



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE MNDCT OLC RP FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to comply the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to carry out repairs pursuant to section 33; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional eighty-eight minutes to allow the landlord the opportunity to call. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant stated she no longer resides in the unit and withdrew her claims under sections 33, 62 and 70.

The tenant testified that she obtained an Order of Substituted Service dated March 13, 2019 authorising service of the Notice of Hearing and Application for Dispute Resolution on the landlord by registered mail at the unit. The tenant submitted a copy of the Order as evidence.

On February 6, 2019, the tenant filed an amendment to increase the monetary award requested to \$6,400.00. On March 14, 2019, the tenant submitted an amendment to her claim to change her address of service.

The tenant testified that pursuant to the Order for Substituted Service, she served the landlord with the Notice of Hearing, evidentiary materials and amendments by registered mail sent on March 15, 2018 to the address stated in the Order; the documents are deemed received by the landlord under section 90 five days after mailing, that is, on March 20, 2019. In support of service, the tenant provided the tracking number for the registered mail which is referenced on the first page of the decision. Further to sections 89 and 90, I find the tenant served the landlord with the documents on March 20, 2019.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to return the security deposit to the tenant pursuant to section 38 of the *Act*; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing. The tenant submitted substantial documentary evidence including copies of hundreds of texts during a lengthy hearing.

The tenant claimed compensation for damages or loss due to the landlord's action in unlawfully evicting her contrary to the terms of a fixed term tenancy agreement, changing the locks of the unit, and putting her belongings outside in a snowstorm where

they were damaged. She claimed damages for loss of quiet enjoyment. She claimed compensation for damages to her personal possessions.

During the eighty-eight-minute hearing, the tenant became distraught. As a result, the hearing was placed on hold for several minutes to allow the tenant an opportunity to recover her composure. Following this, the tenant stated she was able to continue with the hearing. Accordingly, the hearing resumed.

The tenant testified that the tenancy began on June 1, 2018 for a fixed 1-year term at monthly rent of \$800.00 payable on the first of the month. The tenant submitted a copy of the tenancy agreement ("the tenancy agreement"), a 13-page document that is not in the standard RTB form. The agreement stated in part as follows

Term

6. The term of the Lease commences at 12:00 noon on June 15, 2018 and ends at 12:00 noon on June 15, 2019.

Section 28 of the tenancy agreement stated as follows (as written):

One year contract subject to re negotiation at the 6 month mark.

The unit was a furnished condo in which the landlord had one locked room containing his possessions. The tenant testified the landlord lived elsewhere and did not spend any time in the unit while she was in occupancy.

The tenancy agreement required the tenant to pay all utility bills; the tenant submitted hydro receipts as evidence that the hydro account was in her name only.

The parties also entered into a second tenancy agreement dated January 15, 2019 ("the January 15, 2019 Agreement"), a copy of which the tenant submitted as evidence; the agreement is in the standard RTB form. The January 15, 2019 Agreement stated the parties entered into a fixed term for a 2-week period, from January 15, 2019 to February 1, 2019. The rent was \$800.00 monthly payable on the 15th of the month. The tenant was required to pay a security deposit of \$400.00 by January 15, 2019. The tenant was required to pay utilities.

The January 15, 2019 Agreement does not refer to the tenancy agreement.

The 1-page Addendum to the January 15, 2019 Agreement stated the landlord has one room for his possessions in the condo and the landlord may give 24-hour Notice by text or email. The relevant terms of the Addendum are as follows (as written):

4. The lease is a fixed term agreement, it starts on January 15 and ends on February 1st, tenant is expected to move out by that date. If tenant requires extra time to find a new home, tenant may request another 2 weeks fixed term tenancy agreement upon request.

5. The locked spare room is the ONLY space unavailable to the tenant. It is being used as storage and to be left alone.

At the beginning of the tenancy, the tenant provided a security deposit of \$450.00 which the landlord holds. The tenant has not provided any authorization to the landlord to retain any of the security deposit. She stated there is no arrears of rent or outstanding utility bills.

