Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, 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 order for damage or compensation under the Act for the Tenant in the amount of $25,650.00, and to recover the $100.00 cost of her Application 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 Landlord, L.M. and N.M., 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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.

In describing the hearing process to the Parties, I advised them 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.

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 periodic tenancy began on July 1, 2014, with a monthly rent at the end of the tenancy of $1,350.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $650.00, and no pet damage deposit.

The Tenant has two monetary claims in her Application, the first for compensation pursuant to sections 49 and 51 of the Act for 12 months' rent. This is based on the Tenant's claim that the Landlord failed to fulfill the stated purpose of the Two Month Notice to End the Tenancy for the Landlord's Use dated March 28, 2019 ("Two Month Notice"), with which he served the Tenant. The Tenant applied for a monetary award of $16,200.00 for this claim.

The Tenant's second request for compensation is because she claims she experienced a loss of quiet enjoyment of the rental unit, due to there having been extensive renovations in the rental unit above her, over the course of her last 12 months of the tenancy. The Tenant applied for a monetary award of $9,450.00 for this claim.

#1 Landlord's Purpose in Ending Tenancy

The Parties agreed that the tenancy ended, because the Landlord served the Tenant with a Two Month Notice. The Parties agreed that the Two Month Notice was signed, dated, and served on the Tenant in person by the Landlord on March 28, 2019, and had an effective vacancy date of May 31, 2019. The ground for the eviction listed on the Two Month Notice was that the rental unit would be occupied by the Landlord or a member of the Landlord's close family.

The Tenant testified that she applied for compensation, because the Landlord did not fulfill the stated purpose on the Two Month Notice. The Tenant said: “As far as I understand, if you evict someone to live in the suite, you must move in within a reasonable amount of time and live there for six months.” She said that the Landlord did not do this.

The Landlord said:

> [The Tenant] moved out. She moved out on May 31, [2019] and I moved into this apartment in June, and I’ve been here ever since. We have no other residence in B.C.
>
> I moved in here in June – yes construction’s been going on, and with some challenges, it’s a small bedroom. We started doing the stairs at the back and front of the building. That took us to the end of October. Then some minor renovations here – major for the bathroom. We changed the cupboards in the kitchen, we rearranged the fridge to fit against the wall. I worked closely with the contractors. We made changes and adjustments as we went along. I took the carpet out, and I did a lot of that work myself. The staircases took a lot of time, at the front and the balcony. That took us to end of November.
>
> The stair renovations had nothing to do with the garden suite. I worked on it through August and September putting in new railings – it takes a lot of work to maintain the decks.
>
> I was going to move in, back in January, but [the Tenant] ended up staying here until the end of May. The first floor was being used, then rented out.
>
> We have a home in Ontario. I’m planning to be out there, but I have another issue with my mother’s health here. I don’t want to leave her. I have been out there a few times; I was out there in August and November and December, but with my mother being here and in ill health. . ..

The Tenant said:

> [The Landlord] wasn’t living in the upstairs suite during the renovations of the main floor suite. Maybe he was staying at his son’s upper suite sometimes. He put a bed mattress in there in 2017. The renovations to the main floor were so

> extensive – they knocked down walls - the contractor fell through the floor [into the rental unit].
>
> In the other dispute for that the Arbitrator said if you're evicting someone to renovate, it's allowed, but it's a different eviction process. [The Landlord] said he moved in and renovated, but he just renovated.

The Tenant submitted photographs of the rental unit she said were taken after she moved out and the Landlord or a family member was supposed to have moved in. She said she took the photographs from October 24, 2019 through November 29, 2019. The photographs include:

