unit. Regardless of the fact the Tenant made alternate arrangements to heat the rental unit, I find that using a space heater is less desirable than central heating, as it is noisy and typically provides localized heat which is most effective if a person is near the heater. I therefore find that the value of her tenancy was reduced by approximately 5% per month for the period between September of 2016 and March of 2017 and I award the Tenant compensation of $380.00 for the inconvenience of having to use a space heater.

On the basis of the testimony of the Tenant, the testimony of the witnesses, and the digital images submitted in evidence, I find that water leaked through the walls of the rental unit and her sink backed up/overflowed on numerous occasions between December of 2016 and February of 2017.

On the basis of the testimony of the Tenant, the testimony of the Advocate for the Tenant, and documents submitted in evidence, I find that the "flooding" was reported to an agent for the Landlord (Barry) on several occasions, and that three of those reports were made in writing. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the problem was first reported to Barry on December 07, 2016. Regardless of whether or not Barry informed anyone else working for the Landlord of these verbal and written reports, I find that the Tenant properly reported the problem to the Landlord.

Regardless of the fact that Barry was no longer working for the Landlord when the written report dated February 10, 2017 was given to him, I find that the Tenant had sufficiently reported the problem to the Landlord prior to the end of Barry's employment.

I favour the testimony of the Tenant, who stated that the Landlord did not respond to her report of a flood on December 07, 2016 over the testimony of the Agent for the Landlord #1, who stated that Barry snaked the kitchen sink sometime in December of 2016. I favour the testimony of the Tenant, in large part, because she was present during the incident and the Agent for the Landlord #1 is merely relying on information provided to her by Barry. Regardless of whether or not Barry snaked the sink in December of 2016, it is readily apparent that these efforts did not repair the problem with water egress, given that the problem persisted until February of 2017 when a plumber repaired a leak elsewhere in the building.

On the basis of the testimony of the Tenant and the absence of evidence to the

contrary, I find that the Landlord did nothing to respond to the water egress until February of 2017 when a leak was discovered elsewhere in the residential complex. Given that water stopped leaking into the rental unit after this leak was repaired, I find that the leak was the source of the water egress into the rental unit. I find that the Landlord did not comply with section 32(1) of the *Act* when the Landlord did not respond to the problem with water egress in a timelier manner.

I favour the testimony of the Agent for the Landlord #1, who stated a plumber was called to repair the leak in the residential complex on February 02, 2017 over the testimony of the Tenant, who stated the leak was repaired on February 23, 2017. In reaching this conclusion I was heavily influenced by the plumbing invoice that was submitted in evidence. Although the invoice is dated February 23, 2017, I find that this could represent the date of the invoice, as the Landlord contends.

In concluding that a plumber was called on February 02, 2017 I was heavily influenced by the post-it note on the invoice, which indicates the service was on “Feb 2/3/2017”. Although the Advocate for the Tenant speculates that the person writing the post-it note inadvertently wrote 2/3/2017 when they meant to write 23/2017, I find it equally likely that the note means that repairs were made on February 02, 2017 and February 03, 2017 and I therefore accept the post-it note at face value.

In concluding that the leak was repaired on February 03, 2017 I was further influenced by the Tenant’s submission that the influx of water lessened after February 06, 2017. I find it unlikely that the Tenant would have noticed reduced water flow on February 06, 2017 of the repair was not completed until February 23, 2017. I find that any water leaking after February 03, 2017 could be reasonably explained by water remaining in the structure after the repairs had been completed.

As the Landlord beached the *Act* by not repairing the water egress in a timelier manner, I find that the Tenant is entitled to compensation for repeatedly cleaning up water that leaked into her rental unit. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant spent approximately 36 hours cleaning up after “floods” between January 29, 2017 and February 06, 2017 and that she is entitled to compensation of $720.00 for this labour.