The tenant testified she did not provide a separate security deposit pursuant to the January 15, 2019 Agreement.

The tenant testified that she provided her forwarding address to the landlord in writing at the beginning of the tenancy. The tenant testified the tenancy ended on February 3, 2019 when the landlord unlawfully removed her possessions from the unit and changed the locks.

The tenant testified she is a part-time member of the Canadian [name withheld] Regiment; she is presently in training to certify as a paramedic. At the time of the tenancy, she was employed by a utility company. She stated she was 21 years old when she rented the unit, which was her first tenancy. The tenant described herself as "uninformed" about landlord-tenancy matters.

The tenant testified that in November 2018, six months after moving in, the landlord informed her he planned to sell the unit. He told the tenant they only have a monthly tenancy and he asked the tenant to move out. The tenant informed the landlord she did not want to move out and that they had a fixed term tenancy.

The tenant stated that on November 11, 2018, she returned from the Remembrance Day memorial ceremonies to find a real estate agent and a group of potential buyers at the unit. She learned that the landlord had listed the condo for sale on November 5, 2018. The tenant testified she let the group into the unit as she did not know what else

to do. The tenant said she thought she was required by law to cooperate with the landlord who wanted to show the unit to potential buyers without notice. She subsequently obtained advice from the RTB about the landlord's obligation to provide her with 24-hour Notice.

In a letter of November 23, 2018, a copy of which was submitted as evidence, the tenant requested the landlord to comply with the provisions of the *Act* providing notice for entry. In a separate letter, a copy of which was submitted as evidence, the tenant suggested a resolution to the landlord as follows:

- The parties would enter into a Mutual Agreement to End Tenancy;
- The tenant would vacate the unit on January 15, 2019;
- The landlord would comply with the *Act's* notice provisions;
- The landlord would pay one month's rent compensation for the tenant's vacating for the landlord's use;
- The condition inspection would take place on January 16, 2019 and the tenant's security deposit of \$450.00 would be returned

The tenant testified the landlord did not respond to the letter of November 23, 2018 and continued with ever increasing efforts to push her out of the unit in the shortest possible time while denying she had any rights as a tenant. She submitted many texts between the parties in support of her claim.

The landlord informed the tenant by text dated December 1, 2018, "We are switching to month to month". The tenant informed the landlord that this was not correct. She testified there was never any such agreement that the fixed term tenancy had converted to a month-to-month tenancy or that she was moving out before the end of the fixed term.

After the letter of November 23, 2018, the tenant stated the landlord continued to insist by text that she move out. From early November 2018 until the end of the tenancy on February 3, 2019, the tenant testified the landlord acted rudely and disrespectfully towards her, minimizing or denying that she had any rights to live in the unit.

The tenant testified that during the rest of November, December 2018 and January 2019, the landlord would sometimes give a proper 24-hour Notice for viewing by his realtor and potential buyers. However, the landlord frequently sent last minute texts advising her of additional showings on the date set in the Notice. The tenant said it was not unusual to have two to seven showings on a day for which one Notice had been

given. The tenant stated she was expected to clean the unit and to be out of the unit for each viewing. The tenant testified she always agreed to the requests as she thought she had no choice.

The tenant stated she frequently called the RTB and spoke with Information Officers about her rights and the landlord's responsibilities, gradually educating herself on the Act, and relaying the information she received to the landlord. The tenant submitted as evidence copies of considerable correspondence with the RTB as well as evidence that this correspondence was forwarded to the landlord.

The landlord informed the tenant by text on January 1, 2019 that he applied for an order of possession.

The tenant's evidence, supported by many texts, is that she informed the landlord about her right to stay in the unit until the end of the fixed term, the landlord's obligation to provide her with notice if the unit was going to be sold, and the obligation to provide notices of entry. The following is an illustrative exchange of texts between the parties, copies of which were submitted by the tenant as evidence (all texts are as written):

(Date: January 16, 201)

Tenant: Hey so I got on the phone with the Tenancy Branch, going to forward you the information they are giving me.

Landlord: So you're threatening me again?

