



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, RR, LRE, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for

- a monetary claim of \$9,945.00+ for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, including recovery of double the security deposit;
- an order directing the landlord to comply with the Act, regulation or tenancy agreement; regular repairs;
- an order to suspend or restrict the Landlord's right to enter; and
- recovery the cost of her filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses for the Tenant were also present and provided affirmed testimony.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In considering service of the Tenant's Application documents, and the Parties' documentary evidence back and forth, the Landlord said that he had received everything from the Tenant and had time to consider the Application documents and the Tenant's documentary evidence; however, the Landlord said he had received, but had not had time to review and consider the Amendment that the Tenant submitted. The Tenant said that she sent the Amendment to the Landlord via registered mail on February 27, 2020; therefore, pursuant to section 90 of the Act, the Amendment was deemed served on the Landlord on March 3, 2020 or nine days prior to the hearing.

Rule 3.14 states:

**3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17 states that the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established in Rules such as 3.14. This discretion is provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. As the Tenant was late in serving the Landlord with the Amendment, and the Landlord said that he did not have time to review it, I, therefore, decline to admit the Amendment for consideration in this proceeding.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The Tenant said that she moved out of the rental unit on January 31, 2020, and she agreed that only the monetary claims were relevant to the tenancy at this point. As a result, I dismiss all of the Tenant's claims without leave to reapply, except for the monetary claim for damage or compensation under the Act, and the claim to recover the \$100.00 cost of her Application filing fee.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the Tenant moved into the rental unit in September 2017; however, they signed a fixed term tenancy agreement on March 1, 2019, which was to run to March 30, 2020. They agreed that the Tenant paid a monthly rent of \$1,505.00 at the end of the tenancy, due on the 30<sup>th</sup> day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$382.50 and no pet damage deposit. The Parties agreed that the Landlord still holds the Tenant's security deposit.

The Tenant submitted a monetary order worksheet with the following claims:

	Receipt/Estimate From	For	Amount
1		Rent for February 2019	\$765.00
2		Rent for March, April 2019	\$1,530.00
3		Rent – May to August 2019	\$3,060.00
4		Rent Sept – Jan 2020	\$3,825.00
5	Hospital bill having gone to collections	Mental Anguish	?? [did not know how much to claim]
6	Important mail delivered late	Mental Anguish	?? [did not know how much to claim]
7	Security deposit not returned	Security deposit	\$382.50
8	Recovery of FF	Application filing fee	\$100.00
		<b>Total monetary order claim</b>	<b>\$9,662.50+</b>

The Tenant's claims are divided into three main issues: noise, mail delivery, and heat. I will present and analyze the evidence before me in these categories.

### **Loss of Quiet Enjoyment from Noise**

The Tenant said that when she moved in, it seemed like a nice place to live. She said the Landlord lived alone upstairs. She said that a year went by, and she was surprised that after he was on a trip, the Landlord brought back a wife and a 9-year-old child. The Tenant said that the kind of noises she heard from upstairs made her very

uncomfortable and disturbed her quiet enjoyment of the rental unit.

In the hearing, the Tenant said:

I didn't know what was happening. I was extremely uncomfortable. There were constant, disturbing noises from upstairs that would wake me up in the evening and in the morning.

Before I moved in, I wanted to live stress free in a reasonable place that was reasonably quiet. The Landlord had assured me it was, so I was shocked when these things started happening. I felt very stressed.

I talked to my neighbours [in the residential property] who were all hearing the noise. I called the non-emergency police number and they said to call 911, so I called the police. It was very uncomfortable, and I had to write to the Landlord to ask him to please stop with these noises. I thought by calling the police that things would stop, but they didn't. I had to call the police [as recently as] on January 28.

I'm asking for this amount of money, because I wouldn't have moved in, if I knew I would have to deal with these noises from upstairs. My main concern was loss of quiet enjoyment [of the rental unit]. The noise sounded like domestic abuse. I would hear it mostly from the young boy who lived there. Bodies were hitting the floor, getting slapped around constantly. The sound of bodies hitting the floor was quite disturbing.

In response, the Landlord said:

I have given you a letter that will show the facts. I have clearly explained what happened in my home and what was going on there. I will just say, once my wife arrived, she arrived in February 2019; in the third week of March, she got sick and severely ill, and she was so ill that it is a unique disease. In the third week in March, she had severe pain, and she was one night falling on the floor and crying, because of the big pain. After [her son] heard her crying, he is crying, I am crying, it was so miserable. I called an ambulance and I saw the police in my home. They checked my wife and took her to the hospital. From that night, my wife has lost her previous memories – she cannot remember her previous life.

