



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 9, 2020, May 21, 2020, July 13, 2020, and August 20, 2020, by conference call. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for damage or loss under the Act.

The Landlord (agents of) and the Tenant (as well as her advocates and therapist) were present at all hearings.

The Landlord confirmed receipt of the Tenant's application and evidence package, and although they initially stated they did not get enough time to respond to it prior to the first hearing on March 9, 2020, this issue is now moot, since the Landlord has since been given additional opportunity to prepare a response. I find the Landlord has been sufficiently served with the Tenant's application and evidence.

The Tenant confirmed that she received all of the Landlord's evidence packages (One prior to the first hearing, and the most recent one on June 19, 2020, via email, and did not take issue with the service of these packages. I find the Landlord sufficiently served the Tenant with their evidence for the purposes of this proceeding.

Both parties were provided the 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 compensation for damage or loss under the Act?

Background and Evidence

General Background Information

Both parties agree that:

- monthly rent is currently \$379.00 and is due on the first of the month.
- The Landlord holds a security deposit in the amount of \$278.50.
- The Tenant moved in on March 15, 2005 and continues to reside in the building.

General summary of claim

The Tenant initially listed on her application that she was seeking \$27,153.23. However, in the hearing, she asked to remove part of her claim (for dental expenses). The Tenant clarified that she is only seeking \$23,714.23 for the following items:

- 1) \$6,499.85 – Loss of Quiet Enjoyment – April 2015 until July 2019
- 2) \$134.38 – Printer Toner
- 3) \$4,080.00 – Counselling services
- 4) \$13,000.00 – Aggravated damages

The above 4 items will be further detailed below. The Tenant explained that her claim is rooted in several issues. More specifically, she stated that she suffered physical assaults and harassment from one of the other occupants in the building referred to as “HF” in this Decision. The Tenant stated that the most “egregious” incident was in March of 2015, although the incidents continued to occur afterwards to varying degrees in and around the rental building. The Tenant also stated that she suffered a “profound” loss of quiet enjoyment in years following her initial assault, due to the Landlord not taking sufficient action to stop or evict HF (who was also a tenant in the building for most of the time). The Tenant also explained that due to the Landlord’s inactions regarding HF, she suffered aggravated damages, as the ongoing issues took an emotional, physical, and psychological toll on her. The Tenant feels the lack of institutional action against HF emboldened him for many years, impeded her ability to obtain help from police, caused her to lose respect from others and lowered her self esteem. The Tenant also explained

that she suffered immense anxiety and depression over the years, due to ongoing fear of further assaults as she would come and go from her rental unit. The Tenant explained that she engaged several levels of government, with limited success, and also sought counselling over the years, which cost her thousands of dollars. The Tenant stated that this speaks to her attempts to mitigate the damage and loss that she endured.

Tenant's submission and evidence

The Tenant provided written submissions and verbal testimony to explain the following situations that occurred:

- The Tenant was sexually assaulted by another occupant (HF) in the building numerous times since 2015.
- The first assault was in March 2015 when she was sitting in the lobby of the building. She was approached by HF proceeded to put his arm around her, and put his hand on her crotch and chest, in aggressive, inappropriate ways. At this time, the Tenant said that HF told her that he would “give her a good licking” because he could “not get it up anymore”. HF made gestures with his tongue and squeezed the Tenant’s breast.
- The Tenant verbally reported this incident to the building manager and the Tenant stated she was told the Landlord would follow up with police. However, the Landlord stated they advised the Tenant to follow up with police. Eventually, the Tenant reported this incident to the police department, in writing, after a significant period of time had lapsed. The Tenant stated she was interviewed by the police but HF was not charged.
- HF continued to reside in the building, and the Tenant did her best to prevent interaction with him.
- The Tenant was largely successful in avoiding HF for the next 2 years, until March 17, 2017, when the Tenant was in the elevator. At that time, HF blocked the Tenant into the elevator, and made sucking noises while rubbing his stomach. The Tenant provided a copy of an email she sent to the Landlord the same day it occurred.
- Again, on June 17, 2017, HF again blocked the Tenant from exiting the 9th floor hallway, while he was shirtless, rubbing his stomach and making kissing noises.
- On August 10, 2017, HF again approached the Tenant in the laundry room when he lunged towards her. The Tenant provided a witness letter from someone who saw this incident.

