# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MALABAR HOLDINGS INC.
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing originally convened as a cross applications. On the first date of the original hearing on September 25, 2018, the Landlord withdrew his claim. As such, the hearing only dealt with the Tenant's Application for Dispute Resolution, filed August 28, 2018 in which the Tenant requested monetary compensation from the Landlord and return of her security deposit.

The hearing was conducted by teleconference at 1:30 p.m. on September 25, 2018 and continued on November 9, 2018.

Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was also assisted by an advocate, E.R.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

2. What should happen with the Tenant's security deposit?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating this tenancy began as a 1 year fixed term on May 1, 2012. Rent was originally payable in the amount of $790.00. This document also indicated that the Tenant paid a security deposit in the amount of $375.00.

The Tenant's advocate testified that approximately one month into the tenancy the parties renegotiated the terms of the tenancy and rent was reduced to $600.00. A copy of the tenancy agreement was provided in evidence. This document indicated the Tenant paid a $300.00 security deposit; the Tenant's Advocate confirmed the Tenant paid $300.00 as a security deposit not $375.00 as set out in the original agreement.

The tenancy agreement also indicated that the water, heat and electricity utilities were included in the rental payment.

The tenancy ended March 2, 2018. At the time that the tenancy ended rent was payable in the amount of $600.00.

The Tenant sought monetary compensation from the Landlord in the amount of $7,980.00. In support of her claim the Tenant filed a Monetary Orders worksheet wherein she detailed her claim as follows:

| | |
|---|---|
| 30% rent reduction February 2016 to February 2018 for breach of quiet enjoyment ($180 x 36 months) | $6,480.00 |
| $25.00 per month for 12 months for amounts paid for heat in contravention of the tenancy agreement | $300.00 |
| 25% rent reduction for lack of heat in the winter months | $900.00 |
| Return of security deposit | $300.00 |
| **TOTAL CLAIMED** | **$7,980.00.** |

In terms of the 30% rent reduction, the Tenant's Advocate stated that this related to an alleged breach of her right to quiet enjoyment as well as a lack of repairs to the rental unit.

The Advocate confirmed that she wrote a letter to the Landlord about these concerns in the fall of 2017; introduced in evidence was a copy of this letter dated October 27, 2017 in which the Advocate raised the following issues:

1. The Tenant's request that the Landlord provide 24 hours' notice of any intended entry.

2. The Tenant's request that she not be required to grant service people entry to the rental unit and that the lock on the common area be changed so that it is not the same as hers.

3. The fact the Tenant's window has been broken since she moved in and requesting its repair.

4. The Tenant's concern that the oil will run out during the winter months.

The Tenant also provided an email from the Tenant's daughter, dated March 19, 2018, wherein the Tenant's daughter describes how her mother's dealings with the Landlord, including him showing up unexpectedly, and not taking care of required repairs caused her increased stress. In another email dated August 16, 2018, her daughter describes how the rental unit was not painted and renovated prior to move in as promised by the Landlord. She also writes that on one occasion just after her mother moved in, the Landlord stuck his head through the rental unit window.

In the within action the Tenant claimed a 30% rent reduction from February 2016 to February 2018 on the basis that her right to quiet enjoyment was repeatedly breached when the Landlord, and persons hired by the Landlord to make repairs, entered her rental unit without proper notice. The Tenant stated that every time the Landlord entered the rental unit he did not give her notice and estimated this occurred once or twice a month minimum. She further stated that she was the only person who had a key to the outside door which allowed access to the furnace, hot water tank and laundry area; as such, whenever service people required access to this room the Landlord had the workers contact her directly which in essence resulted in her acting as the Landlord's agent.