I submitted four doctors' letters from [local hospitals, doctors, and community

centers]. Those letters have updated [the Tenant]. I have told her about my wife. And also, I asked her if you feel any disturbance. She never complained, neither she nor her roommate. From time to time I asked her and updated her about my wife. She is in this kind of institution. I updated all the tenants. It is an institution.

I have a 9-year-old boy who saw his Mom in institutions, and three times the ambulance has come to my home. I was so surprised that this is what people say – we are all human beings. My wife is so sick and after disclosing, sharing this, people are having a case against me for their money. I always updated them about the situation of my wife... it happened three or four times. [The Tenant] was living here from 2017, still she left on January 31 [2020]. Until that time I have never heard from her.

Tenant has called the police; I talked to her after the incident happened. Today I am here – it is an act of God. She is sick. When the doctors checked her, her hands and legs are severely in pain. Doctors found no cause of the pain of her hands and legs. A wrong signal coming out of her brain.

The Tenant responded:

I don't deny it all. I'm sorry his partner did go through that turmoil, but he had moved these people in and told me months after the fact, after there was constant noise. Perhaps that was her having a seizure, but I was hearing a very clear, massive smack and then this young boy crying profusely and yelling from the woman at the boy. Not only abuse from his side, but also the wife's side to the boy. I know the other tenants in the other units were hearing the same thing. I didn't say anything to him, because I felt extremely uncomfortable and unsafe bringing it up.

The Landlord said that talking about slapping children is "totally absurd." He said:

As I mentioned, in the morning, the boy doesn't want to go to school, he wants to play or sleep more. Whatever she said is absolutely wrong. There was one time in the night time, my son was watching TV and it was a little loud. Still she got some sound and she knocked on the door, and immediately we closed it. We went down and explained to her that this is what is happening, and it will never happen again. Mostly, it happens for two to three days, we try to control it. It is discipline and it doesn't make any sound.

The Tenant's witness, C.S., said she had been a neighbouring tenant in the residential property. She said:

The slapping I heard was on the weekends. I banged on his door when the television was loud. There was a slap and a scream. [The Landlord] came down and said he was quietly watching television. He told his son to say that. The police came and he said he was disciplining his child.

**Delayed Delivery of Mail**

The Tenant said that she was in an accident in September 2018. She said she had moved in to the rental unit in September 2017. She said:

I was hit by a motor bike and was in hospital in Ontario. I had an adjuster handling the claim; he said he was taking care of it. A hospital bill came; I'm not sure when it was sent. [As tenants,] we did not have a mail box, and I always trusted the Landlord to give me the mail on time. Sometimes packages would come, and I would have to talk to the Landlord about them. He would say, I have got it and then he would come by my door. All mail went to his mail slot.

He left to travel in late December [2018]. He received my hospital bill, which said if you don't pay this, it will go to collections. He went away for a month. I received that bill in mid-March [2019]. It did go to collections, at which point, I was feeling quite stressed out. Because of this, I asked to have a [separate] mail box, but he never put one out.

I started receiving other bills late; I was getting behind on monthly payments. What are they talking about? Finally, by the end of when things were getting bad, there was animosity, the Landlord decided to put out a mail box after the fact, at the end of the tenancy.

I didn't know what that [inconvenience] would be worth. I put that in [the monetary order worksheet] to let you know how much the bill was. The Adjuster has sorted it out, but I want some compensation for it having had it go to collections.

The Landlord referred to his submission, in which he commented on the Tenant's claim for compensation, due to mail delivery in the residential property. In that letter, the Landlord said that whenever he goes away, he keeps a separate mail box for tenants.

He said that the Tenant's bills were received by her on time.

In the hearing, the Landlord said:

I have no contract with her that I have to deliver her letter to her home. Whenever they used to ask me if they had any letters or not and sometimes when they are not asking, I used to deliver to their home. Whenever they have something they are having delivered, I would knock on their door and give to them. Whenever it is coming to me, immediately it is coming to them.

All the mail has been delivered. I have not got anything in my hand. Everything has been delivered. It was given to them on time. If she is saying I have not delivered her letter it is not right. If she's doing her job or something – there is a mail box outside and letters were there in that mailbox. Even in February [2020], I can see her mail still in the box.

The box was left there last year in middle of January, the second week of January [2020], so that the post man can put the letters there. The letters – whatever is there, she has to collect her own letters.

The collection of mail is a courtesy.

No complaint from any other tenant. Even from [the Tenant], I have not heard anything before this January. She never complained that she has not given her any mail on time. She is trying to make my life more stressful.

The Tenant said that she asked the Landlord for a separate mailbox twice. She said he did put out a separate box for mail temporarily when he went away in January 2019; however, she said the Landlord had received the hospital bill before then, but failed to give it to her.