- On October 21, 2017, the Tenant was walking home from the store, and HF called her profane names, while quickly approaching her. The Tenant reported this to police, as evidenced by documents in her evidence package.
- The Tenant pointed to emails showing she notified the Landlord of the June 2017 and October 2017 incidents. However, the email the Tenant pointed to is dated October 2017, not June 2017.
- After reviewing the police documentation, the Tenant noticed that, following the incident on October 21, 2017, the Landlord had told police that there was no corroborative evidence to substantiate the allegations made by the Tenant.
- The Tenant feels there was a great deal of corroborative evidence, and that HF had a long history of inappropriate behaviour, dating back to June of 2011 (the Tenant pointed to multiple complaint letters in the Landlord's evidence).
- Despite telling the police that there was no "corroborative evidence" to support the Tenant's allegations from the October 2017 incident, the Landlord issued a 1-Month Notice to End Tenancy for Cause (the Notice) on October 26, 2017, to HF because of his inappropriate behaviour with female tenants. HF was issued an order to move out on January 30, 2018, by the Residential Tenancy Branch.
- The Tenant filed a complaint sometime in 2017 with the Police Complaint Commissioner because of the lack of action taken after she reported the sexualized violence.
- In April of 2018, the Tenant saw HF in the laundry room of the building and she informed the Landlord of this. The Landlord confirmed that they never received the keys back from HF when he moved out. Following this, the Landlord was ordered (by the RTB) to take a number of steps to facilitate the key retrieval. A copy of this decision was provided.
- The Tenant stated she believes HF still has keys but noted that he hasn't been coming into the building since around July of 2019, which is around when his female friend in the building moved out.

The Tenant stated that she has a number of physical disabilities and was unable to effectively flee when she was cornered by HF. The Tenant stated she is also unable to find suitable alternative housing, as this is a subsidized unit, in a high-demand housing market. The Tenant stated that as a result of these repeated incidents, her "soul broke" and she has lived in fear over the continual assaults. The Tenant stated that she suffers from significant anxiety, and ongoing fear. The Tenant fears she will run into HF every time she leaves the building and has a "sick feeling inside of her" due to the fear.

The Tenant stated that the Landlord should have taken steps, sooner, to evict HF from the building, and following that, they should have restricted his ability to come back to the building and visit friends.

Previous Hearing – August 2018 – Tenant’s Application to Restrict HF Access to the Building

The Tenant pointed to a decision from a previous hearing held in August of 2018. In that hearing, the Tenant requested the Landlord take action to retrieve the keys and prevent HF from accessing the building, following his eviction. The arbitrator issued the following orders to help prevent HF from coming back into the building:

1. Immediately following receipt of this decision, the landlord shall communicate with HF’s girlfriend for purposes of determining whether she had retrieved the keys from HF and if she has the landlord shall request the keys be returned to the landlord. The landlord shall report back to the tenant to inform her as to whether the landlord was successful in retrieving the keys from HF’s girlfriend.

Should the landlord be unsuccessful in retrieving the keys from HF’s girlfriend, I order the following:

2. The tenant shall contact the landlord when she sees HF at the residential property.
3. Upon receiving the tenant’s communication above, the landlord shall have an agent attend the property and request HF return the keys to the landlord.
4. The landlord shall inform the tenant as to whether the landlord was successful in communicating with HF and whether the keys were retrieve.
5. If the landlord is unable to find or communicate with HF despite the tenant’s communication under order 2, the process shall repeat until such time the landlord makes contact with HF and reports back to the tenant the outcome of the communication with HF.

The Tenant pointed out that although the Landlord cannot “unreasonably” restrict access to the building, they are able to restrict access by some individuals, when it is *reasonable* to do so. The Tenant pointed out that the arbitrator at the previous hearing suggested that it was an option to pursue a ban of HF, but that it would depend on the evidence collected and used to support that ban. The parties were encouraged to work together, and the Tenant was advised to pursue a peace bond against HF.