In terms of the Tenant's concerns regarding the Landlord's behaviour the Advocate submitted that the Tenant suffered increased stress as a result of what she perceived as harassment from her Landlord and this exasperated her mental health and addiction issues. The Advocate drew my attention to a letter dated February 9, 2018 from her mental health worker wherein the worker wrote:

> "[The Tenant] has expressed concerns about her living situation for quite some time, and has often asked for support in finding ways to manage the difficult situations with her landlord. [The Tenant] has spoken about how the landlord has disrespected her boundaries, entered her home without permission, and been emotionally abusive towards her. [The Tenant's] interactions with her landlord appear to be making her feel increasingly unsafe in her own home, and it is my professional opinion that these interactions are triggering past traumas that she has experienced. [The Tenant] has tried to manage this situation by changing her reactions towards this individual, however,

> it appears that his behaviors towards her are taking a toll on her emotionally. It is my opinion that [the Tenant's] mental health would be greatly benefitted from being in a new, safe living environment".

The Advocate confirmed this letter had been sent to the Landlord such that he was aware of the Tenant's concerns.

In another letter, dated February 8, 2018, a doctor from a medical clinic wrote that the Tenant required relocating due to stress from her current location.

In terms of the lack of maintenance the Advocate submitted that the most problematic issue was that the Tenant could not open or close her window from June 2012 to November 2017. She stated that it malfunctioned such that it remained open about one inch. The Tenant testified that she brought this to the Landlord's attention verbally during the course of the tenancy as well as texting him repeatedly about her window from 2012 to 2017. She was not able to provide proof of this claiming that she lost the text messages; the only copy provided in evidence was a text message from September of 2017. The Tenant also testified that she was concerned about lack of privacy and safety as the window was in her living room/bedroom.

Although the Tenant testified this was an issue throughout the entirety of her tenancy, she also testified that "eventually the window was replaced but it took them three months to do so".

The Tenant's Advocate submitted that the breaches of the Tenant's right to quiet enjoyment were intermittent throughout the tenancy because the Tenant did not know when she was going to receive a barrage of text communication. She stated that it was not just the number of messages; rather, it was the unpredictability of the messages and intrusion into her life. The Advocate also submitted that this, in conjunction with the failure to repair the window were the reasons why she sought a 30% rent reduction for this time period.

In terms of the laundry room issues the Tenant testified that the washing machine did not clean properly and the Landlord did not attend to repairs in a timely manner. The Tenant claimed that due to this she had hives on her body. The Tenant also claimed that a minimum of seven people used the washing machine, which was adjacent to her rental unit. The Tenant stated that she spoke to the Landlord on the phone and by text about the washing machine as well as the dryer. Again the Tenant was not able to provide copies of text messages sent prior to the fall of 2017; the Advocate submitted

that these messages were representative of the messages sent to the Landlord throughout the tenancy.

The Tenant also claimed compensation of $25.00 per month for heat she paid for despite heat being included in her rent as per the tenancy agreement. The Tenant's Advocate submitted that the Landlord told her that she had to pay an extra $25.00 per month if she wanted heat.

The Advocate confirmed that even though she paid the extra $25.00 per month she had issues with not having adequate heat during winter months as the oil for the furnace would regularly run out such that there was no heat. The Advocate confirmed that the entire house, as well as the rental unit, was heated with an oil furnace. She stated that the oil would run out and not be replaced for months at a time. The Tenant provided in evidence a photo of a space heater the Landlord provided to the Tenant when the oil ran out. The Advocate submitted that this was insufficient to heat the unit which also provided a feeling of dampness in the rental unit.

The Advocate further noted that despite her explicit request in her aforementioned letter of October 27, 2017 the oil ran out in the house from December 25, 2017. The Advocate also submitted that there was an additional time in January and February 2018 when the heat ran out again. Notably, this was not disputed by the Landlord.

Text messages between the Tenant and the Landlord confirm that the Tenant asked when heat would be re-established, including a text message from the Tenant on October 5, 2017 wherein the Tenant asked the Landlord about when they would be getting heat again. The Advocate submitted this went on each year, although the Tenant only had text messages going back to 2017.

The lack of consistent heat in the winter months was the basis for the Tenant's claim for a 25% rent reduction for two months each winter of the tenancy for the following three years; 2015, 2016 and 2017; $150.00 x 6 = $900.00.

In response to the Tenant's claim the Landlord testified as follows.

He confirmed that the rental unit is one of three in the rental building.

He stated that in terms of the $600.00 rent amount, he did this as a "special favour" to the Tenant so she could get a $260.00 to help her with her rent from an organization.

