



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, OLC, LRE, CNL, MNDCT, LAT, MNRT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 9, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order for regular repairs;
- an order that the Landlord comply with the Act, tenancy agreement, or regulations;
- an order restricting or suspending the Landlord's right to enter the rental unit;
- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of the Property;
- a monetary order for damage or compensation;
- an order authorizing the Tenant to change the locks to the rental unit; and
- a monetary order for the cost of emergency repairs.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application, documentary evidence and digital evidence package to the Landlord by registered mail on January 16, 2020. The Landlord confirmed receipt of the package on January 28, 2020. Pursuant to Section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord stated that the Tenant included a memory stick in the Application package which contained many video clips and pictures which seemed to relate to previous tenancies. The Landlord stated that he did not recognize the residence in some of the videos. The Landlord stated that the digital evidence was not labelled and he was

unsure what was relevant to be considered in preparation for the hearing. During the hearing, the Tenant stated that she was overwhelmed by the amount of evidence she had and confirmed that she did not include a description of the digital evidence she provided to the Landlord.

The Landlord stated that he was unable to provide a copy of his documentary evidence to the Tenant as the tenancy ended on February 13, 2020. The Landlord stated that the Tenant did not provide him with her forwarding address, therefore, the Landlord did not know how to properly serve the Tenant. While the Tenant stated that she provided the Landlord with her forwarding address via email on February 26, 2020, it was discussed during the hearing that the Tenant is required to provide the Landlord with the Tenant's forwarding address in accordance with Section 88 of the Act.

As the Tenant was not served a copy of the Landlord's evidence, I find that the Landlord's documentary evidence will not be considered. Only the Landlord's oral testimony will be considered during the hearing.

#### Preliminary Matters

In relation to the Tenant's digital evidence served to the Landlord;

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") Section 3.7 states;

Evidence must be organized, clear and legible. All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

According to 3.10.1 Description and labelling of digital evidence;

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute

Access Site, directly to the Residential Tenancy Branch or through a Service BC Office and be served on each respondent. A party submitting digital evidence must:

- include with the digital evidence:
- a description of the evidence;
- identification of photographs, such as a logical number system and description;
- a description of the contents of each digital file;
- a time code for the key point in each audio or video recording; and
- a statement as to the significance of each digital file;

I accept that the Tenant did not provide the Landlord or the Tenancy Branch with a description, identification, time code of key points, or a statement of the significance of the relevant digital evidence that the Tenant intended to rely on during the hearing. As the Landlord stated that much of the digital evidence served to him did not seem relevant to the tenancy, nor was the digital evidence clear to the Landlord, I find that the Tenant's digital evidence will not be considered during the hearing. Only the Tenant's documentary evidence and oral testimony will be considered.

During the hearing, the parties testified and agreed that the tenancy ended on February 13, 2020. As such, I find that the Tenant's claims for; an order for regular repairs, an order that the Landlord comply, an order restricting or suspending the Landlord's right to enter, an order to cancel a Two Month Notice, and an order to change the locks are now moot. As such, these claims are dismissed without leave to reapply. The hearing continued based on the Tenant's monetary claims.

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.

#### Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

2. Is the Tenant entitled to a monetary order for the cost of emergency repairs, pursuant to Section 33 of the *Act*?

#### Background and Evidence

The Tenant stated that the tenancy began on October 16, 2019, while the Landlord stated that the tenancy began on October 15, 2019. The parties agreed that during the tenancy, the Tenant was required to pay rent in the amount of \$975.00 to the Landlord which was due on the first day of each month. The parties testified that the Tenant paid a security deposit in the amount of \$487.50, and a pet deposit in the amount of \$200.00, both of which the Landlord continues to hold. The parties agreed that the tenancy ended on February 13, 2020.

The Tenant set out her claims in an attachment to the monetary worksheet provided in her documentary evidence.