The Tenant stated that the harm caused by HF has been exacerbated by the Landlord’s inaction and minimization of the impacts. The Tenant provided a letter from her doctor,

who speaks to the impacts on the Tenant. In part, he points out the negative responses by the Landlord added distress because they did not take her seriously. The Tenant also stated, along with her witness and counsellor, that the Landlord knew about HF's behaviour before the Tenant ever had her first incident with him. The Tenant pointed to a note (warning letter) from the Landlord to HF from July 2011, noting inappropriate physical contact based on a separate tenant complaint. The Tenant pointed to a second warning letter from the Landlord to HF from October 2014, where HF was making unwanted sexualized conversation with others in the building.

The Tenant stated that rather than report her incident to the police, the Landlord asked the police to come and provide safety training for female residents in the building around May of 2017.

The Tenant feels the Landlord has placed the responsibility on the female residents to stay safe, rather than holding HF accountable. The Tenant pointed out that the warning letters to HF explained that his tenancy would be at risk if other complaints were received, yet the Landlord failed to take steps to evict HF for years.

The Tenant pointed to a letter from another occupant in the building who stated that she had experienced "continued harassment" by HF for "at least 3 years" before the Tenant on this application pushed for action. That occupant stated that the Landlord informed her it was a police matter, and that they would not do anything further. That occupant stated she never reported the issues to police.

The Tenant stated there is a lack of decisive action taken by the Landlord, in general, and following the attack on the Tenant in March 2017. The Tenant feels that the Landlord damaged the outcomes for her by telling the police there was no corroborative evidence.

The Tenant also feels it is unacceptable that HF was allowed to access the building even after he was evicted. The Tenant stated that this has profoundly impacted her quiet enjoyment.

The Tenant feels she mitigated the issues as best she could and was limited in what she could do because of her physical disabilities (could not move residences). The Tenant also feels she communicated the issues as they happened as best she could. The Tenant further stated that she sought counselling and therapy to help her deal with the trauma. The Tenant has also engaged advocates, medical professionals, and various levels of government to facilitate change. The Tenant stated that she would

always keep an eye out for HF and be on guard for her own safety at all times in common areas.

As a result of the Tenant's loss of quiet enjoyment, she is seeking a 35% rent reduction for the April 2015 until July 2019, in the amount of \$6,499.00. This is \$379.00 x 35% over approximately 49 months.

Aggravated Damages

The Tenant is also seeking aggravated damages due to the years of suffering she endured from the Landlord's negligence, and inaction. The Tenant stated she suffered greatly because the Landlord did not take her reports of sexualized violence seriously, despite the various complaints of harmful behaviour towards women by HF.

The Tenant provided statements and evidence from her counsellor, who has corroborated the impact on the Tenant's emotional wellbeing. The Tenant's counsellor and also her doctor stated that due to the inaction of the landlord, the Tenant experienced much greater harm than would have otherwise occurred if the Landlord had acted promptly.

The Tenant pointed to the fact that the Landlord told police that there was no corroborative evidence to support the Tenant's allegations, yet shortly after this, the Landlord issued a Notice to End Tenancy to HF, due to his actions. The Tenant feels these types of statements made by the Landlord to the police diminished her credibility.

The Tenant further stated that even after the Landlord pursued eviction against HF, they failed to take reasonable steps to ensure the Tenant was safe from his continued harassment. The Tenant stated she felt hopelessness, isolation, and indignity, and frequently contemplated ending her life. The Tenant feels the emotional impact has been extreme and requests \$13,000.00 for aggravated damages.

The Tenant provided numerous letters of support from mental health workers, advocates, medical staff, and friends to corroborate the events that occurred, and the impacts it had on her.

The Tenant provided a written statement from her counsellor (who also attended the hearing as a witness), to list the sessions she had with the Tenant from July 2017 until May 2018. The price on that list was \$30.00 per session, and there were 23 sessions listed on that sheet. No further list or account of the sessions was provided, aside from

the counsellor stating in the hearing that the Tenant has spent well above \$4,000.00 in total. The Tenant is seeking \$4,080.00 to cover some of her counselling costs but did not provide any indication how this amount was calculated or arrived at.

The Tenant provided copies of police reports she filed dating back to March 2017. It appears the Tenant, in 2017, reported several incidents, including the most egregious incident in March 2015, where HF molested her, and assaulted her in the lobby. The Tenant also explained to police another incident in the summer of 2015, an incident in the elevator March 21, 2017, an incident at the laundry area on June 27, 2017, and a few others since that time. In some of these police reports, the officers note that the Landlord felt there was insufficient corroborative evidence to substantiate an eviction of HF.