The Landlord stated that the main tenants in the house were responsible for the heat and oil; he further stated that the oil "constantly ran out" and it would take 4-5 days for the oil to be delivered. He stated that over the course of the first couple years of the tenancy costs started to rise in terms of the oil.

The Landlord also noted that because the Tenant's cat went in and out the window the Tenant left the window open constantly; further, because her window was by the thermostat, it was going constantly. He stated that the other tenants were gone all day and the Tenant was the only one who was home all the time. The Landlord alleged that one time he was there and the Tenant had her heat at 24 degrees.

In terms of the $25.00 per month heat charge, the Landlord stated as follows. He stated that the Tenants had a meeting in late 2016 or early 2017 about the high costs of the heating and everyone agreed to pay an extra $25.00 per month to deal with the costs. The Landlord confirmed that he was at that meeting. The Landlord stated that this payment was to offset the increased costs of the oil which he claimed to have paid approximately $1,500.00 out of his pocket to offset the losses for those two years.

The Landlord also stated that there was never any time when the unit did not have heat for a month as claimed by the Tenant; he stated that it was 4-5 days, and a maximum of 6 while they were waiting for the oil to be delivered. He also said that as soon as the oil was delivered he would call the company to come in and turn the furnace back on.

In terms of the Tenants' claim regarding an alleged breach of her right to quiet enjoyment the Landlord responded as follows. The Landlord stated that he never, except the one time the hot water tank blew, entered her rental unit without the required 24 hours' notice. He said this was a rare exception and was an emergency as the breaker for the hot water tank was in her suite. He stated that he called the Tenant and told her that they were coming. He claimed that she got really angry at this time.

The Landlord stated that although he is around the rental unit frequently, he has never shown up at her suite unannounced.

In response to the Tenant's concerns about the repair people showing up unannounced, he stated that they do not give an exact time when they are able to attend the rental unit, as such there were times when he could not be there and the Tenant had to let the repair people in. He stated that approximately seven times he was not able to be there when the repair people attended. He also testified that he never asked her to stay; rather, he simply asked that she let them in and he would show up shortly thereafter.

In terms of the Tenant's claims regarding her window, he stated that he found out about it in the fall of 2017 and he acted on it immediately. He also stated that they tried to repair the window but when it could not be repaired they had to purchase one; unfortunately, it took 7 weeks for the window to be built (he also noted that custom windows normally take 3-6 weeks to be built, but this one took one extra week). He also noted that the Tenant's Advocate's claim that this was the only window was not correct as there was another window on the other side of the suite which was the one her cat went in and out of all the time.

In response to the Tenant's claims regarding the washing machine, the landlord testified as follows. He stated that it was a commercial washing machine and he did not have any complaints about this from anyone else. He said he never had a complaint about the tenant's clothes not being clean, nor did the Tenant ever telling him that her clothes were not clean or that she was getting hives. He said the only issue was that the washing machine was too powerful and therefore needed to be on medium, not full otherwise it would drain too quickly for the age of the pipes at the rental unit.

The Landlord also made, what he described as a general comment about his relationship with the Tenant. He claimed that when he first time met her she was not happy at her previous place and he actually moved her from her previous location to the rental unit. He stated that he had a good relationship with her. He would pop in and pick up the rent, they would have a smoke and every time he left she would give him a hug and say goodbye.

He claimed that about eight months prior to the end of her tenancy she started seeking help with her addiction issues and it was at this time that she "changed and became very angry". He stated that it was also at this time that the Tenant started having issues with the other Tenants. He claimed to take good care of his tenants and noted that if this really was a problem he would have two other claims on his hands from this rental unit.

He said he knew the Tenant's situation and he tried to make her life comfortable. He further stated that there were times when she could not pay her rent and he would take money out of his pocket and pay her rent so she would not be evicted. He said he never knowingly or otherwise took away her right to peaceful enjoyment.

In reply the Tenant's Advocate stated that the Landlord's estimate of seven times that repair persons required access to the common areas with the Tenant's assistance was

inaccurate as it was “fairly constant”. The Advocate stated that even if it was seven it required a “tremendous amount of coordination” for the Tenant, which is not her responsibility; rather, it is the Landlord’s responsibility to be available for such repairs.

