



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 27, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf and was accompanied by T.D., her legal counsel. The Landlord attended the hearing on his own behalf and was accompanied by M.M., his legal counsel.

The Landlord and the Tenant acknowledged receipt of the Tenant's Application package and the Landlord's documentary evidence package, respectively. No issues were raised with respect to service or receipt of these documents. I find that each party was served with the above documents in accordance with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

At the outset of the hearing, legal counsel for the Landlord advised his client does not dispute the items listed from #1 to #6 on the Monetary Order Worksheet, dated April 27, 2017. These items total \$1,944.87, which the Landlord agreed to pay. These aspects of the Tenant's claim have not been considered further in this Decision and will be factored into the total monetary order, the reasons for which are explained below.

### Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

Although the parties disagreed with respect to several of the terms of the tenancy agreement, both parties acknowledged that a tenancy agreement existed between them.

As a background, T.D. took pains to describe the rental unit, which included four bedrooms and two bathrooms. As a result of mold found in the Tenant's bedroom in or about January 2015, the Tenant moved into a vacant bedroom. Subsequently, as a result of flooding in the rental unit on or about February 27, 2017, the Tenant moved into another vacant bedroom.

As noted above, Items #1 to #6 on the Monetary Order Worksheet, dated April 27, 2017, were agreed to by the Landlord. Accordingly, only items #7 to #9 have been considered in this Decision. First, the Tenant claimed \$831.60 for various services provided by C.M. at the request of T.D. An itemized invoice summarizing the tasks completed by C.M. was submitted with the Tenant's documentary evidence. It indicated that C.M. attended the rental unit, took photographs, transported the Tenant to a hotel, communicated with T.D. and the Tenant, attended city hall to view permits, conducted research on Residential Tenancy Branch decisions, wrote a report, and reviewed files. C.M. testified to his belief that the Tenant could not remain in the rental unit due to the presence of water. He testified that he attended the rental unit and contacted the Landlord who stated the flood damage was not his problem, although the Landlord did agree to cover the Tenant's insurance deductible. C.M. also took the Tenant to his

house and fed her, then took her to a hotel, where she stayed for three nights. In addition, C.M. took the Tenant to Costco to purchase a new bed.

In reply, On behalf of the Landlord, M.M. submitted that these are in the nature of legal fees and disbursements and are not recoverable in dispute resolution proceedings before the Residential Tenancy Branch.

Second, the Tenant claimed \$7,500.00 for loss of quiet enjoyment. The Tenant testified that the Landlord attended the rental property and berated her. She stated she was moved from one bedroom to another due to mold, and from that bedroom to a third bedroom due to the flood that occurred in the rental unit. She also testified that she was accused of tampering with a smoke detector, which she denied. The Tenant also testified that workers entered the rental unit unannounced to deal with the flood repairs, which made her feel unsafe. She estimated the workers entered the rental unit unannounced on six occasions.

In addition, the Tenant testified she had concerns about privacy when using a washroom that shared a door with a male occupant's bedroom. She confirmed during the hearing that the door was never opened while she was in the washroom. These events caused the Tenant to be "stressed out" and resulted in a loss of sleep, anxiety, and an inability to focus. She stated she was fired from her job because she was unable to follow instructions. She attributed this to the Landlord's actions during the tenancy.

In reply, the Landlord testified that the entire unit was rented to four people. He testified that issues arose between the tenants and that they were told to work it out. Further, the Landlord testified there had never been mold in the rental unit before the Tenant moved in. In any event, he called a maintenance person upon being notified of the issue, who addressed the problem immediately.

Third, the Tenant claimed \$9,000.00 for exemplary and punitive damages. T.D. advised during the hearing that this was claimed in error and that the Tenant intended to claim aggravated damages. He stated that he advised M.M. of the Tenant's intention to claim aggravated damages the week before the hearing.

M.M. acknowledged the conversation with T.D. but disagreed that the claim for aggravated damages should proceed, noting that punitive damages are not available to parties under the *Act*. In response, T.D. submitted that aggravated damages flow from the Landlord's breach of the covenant of quiet enjoyment, as described in the Tenant's oral testimony, and that it is not necessary for them to be specifically claimed.