Landlord's submission and evidence

The Landlord stated that they feel they have responded to all incident reports appropriately, and they take this issue seriously. The Landlord stated that they have tried to balance the needs of all Tenants. The Landlord pointed out the challenges of taking action against Tenants when there is a spotted, inconsistent and often poorly documented written record, spanning many years. The Landlord stated they generally require formalized complaints, in writing, and proper reports in order to take affirmative action. The Landlord explained that the written reports they received were often years apart, and it is difficult to take action based on a conversation or verbal complaint.

The Landlord reiterated several times that the Tenant only told them part of the story, and often much after the fact, which further impeded their ability to take action against HF in a timely and effective manner. The Landlord took issue with the differing dates and facts in the Tenant's reports, and also that she only made the incident from March 2015 clear after the hearing was underway for HF's eviction (more than 2 years later). For example, the Landlord tried to make it clear that they want complaints in writing, and despite making this known to the Tenant, they did not get anything in writing from the Tenant from the March 2015 incident for years (although they were told verbally regarding part of it).

The Landlord stated that they encouraged other victims of HF to come forward, but nothing formal was received until around November of 2017. Just prior to this, the Landlord decided to pursue eviction of HF because they believed they would have enough to support the end of the tenancy for cause based on the police officer

testimony. The Landlord stated that they were successful in ending the tenancy of HF around March 2018, but he did not give his keys back.

The Landlord stated they had no real way to get the keys back, and rekeying the building was not a viable option because HF was friends with others in the building, and access was difficult to control. The Landlord stated they cannot restrict the guests of other Tenants and can only try to hold Tenants accountable for their guests, if there is verifiable evidence showing their guests have created a disturbance.

The Landlord stated they offered the Tenant space in an alternative building to help her feel safe.

Landlord's Evidence and Testimony Regarding the General Timeline

The Landlord explained that HF moved into the building around the same time as the tenant/applicant, which was in 2005. The Landlord explained that they did not see any written complaints or reports until June 2011, when someone named DW reported that HF accosted another occupant of the building. Another undated letter was provided by LA speaking to HF's inappropriate sexual behaviour towards others. Evidence was also presented by the Landlord showing that HF was suffering from cognitive decline and poor psychological and emotional wellbeing.

The Landlord provided a copy of a letter which they wrote to HF, in July 2011, whereby they told him that others had complained about his inappropriate physical contact. The Landlord explained to HF at that time via a warning letter, that the police would be involved and his tenancy would be in jeopardy if another written report was received.

The Landlord provided a copy of a letter written to them, by the Tenant, dated September 27, 2014, whereby she reported being verbally assaulted by HF. Following this incident, the Landlord issued a warning to HF, noting that he had made sexual comments to other tenants and that it needed to stop. The Landlord again warned HF that he could be evicted if the issue continues.

The Landlord stated that the Tenant informed them verbally in March of 2015 of a sexually inappropriate incident, whereby HF had made advances on the Tenant. The Landlord stated that they were not made aware of any physical attack or assault, and were not privy to the exact details of the incident in March 2015. The Landlord explained that they told the Tenant to submit a written complaint and also to report the incident to the police. The Landlord stated that they never received any formal written complaint

from the Tenant in March of 2015, at the time she alleges the physical assault occurred, which is partly why no warning letter or action was taken at that time.

The Landlord provided a copy of an email from the Tenant dated March 17, 2017, whereby the Tenant referred to the incident of March 2015 and to a new incident. In the email the Tenant stated that HF had once again harassed her by blocking her into the elevator and cornering her. In that email, the Tenant also referred to being molested two years prior. The Landlord stated they were unaware of the physical aspect of the assault in March 2015, until it was put in writing in this email in March of 2017. The Landlord also provided a copy of a written letter from the Tenant, dated around March 21, 2017, which detailed the incident of March 2015 (physical assault), as well as the incident from March 21, 2017 (elevator incident).

The Landlord provided a response via email to the Tenant, expressing that police involvement could expedite any potential remedies and that they would be willing to support the Tenant if she went to the police. The Landlord stated that they offered to follow up with the community police officer.