In terms of the Landlord’s claim that he only found out about the window in the fall of 2017, she noted that the Tenant sent a text message to the Landlord in September 2017 wherein they discuss how long it will take to fix the window. In this text the Tenant writes that she hasn’t been able to open it since she moved in.

Analysis

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

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

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

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

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

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

In terms of a Landlord's obligation to maintain and repair the rental unit, section 32 of the *Act* reads as follows:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

> **8** (1) Landlord's obligations:
>
> (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
>
> (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act,* which reads as follows:

**28** 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.

*Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* provides in part as follows:

"…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 form a basis for a claim of a breach of the covenant of quiet enjoyment.

…Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
…A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.
…In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

*Tenant's Claim for a 30% Rent Reduction for Breach of Quiet Enjoyment*

The Tenant alleged the Landlord regularly attended the rental unit without providing proper notice. The Landlord denied this and claimed that the only time he did so was during an emergency with the hot water tank. While it is often the case that testimony of a tenant and landlord will conflict during a hearing, without corroborating evidence, I am unable to prefer the testimony of one party over the other. As it is the Tenant who bears the burden of proving her claim, when such a situation occurs, I must find that the the

claiming party has failed to meet that burned of proof. I therefore find the Tenant has submitted insufficient evidence to prove her claim that the Landlord regularly entered the rental unit in contravention of sections 28 and 29 of the *Residential Tenancy Ac.t*

Conversely, I find that the Tenant has met the burden of proving that she was regularly required to communicate and coordinate with repair persons with respect to repairs at the rental unit. The evidence establishes that the key to the Tenant's unit was the same as the key to the common area in which the services were located such that she was regularly asked to grant the repair persons access; further the Tenant was at the rental property during the day such that she was more available than other tenants or the Landlord. However, in doing so the Tenant acted as a *defacto* resident manager of the property, which was of considerable benefit to the Landlord and without any sort of related compensation for the Tenant. I find this to be an unreasonable disturbance in breach of her rights pursuant to section 28.

The Tenant's Advocate submitted that this occurred regularly. The Landlord estimated that on seven occasions he was not present such that the Tenant facilitated access to the rental unit for these repairpersons. As noted, without corroborating evidence, I am unable to prefer the testimony of either party. However, I find it likely the Landlord has underestimated the number of times this occurred, just as I find it likely the Tenant has overestimated the occurrence.

The tenancy began May 1, 2012 and ended in early 2018, such that it was approximately six and a half years long. I am mindful of the letter from the Tenant's Advocate in the fall of 2017. The concerns raised in this letter suggest to me that this was a more regular occurrence than once a year. I therefore find it likely that this occurred approximately 13 times, or twice a calendar year. On this basis, I find the Tenant is entitled to be compensated for her time, as would a resident manager. I have determined a reasonable sum to be the sum of $100.00 per occurrence, such that she is entitled to **$1,300.00** in compensation.

As noted previously, while the Tenant's Advocate submitted that the Tenant's window was malfunctioning from the time her tenancy began, and the Tenant wrote in her text message to the Landlord that this was the case, the Tenant also testified that after she told the Landlord about the window it took three months to be resolved. The Landlord testified that as soon as he was made aware of this problem he attended to its repair and ultimate replacement.

On balance, I find it more likely that the Tenant informed the Landlord of her malfunctioning window in September of 2017 by text message. The Landlord stated that he attempted to repair the window and when that was not possible he ordered a replacement which took seven weeks. This timeline is consistent with the Tenant's testimony that after she told the Landlord it took three months for the window to be repaired.

While a Landlord has an obligation to repair and maintain the rental premises, the Landlord relies on the tenants to inform them of any deficiencies and required repairs *within* the rental unit. I find the Landlord attended to this repair upon being notified and therefore satisfied his obligation pursuant to section 37 of the *Act.*

Similarly, I find the Tenant has failed to prove that the washing machine malfunctioned to such an extent that she experienced hives.