Tenant: I am not threatening you, I am going through the legal resources we both must review as a landlord and tenant. I've sent you an email from the Tenancy Branch. [provides phone number of RTB]

...

Tenant: I am at work.

Landlord: something to think about while at work. I'm done being nice, you've pushed it too far. You are required by law to leave by the end of the month. Thank you.

Tenant: Okay, call the tenancy board at the number above. I am not trying to do anything but understand my rights in this situation. There has been a severe lack of communication, playing & transparency here. Please, reference the email I have sent you both as well as call the number above. I will communicate with you both again in writing by the end of the weekend....

Beginning with the listing of the unit on November 5, 2018 and continuing until February 3, 2019, the tenant described an accelerating campaign of texting, harassment and bullying by the landlord which caused her extreme distress. She testified as follows to her recollection of events and the effect upon her:

- Beginning with the listing of the unit, the landlord engaged in ever-increasing pressure to get the tenant to move out;
- The landlord sent countless texts to the tenant, copies of dozens of which the tenant submitted in evidence, arguing with her to move out and threatening her if she did not;
- Over the three-month period, the tone of the communication from the landlord became increasingly hostile and threatening;
- On December 2, 2018, the landlord threatened the tenant to contact her employer; he sent a text to the tenant, a copy of which was submitted as evidence, stating as follows:

“Clearly your unwilling to make this reasonable. I’ll contact your employer....”

- The landlord called the tenant in the middle of the night to berate her to move out, especially if she had not immediately responded to his texts;
- The landlord told the tenant that his girlfriend worked at the RCMP and the RCMP were going to help him “to get her out”;
- The landlord refused to “put anything in writing”, that is, to send emails, and instead flooded the tenant’s phone with confusing, contradictory texts in which he sometimes stated falsely that she had agreed to move out;
- The landlord demanded and expected the tenant would move out at varying times.; in a text of January 3, 2019, the landlord asked the tenant if she was moving out in March; the tenant replied that she didn’t know;
- The landlord accused the tenant of being ungrateful because he was being “kind” in letting her stay there;
- The tenant stated she received a text dated January 16, 2018 from the landlord’s realtor, a copy of which was submitted in evidence, which increased her feelings

of being “ganged up on”; the text stated the police were involved and a police officer would attend on February 1, 2019; the text stated in part as follows:

“You threatened us with the landlord tenancy branch after we’ve bent over backward to help you out. So if there was any potential of us helping you out further that is gone now. ... you have now pushed us to contact the landlord tenancy branch and they have stated you must vacate the property by noon on February 1st. We will be calling the RCMP for a stand by keep the peace for February first while you move out because it’s clearly you are unwilling to comply with legal contracts.”

- The tenant replied that she was not threatening the author of the above text, and that “your behaviour is unnecessary and unwelcomed. I have rights as well as a tenant and this has become absolute chaos for no reason but money.”
- Because of the landlord’s actions, the tenant became increasingly scared; she became concerned about losing the unit and becoming homeless; she testified that later, her concern turned to fear and then terror;
- She gave in to the landlord by considering moving out earlier, despite repeatedly saying she would not;
- She became increasingly unable to sleep;
- She experienced constant, rising anxiety and depression; and
- The tenant sought help and advice from a mental health counsellor.

The tenant expressed regret about “not standing up to” the landlord. She testified she felt stressed, alone, and attacked.

The tenant acknowledged that she signed the January 15, 2019 Agreement. She acknowledged that signing the Agreement was a poor decision on her part. However, she explained that she could no longer think clearly and was overwhelmed with feelings of terror, confusion, frustration and hopelessness, and finally gave in to the landlord.

The tenant testified that she thought “she was OK” even though she signed the January 15, 2019 Agreement, because the landlord assured her that she could continue renting the tenancy after January 31, 2019 on a month-to-month basis. The tenant acknowledged that the January 15, 2019 Agreement does not include any such clause.