Finally, the Tenant claimed \$100.00 in recovery of the filing fee paid to make the Application.

At the conclusion of the hearing, T.D. submitted that the Tenant is entitled to the compensation sought because of the disruption caused due to mold and the flood, and the Landlord's actions. He asserted that, but for the help of strangers, the Tenant would have been living on the street. Further, T.D. submitted that the Landlord was indifferent to the Tenant's plight, which fell short of the standard set by the *Act*. He suggested it is time to "send a message" to landlords who do not live up to their obligations under the *Act*.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

As noted above, M.M. agreed with items #1 to #6 on the Monetary Order Worksheet, dated April 27, 2017, and agreed the Landlord would pay these amounts to the Tenant. Accordingly, with the agreement of the parties, I grant the Tenant a monetary award in the amount of \$1,944.87.

With respect to the Tenant's claim for \$831.60 for services provided at the request of T.D., I find there is insufficient evidence before me to conclude the Tenant is entitled to recover this amount. First, there is insufficient evidence before me that the flooding occurred due to the Landlord's violation of the *Act*, regulation, and/or the tenancy agreement. It appears to have been an unexpected, although inconvenient, event. Second, landlords are not insurers of tenants. Third, the invoice submitted with the Tenant's documentary evidence confirmed the tasks completed by C.M. were performed at the request of T.D. Many of these could have been completed by the Tenant at no cost. Finally, many of the items claimed on the bill, such as legal and other research, were in the nature of legal fees and disbursement and are not recoverable under the *Act*.

With respect to the Tenant's claim for \$7,500.00 for loss of quiet enjoyment, section 28 of the *Act* states:

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

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

[Reproduced as written.]

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

*The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may for a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:*

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.*

...

*Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.*

*A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.*

[Reproduced as written.]

In this case, the Tenant claimed that she was forced to move from one bedroom to another due to mold discovered in her bedroom. The Landlord testified there had never been mold in the rental unit before the Tenant moved in and started drying her laundry in her room. In any event, the Landlord called his maintenance person, who addressed the problem immediately.

According to the Tenant, she was again forced to change rooms when a flood occurred in the rental unit on or about February 27, 2017. Neither party provided testimony with respect to the cause of the flood. The Tenant testified that the Landlord berated her, that workers came into the rental unit unannounced on roughly six occasions, and that she was concerned about privacy in the rental unit.

I find that the Tenant experienced a loss of quiet enjoyment of her rental unit due to the unannounced entry of workers into the rental unit, although the Tenant's loss was minimal. As noted above, "it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour." I find there is insufficient evidence before me of behaviour as contemplated under Policy Guideline #6. I find the Tenant is entitled to a monetary award of \$300.00.

Finally, with respect to the Tenant's claim for \$9,000.00 for punitive damages, T.D. urged me to proceed on the basis that the Tenant intended to claim aggravated damages. Although M.M. was advised of the change to the Tenant's claim roughly one week before the hearing, he did not agree. T.D. suggested that aggravated damages flow from the Landlord's breach of the covenant of quiet enjoyment, and submitted that it was not necessary to specifically make a claim for them. I disagree. These proceedings require that parties be fully aware of the claims being made against them. Although T.D. advised M.M. of the Tenant's intention to claim aggravated damages, this does not have the effect of amending the Tenant's claim. Finally, I observe that Policy Guideline #16 confirms an arbitrator does not have authority to award punitive

damages, and that aggravated damages “must specifically be sought.” Accordingly, this aspect of the Tenant’s claim is dismissed.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary award in the amount of \$2,344.87, which has been calculated as follows:

<b>Claim</b>	<b>Allowed</b>
Agreed damages (from MOW, #1-#6):	\$1,944.87
Loss of quiet enjoyment:	\$300.00
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$2,344.87</b>

### Conclusion

The Tenant is granted a monetary order in the amount of \$2,344.87. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 16, 2017

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Residential Tenancy Branch