- Pieces of wood piled messily on the grass with a tarp covering the it;
- Bathroom gutted down to the studs;
- View from bathroom with studs showing, equipment and cords left throughout;
- Gutted bathroom, tiles, shower, sink gone, looking into living room, carpeting gone;
- View through living room window of gutted kitchen, with studs, debris showing;
- Construction crew member in living room from bathroom window;
- Gutted kitchen; stove in living room;
- Kitchen window covered with paper;
- Construction crew member in living room, and shows strip out of the ceiling;
- Through living room window, showing second bedroom, parts of drywall stripped in living room wall and ceiling, and stripped down to studs in bedroom;
- Main bedroom, with contents indicating it is used as a construction site, not a bedroom – Tenant's comment "he's clearly not living here";
- Main bedroom window covered with paper;
- Main bedroom filled with large bags of carpet pieces and other garbage, rather than furniture;
- New front window that "wasn't there when I lived there";
- View into living room shows refrigerator there, and preparation to put in the new window in the front of the rental unit.

I asked the Landlord if he had a B.C. or an Ontario driver's license. The Landlord said he never changed his driver's licence to British Columbia when he moved here. He said:

> It's only Ontario, because I don't drive here. I use the bus service and my son can pick up stuff for me.

> I never said I lived on the first floor . . .. while doing renovations from the first floor. The other tenants were . . . they got a Notice; I was going to be moving in there and I decided, “why not do renovation? I wasn’t planning to do it, but the plan was not to do renos. This floor here was not going to take major renovations, but after we gutted the bathroom, because of water damage. We thought, we’re planning to stay there for many, many years to come. I renovated, because I don’t like carpet and then found the water damage.

#2 Loss of Quiet Enjoyment **– May 2018 → May 2019 @ $9,450.00**

The Tenant said she is asking for a percentage of her rent back, because of the stress she endured living under renovations which were done to the main floor suite. She said:

> He evicted the people above me, and he kicked them out and they were evicted and then he said he was moving in personally, but they just renovated. The people moved out and they renovated the suite for 10 months. – the unit above me. He told them that we’re moving in, but they renovated from February [2018] until at least December [2018]. I lived through renovations above me all that time.
>
> Renovations on the main floor began in February 2018. I was renting out my second room to a student, who moved out mid-May, and I couldn’t re-rent the place out. There was construction going on upstairs, heavy tools on the floor, no sound blanketing, just raw tools going. They didn’t know how long the renovations would be going for; my roommate was irate. I wanted to figure out a discount and give it to her going forward. My roommate would study and be staying at hotels on weekends. She moved out mid-May.
>
> A contractor fell through a hole in the ceiling. They didn’t come down and do the repairs from when he fell through – just left it in a mess.
>
> At the end of November/beginning of December they finished painting. My brother came and stayed in it when I was in hospital for a workplace accident.
>
> Basically, I travelled with the film I was on and lived in a hotel and travelled for a couple weeks. I was more than accommodating – they had a key to my place. The home problems weren’t a problem with my workplace injury. But someone walked into me again. When I came out of hospital needing peace in my house. It didn’t last, and I still didn’t have the ability to get a roommate.

From Canadian Thanksgiving on, they said they were going to be replacing the windows. Got a call from [L.] while I was in Toronto, saying the windows hadn't been put in, that there was a problem with rot in the walls; they had to replace that first.

When I came home there was plywood instead of a wall and instead of a window. My furniture was plunked in the corner. Dirt and glass everywhere . . . if they were going to be evicting me, it would have been better to move out, while they were putting the windows in…. Six weeks with no windows, no wall, and rain would come in by the gaps.

They kept plywood up. Eventually, jimmy- rigged the frosted window in the living room. Clearly, they were going to be moving in – they were going to paint the living room beige, same as upstairs . . but I said 'no, my walls are white.' They were pretending I was still going to be living there.

We had a great relationship for a long time, but when this renovation happened – October to November, for six weeks my living room was out of doors. I didn't stay there. They were in the backyard and using my unit as a workspace. Every weekend, I would clean up the rusted nails, broken wood, sawdust and then I'd garden. And then on Monday they would come back, put their tools on my table. The carpenter was rude. I asked him to hold off using circular saw until my dog and I have gone for a walk, but he wouldn't.

By October 6, 2019, the suite was gutted – a hole in the ground – no sink, no bathroom, carpet ripped out. This was five months after my eviction. So basically. . . he said he started doing water repairs in November, but photos show the entire living room and kitchen were gutted down to the studs.