The Tenant is claiming \$675.00 in relation to a bathtub she stated was in need of repair. The Tenant stated that during the tenancy, she noticed that there was paint flaking off of the bathtub which she felt was a health concern. The Tenant stated that she notified the Landlord, however, the Landlord did not take action to fix the bathtub. The Tenant stated that she took it upon herself to strip the bathtub which took 15 hours at \$25.00 per hour for a total of \$375.00. The Tenant stated that she then had to clean up the paint chips which took 8 hours at \$25.00 per hour for a total of \$200.00. The Tenant stated that she also had to purchase cleaning products and tools to complete the job at a cost of \$100.00. The Tenant stated that her vacuum broke while cleaning up the debris from the bathtub, therefore, she is claiming \$200.00 to replace her vacuum.

In response, the Landlord stated that the Tenant had mentioned that the bathtub had some chips in it, however, the Tenant was not agreeable to allowing the Landlord to inspect and make the necessary arrangements to have it fixed properly. The Landlord stated that the Tenant took it upon herself to remove all the paint and damaged the bathtub in the process. The Landlord stated the Tenant did not receive permission to conduct the work herself and that the bathtub is now ruined.

The Tenant is claiming \$3,412.50 which represents a full refund of the rent paid to the Landlord throughout the tenancy. The Tenant stated that the Landlord conducted some renovations next door to her rental unit. The Tenant stated that the noise was unbearable and that she was not advised that renovations would be taking place during her tenancy. The Tenant stated that construction started on October 29, 2019 and continued until January 15, 2020.

The Tenant is also claiming \$5,000.00 for each month of her tenancy for loss of quiet enjoyment due to the construction noise. The Tenant stated that the noise from the construction caused her cat to pass away.

In response, the Landlord stated that made it very clear to the Tenant at the start of the tenancy that he would be altering a portion of the laundry room to include a bathroom for a neighbouring unit being occupied by the Landlord's daughter. Both parties agreed that there is a wall separating the two units. The Landlord stated that the renovation was minor and that he only worked on the renovation up to two days per week for a few hours at a time. The Landlord stated that no heavy-duty machinery was used and that he cut his material outside, away from the rental unit to reduce the noise in the rental unit.

The Tenant is claiming that the Landlord entered the rental unit without permission on four occasions while the Tenant was away on vacation between December 23 and 27, 2019. The Tenant stated that she found the Landlord's keys in her rental unit, proving that the Landlord had been inside. The Tenant is subsequently claiming for compensation in the amount of \$500.00.

In response, the Landlord stated that he has never entered the Tenant's rental unit without her permission. The Landlord was uncertain as to how the Tenant obtained his keys.

The Tenant stated that the Landlord moved her outdoor possession on four occasions without her permission. The Tenant stated that the Landlord damaged these items in the process of moving them. As such, the Tenant is claiming the following for replacement cost of; steel lounge \$200.00, plants and garden \$500.00, planter box \$400.00, paver stones \$200.00.

The Landlord stated that the Tenant would frequently move her possession around the yard, and that the Landlord would only move the items when they were blocking walkways as it posed a tripping hazard. The Landlord denies that any items were damaged and that he cautioned the Tenant about blocking walkways.

Lastly, the Tenant is claiming \$2,000.00 for moving costs as she felt she had to move from the rental unit due to the ongoing issues in the tenancy. The Landlord stated that the tenancy ended due to the Tenant's failure to pay rent in full. The Landlord stated

that he acquired an order of possession which ended the tenancy on February 13, 2020.

### Analysis

Section 28 of the Act, states that 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*
- (d) *use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*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.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*

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.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

***[my emphasis]***

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 32(1) of the Act states that 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 the tenant.*

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. Pursuant to Residential Tenancy Policy Guideline #16 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.

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

The Tenant is claiming \$675.00 in relation to a bathtub she stated was in need of repair. The Tenant stated that the Landlord did not take action to repair the paint chips that were flaking off the bathtub, therefore the Tenant took it upon herself to strip the bathtub herself. The Landlord stated that the Tenant was not agreeable to having the him inspect and repair the bathtub properly. The Landlord stated that the Tenant did not have permission to repair the bathtub which is now ruined.