In keeping with her understanding that she could continue renting after January 31, 2019, the tenant testified she attempted three times to pay rent for February 2019. She stated the landlord refused to accept the bank transfer. The tenant submitted a copy of

a bank document showing her effort to transfer the rent and that the landlord declined the transfer.

The tenant testified as to the events of February 3, 2018 as follows. The tenant and her mother met for lunch. At 3:22 PM, she received a text from the landlord, a copy of which was submitted as evidence, stating as follows:

Hey [tenant], you were due to move out on the 1st of Feb 2019 and I see that you've left some things behind. You have 2 options, you may pick them up today, or, I will be moving them to a storage unit, and your animals brought to the SPCA here in [city]. If you'd like to come back today, I'd like you to bring a police escort.

At 3:52 PM, the tenant received a text from the landlord stating as follows:

There is an arbitration date for March 5th.

At 3:53 the tenant sent a text to the landlord as follows:

You cannot legally take my animals or my items.

At 3:55 PM, the tenant received a text from the landlord stating as follows:

All of this is irrelevant as soon as the residential tenancy branch realized this is still my permanent residence and I still have a room here. You're a roommate and have no jurisdiction under the residential tenancy branch. The police are aware of that. ... Where could you like your belongings.

At 3:56 the tenant sent a text to the landlord as follows:

They did not decide that [landlord]. There is a filing process that needs to be done and you haven't service me a single page of paperwork. I have submitted 120 pages to the RTA.

At 3:56 PM, the tenant received a text from the landlord stating as follows:

The rcmp told me to put your stuff you left behind in storage and take your pets to the spca.

At 3:59 the tenant sent a text to the landlord as follows:

I know what they told you and that's because this is a tenancy issue however that doesn't negate the fact that you are not even remotely abiding by the RTA and this will be brought forth in a legal hearing in a month. You have done nothing on paper since day one and that was ALL I asked for. Now you literally have made me homeless 5 months before I was originally even supposed to move out because of the fact that you want your place sold. An email from the RTA is not a legal order ...

The multiple text exchanges can be summarised as follows. The landlord warned the tenant to only come accompanied by the police who were “already involved” and “you are not allowed back here or someone will be going to jail”. The tenant asked to be allowed to go in to the unit and get her things, saying she had called people to come and help her.

The tenant and her mother arrived at the unit shortly afterward that same day to find a police officer there. The tenant testified the officer told her she was not allowed in the unit. She testified that the officer informed her that she was “only a roommate” of the landlord, the landlord wanted her out, the landlord had changed the locks, and she was not allowed in the unit any more. The tenant testified that the officer told both the tenant and her mother that they would be arrested if they did not leave immediately.

The tenant testified she was afraid the police would arrest her and her mother; therefore, they went away. The tenant testified that none of her possessions had been removed from the unit at that point.

A short time later, the tenant testified she received a text from the landlord saying she could return to get her possessions at 5:00 PM that day. When the tenant returned to the unit at about 5:00 PM with her mother, there was a snowstorm. She testified to finding her possessions heaped in disarray in the front of the unit covered in rapidly accumulating snow. There were furniture items and many cardboard boxes. Some items were mounded without any protection against the snow. A pile of electronic items had a speaker on top which appeared to the tenant to have been thrown there. The tenant testified that all her personal possessions were dumped without regard to damage from snow/water, including furniture, books, papers, clothing, electronics, medical supplies, armed forces training gear, foot wear and memorabilia. The landlord refused the tenant access to the unit saying the lock was changed.

The tenant submitted photographs of her possessions in front of the unit which show a disorderly mound of piled items; the items are difficult to identify because the pictures were taken in the dark. The tenant was pictured standing among a disarray of items, some in containers and others not. The tenant testified the locks to the unit were changed and she could not gain access.

The tenant stated she wanted to minimize damage and get items into storage at her brother's home as quickly as possible. The tenant called several friends with cars or trucks and ultimately got help from five people with vehicles over the next few hours to move her belongings. As she loaded her possessions, the tenant noticed items were broken or missing, and sent confirming texts to the landlord, copies of which were submitted as evidence.