The Tenant's witness, L.N., testified at that point. She said she lived in the residential property from March 1, 2019, to December 31, 2019, but paid rent for January 2020. L.N. said in the hearing:

If I got mail, I usually had to contact the Landlord to get it to me. I had to do it almost all the time. I am new in the country, so it was like Amazon orders. It wasn't mail from a hospital. If the mail was there, I had to ask if I can I come in to take it.

I didn't ask for a separate mail box. While I was there, he never had the separate mail box; he just installed it in the end of December 2019. He didn't go away when I was living there.

The Landlord responded to N.H.'s comments, saying that she orders a lot of stuff through Amazon and other things. He said: "Whenever she orders materials, she used to call me and ask if I received it or not. Whenever I got it, I said yes, I received it. Whenever the mail comes, if she doesn't ask me, I used to say that I got a package for you and I give it to her. I call her and sometimes she calls, 'did you receive it?'"

The Tenant's witness, C.S., said she was a tenant at the residential property from September 2019 to January 2020. C.S. said in the hearing:

There was a problem with mail. When he first told me that he would slip my mail under my door, it was a little weird. One instance, I found out that my parcel had been delivered. I called the Landlord, and asked 'do you have a package?' He said to come pick it up later. 'I'm not available', but the Tenant said he's home. I went to his front door and got it.

C.S. said that she once received two letters, one from ICBC. She said: "They were dated five days apart; maybe they arrived earlier, and I hadn't gotten them. He would slip my rent receipt under the door, approximately a month late every time. It was three weeks before I left in January 2020, that he set up a temporary mail box next to his door."

The Landlord said: "As far as the mail – any time mail comes, we slide it in through the door, and even her parcel, I would hand it over to her by hand. When I see her name, I say you have a parcel."

### **Provision of Heat**

The Tenant said that the heat was supposed to be included in the rent, but that it was often cold in the rental unit. She said she did not have access to the main thermostat and that the Landlord did not always have it on when necessary.

The Tenant said that the lack of heat she endured was grouped in with her claim for rent repayment for the lack of repairs. The Tenant said:

Heat was supposed to be included in the rent, since I moved in. It was April when



I asked him if I could reduce the rent for no heat on for March. He didn't agree with that. I've constantly been asking him to turn heat on. He said he has a mortgage to pay and taxes to pay and that is why he didn't turn it on.

The Landlord responded to this in the hearing:

Canada is a cold country. It is radiant heating. Once we turn it on the whole house gets heated. We put the heat on, once the house is heated, [the Tenants] open all the windows. So many times I told them not to open the windows. Heat gets dissipated.

They have their own controls. They have their own thermostat. We are getting heated; how come they are not getting heated? Once the main suite is on, they adjust their heat.

The Landlord explained that there is a central control switch in his unit, but if he switches this main switch off, the other units do not have control of their thermostats. He said: "I know what type of heat is comfortable for human beings. We can live in a temperature at 10 degrees – I maintained it from 18 to 21. I never allow the heat to get below from 18 to 21."

The Parties were given the opportunity to make final statements in the hearing. The Tenant said:

I was under the impression that this was going to be a quiet, safe place to live. Not only was there a loss of quiet enjoyment for months, I also had no access to mail - bills went unpaid. I had a lack of heat. At no time were the windows open; it was always freezing. I told him to turn on the heat multiple times.

The Landlord said:

The incident with our son in our house is like 3 – 4 days in total. That has been made a big issue. I would like to say re the heat, I have always maintained the proper heat in the home. They used to keep the door and windows open, see my letter.

Finally, their claim is not justifiable. We are human beings. I have a crisis in my family, my wife is sick. You can go through all my documents, doctor notes. It could happen to anybody in the world. So we were living under one roof, we have

to get along. She has been living in our apartment and has no complaints. My wife has come in February 2019, and it is more than a year, it is more complaints. I had an understanding relationship with her, we are very friendly. I don't know what happened to her and I was really surprised.

I have not done anything wrong to my tenant. I feel they are my family. My best service to them. Letter delivery, comfort, I feel they are my family and that is how I treated my tenants. I told the other girl that [the Tenant] is one of my best tenants. I was surprised to see this kind of thing she has done against me.

### **Security Deposit**

The Parties agreed that the Landlord did not return the Tenant's security deposit of \$382.50. The Landlord's evidence includes a letter he received from the Tenant, in which she gave him her forwarding address and requested the return of the security deposit.

### **Analysis**

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

Before the Parties testified, I let them know how I would be analyzing the evidence presented to me. I told them that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. I said that RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

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

"Test"

### **Loss of Quiet Enjoyment from Noise**

Section 28 of the Act sets out tenants' rights to quiet enjoyment of rental units. Section

28 (b) states: “A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: . . . freedom from unreasonable disturbance.”

RTB Policy Guideline #6 (“PG #6”) states:

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 landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

### **Compensation for Damage or Loss**

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 [Act]. 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.

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.