What I personally endured from February through December was people falling through my ceiling, water coming through the floor, my roommate moved out mid-May, because there were power tools going all the time and the floor was buckling above her bed. She was trying to study. I lost that income.

The Landlord, M.M., said:

I was living here most of that time at [my son's] apartment with him. First, the contractors we had worked from 10:00 a.m. to 5:00 p.m. – no early morning noise. It took longer to get the job done, given the shorter days. They did

accommodate. The windows didn't take us two months to get them in. We put double pane windows in.

The back yard was a common area and they had to do the sawing in that area. In the house when . . I know we tried to keep it as clean as they could. The first floor reno., that was a whole different situation.

[Our son] was living in a third apartment in the top. I lived with [our son] and then on the first floor for a period of time and then in the garden suite. [Our son] lives in the top floor; we're renting out the first floor and have been for the last couple months. I lived in the first floor from December 2018 until May 2019, but the garden suite is where we wanted to be in the long term.

The Landlord, L.M., said:

When the construction was done on the main floor, [the Tenant] never indicated a problem with her living there. They were being accommodating there. Her brother was there in August, they were quite happy with the place, had a little baby with them. They were in the back yard – it was there for her to use, but it was not indicated for her personal use. [Our son] said he never had a problem with the construction going on. We tried to accommodate [the Tenant] in every way we could. She stayed there in November. I didn't charge her rent for that month.

We were going to move in there, but we had extensive renovations to do, and the costs were very high. So, in the economic sense, we couldn't afford to live there, so we could get more rent for the main floor. Our first intentions were to move in, but for economic sense.... And I prefer being in the garden suite to walk out to the garden. Our intent is to stay there. [M.] has been there.

M.M. said:

I lived in garden suite most of the time … The bathroom wasn't operational, but I've lived in this suite. When I needed the bathroom, I'd go up to [our son's] in the third apartment in the top. I lived with [our son] and then on the first floor for period of time and then in the garden suite. [Our son] lives in the top floor; we're renting out the first floor, and have been for the last couple months. I lived in the first floor from December 2018 until May 2019, but the garden suite is where we wanted to be in the long term.

I would go to [our son's] to take a shower in the evening. Other than that, it was really just the bathroom and the kitchen cupboards, and another window out front. I took the carpets out and we put in a wood floor and a tile floor in the kitchen.

The Tenant said:

The back yard was my sanctuary and I garden back there. I had emails to [L.M.], but when I came home and was in recovery mode and on disability, there was construction. When I'm working 14-hour days, the power was off, and the water was off, and [their son] would sort it out. But when I was in need of a sanctuary, I didn't have it.

See my videos of the construction crew in my space. The lease that [M.M.] put in for the upstairs tenant that he blacked out, it looks like it began February 22, 2020, so [M.M.] was in the main level suite from September to February, while I was living there.

Basically, it had no bathroom. It wasn't like the walls were not there – no sink, no bathroom, no toilet, it was a major renovation.

The evidence from before of what I endured is in the previous claim, and they have the evidence, and it's not anything they don't know. This is all wrong – there were giant holes through my ceiling. They started renovating my suite, while they dropped stuff in my suite. I offered them more rent because I loved that suite. I know they can ask for the suite. Once I was further along in my career, I could pay more. He said 'no, I'm absolutely moving in there.'

I don't have my own apartment. I'm not autonomous. Things change, but it's been dishonest, and it's like the whole reason this law exists is so that situation like this doesn't occur. It's a shame.

The Landlord, M.M., said:

Quick comments. I'd just like to say I had no other intention than using the garden suite…. This residence makes perfect sense from a location perspective. I will be 75 this year, and I'm hoping to be able to retire in not too many years. I do my consulting in a green economy. Like many, Covid has had an impact on my income for the last few months. Now I'm down to 3 to 4 days of consulting per month, versus formerly 4 to 5 day a week consulting.