The Landlord provided a copy of a letter they wrote to HF, dated April 5, 2017, whereby they warned him about the complaints they had received about him blocking a female from leaving the elevator and being intimidating. The Landlord again warned HF that continued inappropriate behaviour could result in eviction.

The Landlord explained that in June of 2017, they met with the Tenant in person, and discussed the allegations. The Landlord stated that the Tenant spoke of the assault from March 2015, and that his continued assault is giving her PTSD. The Landlord stated that they contacted the police, and no report was on file from the assault in 2015. The Landlord stated that they offered to meet with any of the women who had incidents to report, regarding HF, and to help formalize the complaints. The Landlord stated that at that time, they suggested that the Tenant seek a transfer, if she is suffering emotionally from being in the building.

The Landlord also provided a copy of an email they received from the Tenant on June 26, 2017, where the Tenant complained that HF was observed shirtless, and was staring at the Tenant, making her feel uncomfortable. The Landlord stated that they spoke with the police and confirmed that they received a report, and that the police should contact them if further action is necessary.

The Landlord provided a copy of an email from the police, dated June 30, 2017, whereby the police determined that there is no evidence of an offence, and that HF is doing his best to avoid the Tenant, and the other complainants. The officer considered the file closed, and that since the Tenant never reported the issue back in 2015 when it occurred, there is no file.

The Landlord noted that the police never felt there was sufficient evidence to press charges and the Landlord feels this supports their belief that they also did not have sufficient evidence to evict HF until later in 2017.

The Landlord provided a copy of an email from the police indicating that they helped set up a meeting/workshop with police and the women in the building, to help with personal safety, around May of 2017.

The Landlord provided a copy of the second written statement from the Tenant, dated June 2017, whereby the Tenant alleges that HF came at her again in the laundry room, and intimidated her by approaching her in an aggressive manner.

The Landlord provided a copy of an email from the Tenant on October 21, 2017, whereby the Tenant alleges that HF yelled at her, from down on the street in a profane manner. The Tenant called the police, who documented the incident.

On October 26, 2017, the Landlord issued HF a 1-Month Notice to End Tenancy for Cause. A hearing was held, regarding that Notice, and HF moved out around the end of February 2018. The Landlord stated that as part of that proceeding, the Tenant provided several letters from others in the building but they were not privy to much of that information at the time of the individual incidents. The Landlord feels they are being expected to take action on complaints, some of which were either received many years later, or not received at all. The Landlord expressed that they prefer to have written documentation, reports, and complaints, prior to taking action in the form of warnings, and evictions.

The Landlord pointed out many different date discrepancies in the Tenant's submissions, the statements from her mental health team, versus dates in what was reported to the Landlord. The Landlord highlighted some of the communications to show that the dates from March 2015 onwards were not particularly clear, and would sometimes conflict. The Landlord felt this impacted the reliability of the Tenant's complaints, and increased their need to have consistent complaints, in writing.

The Landlord provided copies of redacted police reports, showing that the Tenant reported HF's sexually inappropriate behaviour in March of 2017, June 2017, and November 2017. In November 2017, the Tenant had requested a criminal peace bond and followed up to the police with an email in December 2017, stating her desire to have HF charged. The Landlord stated they always tried to support the Tenant in her quest for justice with the police, and even went to the extent of supporting her request for a peace bond.

The Landlord also provided a copy of a letter they wrote (dated April 24, 2018) to one of the Tenants in the building, who was inviting HF over to visit, and he was using his old keys (which he failed to return after he moved out). The Landlord explained that they were not given a forwarding address or a phone number to contact HF, in order to try and get the keys back. In this letter, dated April 24, 2018, the Landlord requested that the friend of HF ask him to return the keys. The Landlord notified the Tenant, via letter on May 8, 2018, that HF has been seen re-entering the building with keys that he failed to return after he moved out.

The Landlord provided a letter from one of their employees, M.D., who stated that when he was speaking with the Tenant on May 16, 2018, regarding HF, he entered the building with his friend who also lives in the building. It was noted that the Tenant left the admin office and walked towards HF, engaged in conversation with him. It was also noted that the employee felt the Tenant "baited" HF.