In adjudicating this matter I have placed little weight on the submission that the Tenant has exaggerated the number of times her rental unit flooded. As it is readily apparent that the Landlord did not properly respond to the Tenant’s reports of water egress, the Landlord is not in a position to properly assess the frequency of the floods.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant’s personal property, valued at $271.22, was damaged as a result of the floods. As the Tenant would likely have not incurred these losses if the Landlord repaired the problem in a timelier manner, I find that the Tenant is entitled to compensation for her damaged property, in the amount of $271.22.

I find that the frequent and unpredictable nature of the flood would be disturbing to most people and that the Tenant's right to the quiet enjoyment of the rental unit was breached as a result of the water egress. I therefore find that the value of her tenancy was reduced by approximately 5% per month for the period between December 07, 2016 and February 06, 2017, and I award the Tenant compensation of $95.00 for the inconvenience of the flooding.

I find that the Tenant has submitted insufficient evidence to show that the refrigerator in the rental unit was not operating properly. In reaching this conclusion I was heavily influenced by the absence of evidence from a qualified technician that corroborates the Tenant's submission that the refrigerator alternated between operating at temperatures that were top high and too low.

In adjudicating the claim for the refrigerator I was influenced, to some degree, by the undisputed testimony of the Agent for the Landlord #1, who stated that the rental unit has been renovated since this tenancy ended and that the refrigerator has not been replaced. I find it unlikely that the Landlord would not have replaced the refrigerator during this renovation if it was not operating properly.

In adjudicating the claim for the refrigerator I placed little weight on the digital image of the exterior of the refrigerator. While this image establishes that the refrigerator is somewhat unsightly, it does not establish that it was not operating properly.

While I accept the Tenant's submission that the interior of the refrigerator smelled, I find there is insufficient evidence to establish that the smell was the result of the refrigerator not functioning properly. I find it entirely possible that the smell was related to inadequate cleaning of the fridge and/or expired food products.

As the Tenant has submitted insufficient evidence to establish that the refrigerator in the rental unit was not operating properly, I dismiss her claim for compensation for this alleged deficiency.

On the basis of the undisputed evidence I find that the Tenant paid $245.00 in parking fees for the period between September of 2016 and March of 2017.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant was repeatedly told by Barry that she could not park in her assigned space, and that the Tenant frequently did not use her assigned parking space for fear of reprisal.

On the basis of the undisputed evidence I find that Barry did arrange to have the Tenant's vehicle towed from her assigned parking space on January 25, 2017. I find that this action establishes that the Tenant's fear of reprisal was well founded and that she had a legitimate concern that she could not use the parking space(s) assigned to her.

On the basis of the undisputed evidence I find that on February 01, 2017 the Agent for the Landlord #2 told the Tenant that she could park in space #25 without fear of being towed. As the Tenant had been informed that Barry was no longer acting as an agent for the Landlord by that point, I find that the Tenant knew, or should have known, that she could park in her assigned space after February 01, 2017, without fear of reprisal.

As the Tenant was prevented from using her parking space without fear of reprisal between September of 2016 and January of 2017, I find that she is titled to a refund of the parking fees paid for this period, in the amount of $175.00. As the Tenant knew, or should have known, that she could park in her assigned space without fear of reprisal after February 01, 2017, I find that she is not entitled to a parking fee refund for February or March of 2017.

I find that the on-going parking dispute would be disturbing to most people and that the Tenant's right to the quiet enjoyment of the rental unit was breached as a result of this dispute. I therefore find that the value of her tenancy was reduced by approximately 5% per month for the period between September of 2016 and January of 2017, and I award the Tenant compensation of $237.50 for the inconvenience of parking on the street and the stress of dealing with the parking conflict.

Conclusion:

The Tenant has established a monetary claim of $2,190.28, which includes $311.56 for hydro, $720.00 for cleaning up after "floods"; $271.22 for damaged personal property; parking fee refund of $175.00; $712.50 for loss of quiet enjoyment, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: May 02, 2017

Residential Tenancy Branch