The Landlord, L.M., said:

> I just wanted to say, I'm sorry [the Tenant] feels the way she did, because she never indicated that to me, while they were doing the apartment. You didn't indicate . . . [the Tenant cut in and said 'yes I did'.] We want to be close to [our son], who works for [a utilities company]. That's why we want to be here.

Analysis

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

#1 Landlord's Purpose in Ending Tenancy

I have before me evidence from both Parties with opposing versions of events, in terms of whether the Landlord lived in the rental unit or not. Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 51(2) states that a landlord must pay the tenant:

> …an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:
>
> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
>
> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As explained in Policy Guideline 50 ("PG #50"):

> Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section

> 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.
>
> This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.
>
> [emphasis added]

The Landlord has provided some testimony that he lived in the rental unit at some time during the six months after the Tenant was evicted. However, the Tenant submitted photographs of the condition of the rental unit after she moved out, which show that the unit appeared to have been gutted for renovations. There was no usable bathroom, the bedroom was filled with construction debris, the appliances were out of the kitchen. A construction worker was seen in the unit on different occasions. I find that the Landlord did not provide sufficient evidence that he was living in the rental unit after evicting the Tenant. Rather, I find that the Landlord was renovating the rental unit. He claims that the renovations were done so that the Landlord and his wife could move into this unit; however, he did not provide sufficient evidence that this occurred within a reasonable time after the Tenant was evicted pursuant to the Two Month Notice.

The legislation and Policy Guidelines refer to the landlord or a close family member living in the rental unit for “at least” six months. An online search of the definition of “at least” leads to results of: “not less than; at the minimum” or “not less than” and “more than”.

Further, I find from the Act and PG #50, that the intent of section 49(3) is for a landlord or a close family member to move into the rental unit for more than just the six months noted in the Policy Guideline. Section 49(3) of the Act states:

> (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
>
> [emphasis added]

Policy Guideline #2A, “Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member” states:

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

. . .

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months **and** that they have no other ulterior motive.

[emphasis added]

I find that the intent is not that a landlord must stay in a rental unit periodically for six months and then vacate it (newly renovated), to re-rent it for a higher rate. This is what the Act is trying to prevent landlords from doing.

The undisputed evidence before me is that the Landlord evicted the tenant who lived in the main suite for the same reason that he evicted the Tenant from the garden suite. However, the Landlord renovated the main suite and then rented it out to a new tenant. This behaviour is consistent with what the Tenant says the Landlord is doing with her rental unit. This is further supported by the photographs the Tenant took of the rental unit during October and November 2019. I find from these photographs that the Landlord conducted a major renovation, rather than moving into the unit as a new residence.

Further, the Landlord maintains a residence in Ontario and acknowledges that he lived in that residence periodically in the year following the eviction. The Landlord and his wife indicated that their long-term goal is to move into the residential property; however, there is no evidence before me that they have sold their Ontario home or consider it anything other than their primary residence.

The Landlord acknowledged that he did not change his driver's licence from Ontario to British Columbia. The Insurance Corporation of British Columbia requires people moving to B.C. to switch to a British Columbia driver's license within 90 days of moving here. I find this reveals the Landlord's intention in terms of where he considers home.

When I consider all the evidence before me overall, I find it more likely than not that the Landlord did not intend to, and did not move into the rental unit after the Tenant vacated it. The Landlord did not provide sufficient evidence that he or a member of his close family lived in the rental unit for any length of time after the Tenant was evicted.

I find on a balance of probabilities that the Landlord breached sections 49 and 51 of the Act, by not having a good faith intention for him or his close family member to occupy the rental unit within a reasonable time after the end of the tenancy. I find that the Landlord may have stayed in the rental unit on occasion and temporarily for the purpose of doing renovations there; however, I find that the Landlord did not accomplish the stated purpose for ending the tenancy in good faith.

I, therefore, award the Tenant twelve times the rent of $1,350.00 or **$16,200.00**, pursuant to sections 51(2) and 67 of the Act.