In this case, I find that the Tenant has provided insufficient evidence that the bathtub was in need of repair. I further find that the Tenant provided insufficient evidence to demonstrate that the Landlord was unwilling to complete the repairs if any were required. Lastly, I find that the Tenant could have mitigated her loss by applying to the RTB for an order that the Landlord complete the repairs. In light of the above, I dismiss the Tenant's claim for compensation relation to repairing the bathtub in the rental unit.

In regards to the Tenant 's claim for \$200.00 to replace a vacuum that broke while cleaning up the debris from the bathtub, I find that the Tenant provided insufficient evidence to demonstrate that the Landlord breached the Act causing the vacuum to break. Furthermore, the Tenant provided no evidence to support the cost of a new vacuum. As such, I dismiss this claim without leave to reapply.

The Tenant is claiming \$3,412.50 which represents a full refund of the rent paid to the Landlord throughout the tenancy. The Tenant is claiming a further \$5,000.00 for each month of her tenancy as the Landlord conducted some renovations next door to her rental unit from October 29, 2019 to January 15, 2020. The Tenant stated that the noise was unbearable and that she was not advised that renovations would be taking place during her tenancy. The Tenant stated that her cat passed away due to the construction noise.



The Landlord stated that he made it very clear to the Tenant at the start of the tenancy that he would be altering a portion of the laundry room to include a bathroom for a neighbouring unit. The Landlord stated that the renovation was minor and that he only worked on the renovation up to two days per week for a few hours at a time. The Landlord stated that no heavy-duty machinery was used and that he cut his material outside, away from the rental unit to reduce the noise in the rental unit.

In this case I find that the Tenant provided insufficient evidence to support that the renovations conducted by the Landlord created a substantial interference with the Tenant's ordinary and lawful enjoyment of the premises. I find that the Landlord has a right to maintain the rental property and I accept that the renovations were not significant and only conducted for short periods at a time. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. As such, I dismiss the Tenant's claim for loss of quiet enjoyment without leave to reapply.

The Tenant is claiming \$500.00 in relation to the Landlord entering her rental unit without her permission. In response, the Landlord stated that he has never entered the Tenant's rental unit without her permission. In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord entered the rental unit on four occasions without permission. As such, I dismiss the Tenant's claim without leave to reapply.

The Tenant stated that the Landlord moved her outdoor possession on four occasions without her permission. The Tenant stated that the Landlord damaged these items in the process of moving them. As such, the Tenant is claiming the following for replacement cost of; steel lounge \$200.00, plants and garden \$500.00, planter box \$400.00, paver stones \$200.00.

The Landlord stated that the Tenant would frequently move her possession around the yard, and that the Landlord would only move these items when they were blocking walkways as it poses a tripping hazard. The Landlord denies that any items were damaged and that he cautioned the Tenant about blocking walkways.

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord caused damage to the above mentioned items. Furthermore, the Tenant has provided insufficient evidence to support the value of the cost associated with replacing the items. As such, I dismiss the Tenant's claim without leave to reapply.

The Tenant is claiming \$2,000.00 for moving costs as she felt she had to move from the rental unit due to the ongoing issues in the tenancy. The Landlord stated that the tenancy ended due to the Tenant's failure to pay rent in full. The Landlord stated that he acquired an order of possession which ended the tenancy on February 13, 2020.

In this case, I accept that the tenancy ended in accordance with an order of possession which was granted to the Landlord. Furthermore, the Tenant provided no evidence to demonstrate the value of her moving costs. As such, I find that the Tenant is not entitled to compensation related to moving costs and dismiss the Tenant's claim without leave to reapply.

### Conclusion

The Tenant's Application for a monetary compensation relating to damage, compensation and for the cost of emergency repairs are dismissed without leave to reapply.

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: March 05, 2020

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Residential Tenancy Branch