The tenant submitted in evidence a letter from LR, a neighbour, dated April 1, 2019. The tenant testified that LR was a member of the same Regiment and they had known each other since the beginning of the tenancy. The letter stated in part as follows (as written):

At the time of writing this letter I have known her for seven months. Throughout those seven months I witnessed that she lived alone at [unit]. I also understood that she was renting from my former neighbour [landlord]. I have not seen [landlord] in the vicinity of [unit] since April 2018.

On February 3, 2019 I was returning from work. It was snowing outside and I noticed furniture piled outside of [unit] with snow falling on it. I approached to investigate and found [tenant] along with some friends helping to load the furniture onto a truck. [Tenant] was locked out of [the unit] and told me that someone had waited until she left the premise and that they had moved most of her belongings out of the house and would not let her enter. At this point I helped load some of the furniture onto a vehicle and it was noted that some of her belongings were missing and perhaps inside the unit. I witnessed that some of the items were damaged or broken.

The tenant's testified that she owned the following personal possessions which were in the unit and which were taken outside by the landlord:

- An estimated 140 pieces of specialised military training supplies, such as a medical kit, camping gear, jump kit, uniforms, boots, as well as specialised outdoor clothing and footwear related to her activities and training with the Regiment;

- All her personal clothing, including a snowboarder jacket and a box of expensive quality high-heeled shoes;
- Personal memorabilia, including original newspaper articles about her father's military service;
- Furniture, mattress, bedding;
- Hard copy photograph albums;
- A working antique camera inherited from by her grandmother dated 1885;
- A guitar in a soft case;
- Electronics including a laptop;
- Make-up, personal toiletries and vitamins;
- Many books including her children's books
- A large quartz crystal;
- Personal papers; and
- Two pet mice.

The tenant testified that many of her possessions were wet, damaged, ruined or missing altogether. Some items are irreplaceable, such the original newspaper articles about her deceased father's military service and her photo albums all of which were wet and damaged. A box of shoes, the antique camera and a large quartz crystal were missing and have never been located. The screen on a laptop was shattered. She estimated her losses in damage and missing items at \$10,000 including \$150.00 she paid in cash to the friends who helped her move.

The tenant provided no documentary evidence in support of her estimate of her losses; she provided no receipts of purchases, replacement, or repairs. She provided no estimates. The tenant submitted no photographic evidence of her undamaged possessions prior to the events of February 3, 2019.

The tenant explained her lack of documentary evidence as follows. She described her reaction to the events of February 3, 2019 as "being traumatised"; she said she was upset and distressed for a long time. She had no where to move to and stayed on a friend's couch. The tenant testified she found a place to live only recently. She has been unable for emotional and financial reasons to afford the repairs and replacement of her damaged items.

The tenant's calculation of her claim for compensation at the hearing was as follows:

	ITEM		VALUE
1.	Shoes – box of shoes missing	Estimate of used value	\$400.00
2.	Laptop – screen shattered	Estimate of repairs	\$500.00
3.	Camera – missing, antique	Estimate of replacement value	\$600.00
4.	Jacket – snowboarding, missing	Estimate of used value	\$100.00
5.	Quartz Crystal – missing	Purchase price and replacement value (same)	\$500.00
6.	Make-up, personal toiletries and vitamins – broken, wet or ruined	Estimated replacement value	\$300.00
7.	Guitar – cracked body	Estimated repairs	\$400.00
8.	Personal possessions damaged by snow and water – remainder	Estimated loss	\$7,050.00
9.	Paid to drivers of vehicles		\$150.00
		TOTAL	\$10,000.00

The tenant stated that the figure of \$7,050.00 in item # 8 above for loss of personal possessions was reached by calculating the expected cost of replacing missing, ruined or damaged items. The tenant testified she is still learning of missing or damaged items. Many of the items, such as the memorabilia and the camera, have sentimental value and she does not know how or at what cost these can be replaced.

The tenant testified that she learned on February 4, 2019, after the eviction, that the landlord withdrew his application on February 4, 2019 which had been scheduled for hearing in early March 2019.