The Landlord provided several emails showing they had ongoing communication with the local health authority over HF, and his need for mental health help. The Landlord stated that they were aware HF was struggling due to being a marginalized senior, and because he had gone through life events of his own. The Landlord stated they tried to get help for HF in July 2015, and spanning through 2016, and 2017. The Landlord provided copies of emails showing they were trying to get HF help up until around March 2017. The Landlord stated that HF was displaying signs of dementia, declining decision making capacity, and poor judgement.

The Landlord noted that, in part due to the Tenant's request, they assisted in setting up a safety meeting (run by police) for residents in the building. The Landlord assisted in setting this up for May 26, 2017 and provided refreshments.

On August 20, 2018, the Tenant sent the Landlord an email (a copy of which is provided), stating that on May 16, 2018, HF was again in the building, blocking the

entrance, and making “sucking” noises, the same way he did in the past when he was assaulting the Tenant.

The Landlord provided a copy of a letter, dated September 18, 2018, to which they express that HF has continued to enter the building, since his eviction, but since he has been invited in by other Tenants, the Landlord is unable to pursue trespass charges. The Landlord expressed in this letter (sent to police), that they support the Tenant’s request for a peace bond.

The Landlord explained that the police told them the only way to keep HF off the property is if others stopped inviting him in, if he committed a crime, or if he breached a no contact order.

The Landlord feels they always took the complaints seriously, and they pointed out that they evicted two other people living above the Tenant (based on her complaints) for differing reasons. The Landlord stated that the only person to report “sexualized violence” since 2011, was the Tenant.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/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 everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the totality of the Tenant’s application, evidence and testimony, including the testimony from her advocates and her counsellor. I have also carefully considered the Landlord’s evidence and testimony.

I note the Tenant is seeking the following 4 items, totaling \$23,714.23:

- 1) \$6,499.85 – Loss of Quiet Enjoyment – April 2015 until July 2019
- 2) \$134.38 – Printer Toner
- 3) \$4,080.00 – Counselling services
- 4) \$13,000.00 – Aggravated damages

Loss of Quiet Enjoyment

First, I turn to the Tenant's claim for loss of quiet enjoyment. I note that 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.***

[my emphasis]

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 states that:

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 [...]

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

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.

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

I note HF moved into the building about the same time as the Tenant, in 2005. There appears to be complaints from multiple women, over many years regarding HF. Although it appears many of the issues with HF were not clearly and formally articulated to the Landlord in a timely manner, some were. I also accept that there were some date discrepancies regarding the Tenant's allegations and the dates following the March 2015 incident. It does not appear there are substantial or material discrepancies in what was reported prior to March 2015. In any event, the Landlord was clearly aware of HF's questionable behavior, as evidenced by their formal written warnings issued to him in July of 2011, and in September of 2014. Both of these formally documented incidents involved sexually and/or physically inappropriate behavior by HF towards women in the building.

I note the Tenant states she experienced a more egregious sexual assault in March of 2015, where she reported she was molested and attacked by HF in a similar but more overt and aggressive manner. The Landlord acknowledges being told about some of this verbally, but stated that the Tenant was not clear at that time that it was physical in nature. As such, no warning letter was issued by the Landlord at that time. It appears the Tenant was under the impression the Landlord would follow up with police, and the Landlord was under the impression the Tenant would pursue the matter with police.

Ultimately, the Tenant did not submit a written complaint to the Landlord and also HF was not charged by police at that time.

I acknowledge that the Landlord specifically noted that the police didn't find there was sufficient evidence, which influenced their decision to take their own actions, in part. I accept that the police have different evidentiary standards when making determinations regarding whether to press criminal charges against an alleged assailant, or whether to issue a peace bond. Although it is reasonable for the Landlord to expect some amount of police involvement in this type of a situation, and to encourage the Tenant to formally report her concerns to the police, I find the Landlord is still required to take action and uphold their responsibilities under the Residential Tenancy Act, regardless of what is happening criminally. In a civil matter such as this, it is not reasonable to rely on the lack of action regarding police and criminal charges to demonstrate that there also wasn't sufficient evidence to take action under the Act. In other words, the lack of police charges isn't particularly helpful in some regards given the police have different evidentiary standards for filing charges versus what evidence the Landlord would need to take action under the Act.