#2 Loss of Quiet Enjoyment

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

I accept that during the renovation of the main floor, there were times where services or facilities were interrupted, such as access to power and water; however, the Tenant said that the Landlord's son would deal with these matters when they arose. I find that these interruptions were temporary in nature and not intended by the Landlord to be a permanent withdrawal or restriction of those services.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference." [emphasis added]

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.
>
> **. . .**
>
> **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 RTA and section 60 of the MHPTA (see Policy Guideline 16). 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.
>
> [emphasis added]

I find that the Tenant was subject to months of noise and disruption, including having someone fall through her ceiling into the rental unit and losing her studious tenant, because of the disruption.

The Tenant said the construction on the main floor took place from February 2018 through December 2018. She also said that her rental unit was disrupted by the Landlord installing new windows, including blocking off the windows with plywood for a phase, which would have darkened the rental unit. She said: “My furniture was plunked in the corner. Dirt and glass everywhere **. . .”.** The Tenant said she was without windows and complete walls for six weeks, leading to rain coming in the gaps. She said for six weeks, her “living room was out of doors.” She said as a result, she did not stay there for this time. The Landlord said they gave her free rent for November 2018, as a result.

I also find that the Tenant was not present in the rental unit for the entire duration of the renovation upstairs. The Tenant said she was in the hospital on at least one occasion, she was away at work for a phase, she was in Toronto for a phase, and her brother and his family lived in the rental unit in August 2018. I find these absences decrease the time in which the Tenant can reasonably claim to have been affected by the construction noise, dust, tools, and debris, except for November 2018, when she could not live there, as a result of the window replacement.

Based on the evidence before me overall, I find that the Tenant suffered a substantial interference in her quiet enjoyment of the rental unit and the common area, which was

directly caused by the Landlord's renovations to the main floor of the residential property, as well as installation of windows into the rental unit.

I accept the Landlord's evidence that they took some steps to reduce the impact of the renovations on the Tenant, by not allowing work to be done outside the hours of 10:00 a.m. to 5:00 p.m.; however, I find this also meant that the Tenant and her studying roommate had to listen to the construction noise and put up with the yard being part of the construction site, rather than a place for peace and relaxation, for approximately seven hours a day. Further, the Tenant said that she had to clean up the backyard on weekends, given the rusted nails, broken wood and sawdust.

PG #6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises; however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find that the Landlord made some effort, but not "every effort" to minimize disruption to the Tenant in completing the renovations. Accordingly, I find that the Tenant is entitled to compensation for the inescapable disruption to her quiet enjoyment of the rental unit for eleven months. I find that the main floor renovations began in February 2018. In May 2018, the Tenant's roommate moved out, because of the ongoing construction noise, thereby depriving the Tenant of rental income.

I find it reasonable in these circumstances, based on the evidence before me, overall, to award the Tenant with a 40% reduction in her rent for eleven months from February through December 2018. The Tenant paid $1,350.00 in rent, and 40% of this is $540.00 over eleven months is $5,940.00. I award the Tenant with recovery of **$5,940.00** for the Landlord's breach of the Tenant's right to quiet enjoyment of the rental unit, pursuant to sections 28 and 67 of the Act.

The Tenant is also awarded recovery of the cost of her $100.00 Application filing fee.

The Tenant is granted a monetary order for the compensation awarded pursuant to this Application in the amount of **$22,240.00**.

Conclusion

The Tenant's claim for recovery of 12 times the monthly rent is successful in the

amount of $16,200.00. I find that the Landlord did not provide sufficient evidence to prove on a balance of probabilities that the Landlord or a close family member occupied the rental unit for at least six months starting at a reasonable time after the eviction – the purpose of the Two Month Notice.

The Tenant is also awarded recovery of $5,940.00 for the Landlord's violation of section 28 of the Act, as the Landlord breached the Tenant's right to quiet enjoyment of the rental unit. The Tenant is also awarded recovery of the cost of her $100.00 Application filing fee.

I, therefore, grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$22,240.00**.

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: June 18, 2020

Residential Tenancy Branch