The tenant explained her claim as follows:

1. Damages for the breach of the fixed term agreement;
2. Damages for loss of quiet enjoyment;
3. Compensation for loss or damage to personal possessions; and
4. Reimbursement of the filing fee.

Analysis

The tenant provided extensive oral and written evidence. I have considered all the submissions and evidence presented. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide enough evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. I will examine the tenant's claims in turn.

Damages for Unlawful Termination of Fixed Term Tenancy

I find the parties entered into a fixed term tenancy agreement on June 1, 2018 which was due to end June 1, 2019. I find the landlord unlawfully evicted the tenant on February 3, 2019 prior to the end of the fixed term tenancy.

The tenant claimed that she was forced into signing the January 15 Agreement, that she never intended to move out before the end of the fixed term, and that she relented to the landlord after a two-and-a-half-month persistent promotion by the landlord to get her to agree to move out.

This is analogous to the claim of "duress". If the tenant could establish duress, a contractual basis for rescission would be established. That is, establishing duress would release the tenant from the January 15 Agreement.

I have considered the hundreds of texts submitted which I find establish a relentless, increasing campaign by the landlord to get the tenant out at all costs. I find that the prolific text exchange established that the tenant protested all along about any shortening of the fixed term; countless times, she informed the landlord of the provisions of the *Act* and the advice of the Information Officers at RTB.

I find the landlord persistently pursued his objective of getting the tenant to move out before the end of the fixed term without paying her any compensation. To achieve his objective, I find the landlord threatened the tenant with an unlawful eviction, said he had reported the tenant to the police, and threatened arrest..

I accept the tenant's evidence that she was emotionally devastated and overwhelmed by the landlord's conduct prior to signing and felt powerless in the face of relentless pressure to do so. I find the tenant gave in to the landlord's pressure and believed that signing the January 15 Agreement was the only thing she could do; the best outcome was that the tenancy would continue on a month-to-month basis. I find she came to a point of believing she had no choice but to sign.

I find that as soon as she signed, she reasserted her right to remain in the unit and brought an Application for Dispute Resolution on January 24, 2019 to assert her rights under the tenancy agreement.

I accept the tenant's uncontradicted evidence and find that she has met the standard of proof on a balance of probabilities that she experienced pressure, force, threats and coercion, as a combined result of which she signed the January 15 Agreement.

I find that because of duress and coercion, the tenant's purported consent is vitiated; that is, the legal validity is destroyed. Accordingly, I find that the January 15 Agreement is of no force or effect. The term therein that the tenant promised to vacate the unit on February 1, 2019 is void.

Whether or not the January 15 Agreement had any legal effect, the landlord violated the *Act* by evicting the tenant and her possessions on February 3, 2019.

I accept the tenant's testimony that, following February 3, 2019, she slept on a friend's couch, was devastated, and was not able to move into her own accommodations until recently. I accept that she was without her own home for the months of March and April 2019.

I find that reasonable compensation for breach of the fixed term tenancy is two months' rent payable under the tenancy agreement, for a total of \$1,600.00.

Accordingly, in considering all the evidence I find the tenant has met the burden of proof on a balance of probabilities that she has suffered damages under this heading, that the

landlord breached the tenancy agreement and *Act* thereby causing the damages, that the tenant mitigated her damages, and that she is entitled to compensation in an amount equivalent to two months' rent under the tenancy agreement, in the amount of \$800.00 a month for each of those two months, for a total award of \$1,600.00.

Accordingly, under this heading, I award the tenant \$1,600.00 as compensation for the unlawful breach of the fixed-term tenancy agreement.

Loss of Quiet Enjoyment

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states 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.*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

I find the parties were *landlord* and *tenant* within the meaning of the *Act*. I find the landlord's alleged assertion, reportedly made to the RTB and the police, that the parties were "roommates" to be false, self-serving and manipulative.

There are comprehensive and extensive rules in the *Act* when it comes to physically removing a tenant and their possessions from a rental unit, as well as changing the locks.