I accept that HF likely has his own emotional and psychological issues, and is a marginalized senior, which the Landlord was conscious of throughout this protracted incident. The Landlord appears aware that many of the people who reside in their building do not have many alternative options. Despite all of this, the Landlord still has a responsibility to protect the quiet enjoyment of all Tenants in the building, particularly the Tenants who have fallen victim to the sexualized or physical aggression of HF.

I accept that not all of the incidents were properly recorded or reported in writing, and some of the reports had inconsistencies, which made it harder for the Landlord to take decisive, timely action to remove HF from the building. I also accept that many of these incidents occurred over a protracted period of time. However, I find the Landlord should have, and could have done more, sooner, to remove HF from the building. The Landlord was aware of at least two formally documented incidents involving HF and multiple women in the building, prior to the incident of March 2015 (which appears to be the most severe and damaging incident for the Tenant). This is evidenced by the written warnings they issued. I accept that the incident in 2011 was involving another Tenant and HF, whereas the incident in 2014 was with this Tenant and HF. Either way, it was two distinct times where HF was reportedly acting in an inappropriate manner.

Although these formally reported incidents, prior to 2015, were spaced apart by a few years, the Landlord ought to have known by HF's pattern, that simply continuing to

warning him that his tenancy could end, was insufficient to facilitate a sustained behavior change, especially after he received his second warning in 2014. I am not satisfied that continuing to warn someone is the most appropriate method to take, especially given the seriousness of the allegations and the potential for escalation/recurrence. HF clearly demonstrated a tendency to make other women in the building uncomfortable, physically and/or sexually. I find that by failing to take action to end the tenancy of HF after the second formally documented incident in 2014, they compromised the safety, security and quiet enjoyment of many women in the building, going forward. This includes the Tenant on this application.

I accept that the Tenant would have experienced a significant loss of quiet enjoyment due to her ongoing concern that HF would assault her while she was coming and going from the building, using the shared laundry, or using the elevator. I also accept that the incident in March 2015 would have substantially heightened this concern, and the resulting loss of quiet enjoyment, as the Tenant likely had a nagging and perpetual fear of leaving the apartment to enter common spaces, given HF was still in and around the building.

Although the Landlord eventually took steps to evict HF, and he was removed from the premises around March 2018, I find this was too little, too late. I find the degree to which the Tenant's quiet enjoyment was impacted was related to the lack of proactive action to put a stop to HF's behavior. I accept that it was difficult for the Landlord to keep HF out of the building after his tenancy was ended in March 2018, given the lack of peace bond, lack of criminal charges, the fact that he did not leave a contact number, nor did he return his keys after he left. Further, he was friends with others in the building who would let him in up until around July 2019. Despite all of this, I find it more likely than not that the Tenant would not have been as significantly impacted, had there been more swift and severe consequences for HF, earlier on. Therefore, I find that the Landlord is also liable for the loss of quiet enjoyment the Tenant suffered from March 2018 until July 2019 (the period where he returned to the building repeatedly as a guest to others in the building).

Overall, I find the Tenant has sufficiently demonstrated that the Landlord failed to sufficiently protect her right to quiet enjoyment, and I find that, given the nature and extent of the suffering she experienced, she is entitled to a claim for loss of quiet enjoyment. However, I find a more reasonable amount for this is a 25% rent reduction, rather than the claimed amount of 35%, over the material time (April 2015 until July 2019). This amounts to $\$379.00 \times 25\% \times 49 \text{ months} = \$4,642.75$. In making this

determination, I note that although there was likely some underlying anxiety throughout the material time, due to the Tenant's ongoing fear of being cornered by HF, it is clear that there were significant stretches of time where there was little, if any, incidents. I also note that the Tenant exacerbated some of the Landlord's inaction by not always providing timely and consistent *written* complaints.

Aggravated Damages

Next, I turn to the Tenant's claim for aggravated damages, totaling \$13,000.00, due to the years of suffering she endured, following the assault by another tenant in the building.

An arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

I note the Tenant feels the Landlord was negligent, and due to extreme inaction, caused the Tenant to continue suffering by way of repeated assaults from the other tenant (HF). I accept that the Tenant has endured significant mental and emotional pain as a result of the ongoing assaults from a former tenant in the building. The Tenant believes this was exacerbated by the inaction of the Landlord, and even goes on to say that the Landlord's silence, inaction, and subversive behaviours impeded her ability to seek justice and reform through the police and other government bodies.