Given the evidence before me overall, I find that the Landlord's family situation contributed to periodic disturbances of the Tenant's right to quiet enjoyment. With the support of witness statements in the hearing, I find that the Tenant provided sufficient evidence to establish the first two steps of the Test on this matter. I find that the Landlord's evidence does not contradict the Tenant's evidence that there was crying and screaming and "bodies hitting the floor". I find it is consistent with common sense and ordinary human experience that this type of noise would cause a reasonable person to be concerned and disturbed, if it happened periodically. Based on the evidence, I find it more likely than not that it did happen more once or twice, and that the Tenant's right to quiet enjoyment of the rental unit was disturbed.

However, I find there is insufficient evidence before me to determine how often this occurred, such that I could find it reasonable to award the Tenant reimbursement of 50% of her rent payments for a year. I find that the Tenant did not provide sufficient evidence to establish the value of the loss. However, in this set of circumstances, I award the Tenant with a nominal amount of 10% of her rent payments from March 2019 through January 2020, pursuant to RTB Policy Guideline #16. Ten percent of \$1,505.00 rent is \$150.50, which amounts to \$1,655.50 over the course of eleven months. I award the Tenant with **\$1,655.50** from the Landlord for this category of her Application.

### **Delayed Delivery of Mail**

Given the evidence before me overall, I find that it is more likely than not that the Landlord was inconsistent with the delivery of mail to the Tenant. I find that this affected the Tenant's ability to manage her finances, given the delay of mail provision by the Landlord at the residential property.

Section 27(1) of the Act states that a landlord must not terminate or restrict a service or facility if:

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

I find that the provision of mail in this situation equates to an essential service, as set out in section 27(1) and RTB Policy Guideline #22 ("PG #22"). The tenants in the residential property did not have a reasonable substitute for obtaining their mail for the most part in this situation. PG #22 states:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant

I find that the Landlord's restriction of this service affected the Tenant in a material way and that a retroactive reduction in rent is appropriate in the circumstances. While I find that the Tenant did not establish the number of times this occurred, I find that she was unable to rely on consistent provision of her mail in a timely manner. I find this equates to a ten percent reduction in the value of the tenancy, which I find errs on the side of understating the significance of this matter. Pursuant to sections 67 and 62, I award the Tenant with recovery of ten percent of the value of 12 months' rent or **\$1,806.00**.

### **Provision of Heat**

Based on the evidence before me in this matter, I find that the Landlord controlled the heat available to the tenants in a manner that suited his preferred comfort level, but did not allow the tenants in the residential property to choose or manage their level of comfort. Further, although the Tenant denies having left windows open, I find it reasonable that a person would be entitled to open the window for fresh air without the Landlord's permission and without his reproach.

Again, I find that the provision of heat is an essential service that the Landlord restricted in the rental unit, in breach of section 27(1) of the Act and PG #22.

I find this equates to a twenty percent reduction in the value of the tenancy for the months which are typically colder in the location of the rental unit. Pursuant to sections 67 and 62, I award the Tenant with recovery of twenty percent of the value of six months' rent or **\$1,806.00**.

### **Security Deposit**

I find the Tenant provided her forwarding address to the Landlord in writing on January 7, 2020, and that the tenancy ended on January 31, 2020. Section 38(1) of the Act states the following about the relevance of these two dates.

**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.

The Landlord was required to return the \$382.50 security deposit within fifteen days after January 31, 2020, namely by February 15, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that he returned any amount or applied to the RTB to claim against the deposit. Therefore, I find the Landlord failed to comply with his obligations under section 38(1).

Section 38(6) states that "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."

Given that the Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit. I, therefore, grant the Tenant a monetary award of **\$765.00** from the Landlord in regard to this claim in the Application

### Summary

The Tenant is granted the following monetary awards for the respective categories of claim.

	Landlord's Breach	Amount Awarded
1	Quiet enjoyment	\$1,655.50
2	Prompt mail delivery	\$1,806.00

3	Insufficient heat provision	\$1,806.00
4	Double the security deposit	\$765.00
	<b>Total Award</b>	<b>\$6,032.50</b>

The Tenant is largely successful in her Application, as set out above. Given this success, I also award her recovery of the \$100.00 Application filing fee, for a total monetary order of **\$6,132.50** pursuant to section 67 of the Act.

### Conclusion

The Tenant's claim for a monetary order for damage or compensation under the Act is successful in the amount of **\$6,132.50**. The Landlord breached the Tenant's right to quiet enjoyment, he failed to provide essential services under the tenancy agreement and the Act in the form of mail delivery and heat, and he failed to return the Tenant's security deposit pursuant to section 38(1) of the Act. The latter resulted in an award of double the security deposit, pursuant to section 38(6) of the Act.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 19, 2020

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Residential Tenancy Branch