The Tenant submitted that the circumstances of her tenancy were such that she experienced significant stress. She reported these concerns to a mental health worker and a general practitioner who in turn wrote letters on the Tenant's behalf. These letters appear to have been written in support of a request by the Tenant for alternate housing, containing information provided to them by the Tenant.

The Landlord responded that he did what he could to assist the Tenant and that until the last eight months of her tenancy they had a positive relationship. The Landlord further testified that he helped her move into the rental unit, and loaned her money when needed. He noted that at the end of her tenancy, their relationship deteriorated; which he said coincided with the time the Tenant was going through treatment for addiction issues. He also claimed that the Tenant began having conflict with others in her rental unit at the same time. I found his testimony to be heartfelt and genuine in this regard. Further, it is notable that the Tenant did not dispute this testimony.

While I accept the Tenant was going through a difficult time near the end of her tenancy, I am unable to find that this was a result of the Landlord's actions or inaction in breach of the *Act.*

In all the circumstances, I find the Tenant's claim for breach of quiet enjoyment to be limited to the **$1,300.00** awarded for her time involved in facilitating the repairs to the rental unit and I decline her request for additional compensation for related stress.

*Tenant's Request for Return of $25.00 per month paid for Heat*

The Tenant seeks return of the $25.00 per month she paid for heat. The tenancy agreement submitted in evidence confirms that heat was included in the payment of rent, such that the Tenant was not obligated to pay an additional sum.

While the heating costs may have increased during the tenancy, the proper route to recover such expenses would have been to apply for an additional rent increase; the evidence confirms the Landlord did not make such an application.

I therefore find the Tenant is entitled to the **$300.00** claimed for amounts she paid for heat.

*Tenant's Request for Compensation for Lack of Heat During Winter Months*

The Tenant seeks the sum of $900.00 representing a 25% rent reduction for two winter months of every year of the tenancy.

The Tenant submitted that at times the oil would run out of the oil furnace such that she would be without heat for a month at a time. The Landlord conceded this occurred, but stated that the longest the heat would be off would be 6 days. The evidence confirms that the Landlord provided the Tenant with a space heater to ensure she had heat during these disruptions.

The evidence before me confirms that the oil ran out in October of 2017, December 25, 2017 and in late January and early February 2018 as noted in the text communication between the Tenant and Landlord in October of 2017, as well as the undisputed testimony of the Tenant during the hearing. In fact, the Landlord testified that the oil ran out "constantly".

I find, on balance, that this pattern occurred yearly such that 3 times a winter the oil would run out. I accept the Landlord's evidence that when this occurred, the oil was replenished within six days. As such, I find that the Tenant was without adequate heat for 18 days each calendar year, or six days per winter month.

The Tenant seeks compensation in the amount of $900.00, representing a 25% rent reduction for the two months of winter for the years 2015, 2016 and 2017. I find this sum to be reasonable for the following reasons.

I find the Tenant's heat was disrupted 18 days per year in the winter months; as this occurred during the winter, this was a significant interruption in services. The Tenant paid rent in the amount of $600.00 per month such that she paid $7,200.00 per calendar year; or a daily rate of $19.73. This equates to $355.00 per year for the 18 days, or $1,065.00 for the three years of the tenancy.

I therefore find the $900.00 claimed to be reasonable and I award the Tenant the **$900.00** claimed for lack of adequate heat.

*Return of Tenant's Security Deposit*

Although the Landlord applied to retain the Tenant's security deposit, he withdrew his claim at the start of this hearing. As such I award the Tenant the sum of **$300.00** representing return of her security deposit.

Conclusion

The Tenant is entitled to monetary compensation in the amount of **$2,800.00** calculated as follows:

| | |
|---|---|
| Compensation for breach of quiet enjoyment | $1,300.00 |
| $25.00 per month for 12 months for amounts paid for heat in contravention of the tenancy agreement | $300.00 |
| Compensation for lack of heat in the winter months | $900.00 |
| Return of security deposit | $300.00 |
| **TOTAL AWARDED** | **$2,800.00** |

The Tenant is entitled to a Monetary Order in the amount of **$2,800.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 7, 2018

Residential Tenancy Branch