Having reviewed the totality of the situation, I accept that the Tenant feels the Landlord has been negligent in dealing with her complaints, and adequately dealing with HF in a timely manner. However, I do not find the Landlord's behaviour is sufficiently egregious, high handed, or negligent, such that it warrants aggravated damages.

In making this determination, I note that the Landlord runs a subsidized housing complex which provides housing for vulnerable seniors. Many of these individuals

appear to have varying disabilities, both physical and/or psychological. I accept the undisputed evidence presented by the Landlord showing that HF was suffering from cognitive decline and poor psychological and emotional wellbeing. It appears some of HF's behaviour was socially unacceptable, but not always criminal or dangerous.

The Landlord appears to have engaged with local health authorities to find help for HF, on multiple occasions, over multiple years. The Landlord appears to have attempted to balance his need for housing, against the allegations and the safety concerns. It is clear the Landlord knew of some of the issues going on, but didn't feel that, given the large span of time between written complaints, there was sufficient grounds to end the tenancy until much later than the Tenant had desired.

I note the Landlord, over the years, would issue written warnings to HF, and threaten eviction, if he continued his behaviour. However, it appears this would only be done after a written complain was received, and in hindsight, it appears not all issues were put in writing. In any event, it is clear some action was taken by the Landlord, which shows a good faith intention to address the matter, regardless of how effective it ended up being. As previously mentioned, I find the Landlord could have been more proactive, and taken action sooner. The Landlord has an obligation to maintain a reasonably clean, safe living environment for all tenants, free from unreasonable disturbance.

In this case, the Tenant's quiet enjoyment was certainly impacted by HF and the Landlord's inaction. However, with respect to aggravated damages, I do not find the Landlord's inaction was sufficiently egregious, high handed, negligent or deliberate. I dismiss the Tenant's claim for aggravated damages.

Counselling Fees

Next, I turn to the Tenant's claim for the recovery of the counselling fees she paid since January 2016. I note the Tenant attended and paid for counselling and therapy in order to regain mental wellness in the face of her continual issues with HF over the years, described by the counsellor as follows: "Much of the time, we have been discussing her ability to cope and working with strategies to help her feel safe in her housing situation."

I accept that the Tenant was the victim of several unsolicited and inappropriate sexual encounters with another Tenant in the building. I accept that this would have caused significant emotional and psychological distress, especially given the repeated incidents, and the lack of closure. The Tenant took steps to mitigate the negative

impacts on her wellbeing by seeking this therapy. I accept that this would have come at a significant cost, over the years.

I note that the Tenant failed to provide a detailed account as to how she arrived at the amount of \$4,080.00. I acknowledge that the Tenant's counsellor attended the hearing to state she spent at least that amount in counselling fees.

It seems likely that the Landlord's inaction would likely have contributed to heightened anxiety and distress as she resided in the building with HF, with limited alternative options. As stated above, I find the Landlord failed to take sufficient action to protect the Tenants quiet enjoyment, which is a breach of the Act. However, I note that the Tenant failed to provide a detailed account as to how she arrived at the amount of \$4,080.00. I acknowledge that the Tenant's counsellor attended the hearing to state she spent at least that, but there is only an itemization of some of those fees, and appointments. Ultimately, I find the Tenants has failed to sufficiently demonstrate the value of her loss.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is more appropriate, given the lack of corroborative accounting to demonstrate how her total was calculated. I award a nominal award of \$500.00.

Printing Costs

With respect to the Tenant's request to recover her printing costs, I do not find there is sufficient evidence that the Landlord ought to be responsible for this item. It is not clear how the Tenant arrived at or calculated this amount. I do not find it sufficiently clear how much each page cost, how many pages she had to print, and whether or not the Tenant did any other personal printing with the same printers and materials. Ultimately, I do not find the Tenant had established the value of her loss on this item, and I dismiss it, in full.

In summary, I grant the monetary order based on the following:

Claim	Amount
Loss of Quiet Enjoyment	\$4,642.75
Counselling Fees - nominal	\$500.00
TOTAL:	\$5,142.75

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$5,142.75**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: August 21, 2020

Residential Tenancy Branch