Based on the evidence and the tenant's testimony, I find the tenant has met the burden of proof on a balance of probabilities with respect to establishing her claim for loss of quiet enjoyment. I find the tenant was credible about all the circumstances that led up to her eviction, the effect of the eviction on her personally and the resulting damage or loss. I accept the undisputed testimony of the tenant which is supported by considerable documentary evidence and photographs.

I find the landlord engaged in a pattern of unlawful activities that increased in intensity from the time he listed the property on November 5, 2018 until he evicted the tenant on February 3, 2018. I accept the tenant's evidence and find the landlord was increasingly overbearing, unreasonable, and bullying, to the point she experienced terror. I accept the tenant's evidence and find the landlord increasingly used threats, pressure and coercion to force the tenant to move out; when that failed, he resorted to unlawfully evicting her and her possession.

I find that, on February 3, 2019, the landlord unlawfully evicted the tenant, removed her possessions and changed the locks, all in violation of the *Act*.

Based on the tenant's evidence and on a balance of probabilities, I find the tenant experienced substantial interference with her ordinary and lawful enjoyment of the unit and that the landlord caused this interference. The nature of the interference was not temporary discomfort but was substantial, increasing discomfort over three months. I find that landlord failed to assure the tenant's quiet enjoyment of the unit beginning in

early November 2018 and continuing until the eviction; I find the tenant suffered severe loss of quiet enjoyment because of the landlord's actions.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find this situation to be serious and to amount to a severe loss of quiet enjoyment. I find the tenant increasingly experienced a loss of quiet enjoyment from early November 2018 until she was unlawfully evicted on February 3, 2019.

I find it is reasonable to place a nominal monetary value on the tenant's loss of quiet enjoyment for November and December 2018 of \$400.00 for each month. I find it is reasonable to place a nominal monetary value on the tenant's loss of quiet enjoyment for January 2019 of \$800.00.

My total award in this regard is \$1,600.00 calculated as follows:

ITEM	VALUE
Reimbursement Rent November 2018	\$400.00
Reimbursement Rent December 2018	\$400.00
Reimbursement Rent January 2019	\$800.00
TOTAL AWARD	\$1,600.00

Compensation for Loss or Damage to Personal Property

I find the tenant suffered the loss of her personal belongings directly because of the landlord's failure to comply with the *Act*. For that reason, I find that the landlord must compensate the tenant for the damage flowing therefrom pursuant to section 7(1) of the *Act*.

In this case, the tenant has no receipts to show what she paid for her possession. As well, she stated that her personal records were wet and ruined in the unlawful eviction. The tenant acknowledged that she has not yet repaired the shattered computer screen

or replaced the missing items; hence she has no receipts subsequent to the eviction either.

Without substantiating evidence, I find the sum of \$10,000.00 for a total estimate of loss under this heading to be excessive. However, I accept the tenant's evidence supported by the photographs of her personal belongings left out in the snow, that she has incurred loss and expenses. I find that the tenant had met the burden of proof on a balance of probabilities that she has incurred loss and damage under this category which I assess at \$2,000.00.

I therefore grant the tenant a monetary award for compensation for loss or damage to personal possessions of \$2,000.00.

Security Deposit

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

- (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the uncontradicted evidence of the tenant that she provided her forwarding address in writing pursuant to section 38(1)(b) at the start of the tenancy, that is June 1, 2018. I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

Therefore, I award the tenant reimbursement of double the security deposit (\$450.00) in the total amount of \$900.00

Summary of Award

In summary, I award the tenant a monetary order of **\$6,200.00** calculated as follows

ITEM	VALUE
Breach of the fixed-term tenancy agreement	\$1,600.00
Reimbursement of rent for loss of quiet enjoyment	\$1,600.00
Compensation for damages or loss – personal possessions	\$2,000.00
Reimbursement double the security deposit	\$900.00
Reimbursement filing fee	\$100.00
	\$6,200.00

Conclusion

I grant the tenant a monetary order in the amount of **\$6,200.00**. This order may be filed in the Small Claims Division of the Supreme Court of British Columbia 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 06, 2019

Residential Tenancy Branch