



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, 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 in the amount of \$1,343.00, and for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided in the amount of \$7,810.00; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord ("Agent") 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. 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 confirmed their email addresses at the outset of the hearing and also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, 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.

I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the property management company representing the owner, so I have amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

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 fixed term tenancy began on January 1, 2012, running to December 31, 2012, and then operating on a month-to-month basis. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$1,700.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$850.00, and no pet damage deposit.

In her submitted statement, the Tenant said:

I am asking for compensation and monies owed regarding a repair issue, and the removal of facilities agreed upon in my tenancy agreement. This issue concerns my landlord, [C.L.], who is represented by [the Landlord].

This situation was initiated in late December 2019, due to a poly-B pipe leaking in my unit, and extended to the end of June 2020. The reason for this extended time period is because my landlord, after fixing the initial emergency repair, did not deem this situation worthy of addressing.

I have several letters and emails that prove that this issue was of very little concern to my landlord, nor his agent at the time, [D.B.]. I tried everything in my power to negotiate a remedy that would work for everyone involved, and I was ignored.

My kitchen was gutted on February 3rd, 2020, after several requests and

attempts to garner compensation to alleviate my family's upheaval and inconvenience. I am a single mother with a teenage son. This work needed to be done as there was water damage in the room. I was told that it would take about 3-4 weeks to be completed; it was finished on June 26th, 2020.

When this work was completed, it took a total of 18 days. Yet my family and I spent 147 days without the use of my kitchen. We spent 108 of these days sheltering in place during a global pandemic, which was declared 39 days after my kitchen was removed.

I spent the entire season of spring paying \$1924.00 a month to live without a kitchen. The only room in my 800 sq. ft. apartment that was not affected by this reno was my son's tiny bedroom. This contention eliminated between 2 – 3 hrs of my time each and every day, which tremendously reduced the amount of quiet enjoyment in our home.

This work should have been completed by Marcy 1st/2020, however my landlords disinterest and inclination to spend as little money as possible hindered solving our unlivable situation. I have emails to prove that this was the case, as (landlord) fired several expensive contractors after they gave him a full report, and instead he chose to hire a person who refused to work due to the Covid19 crisis. This excuse lasted from March 21st to June 9th, a total of 80 days wherein we sat waiting for a remedy to our situation.

...

The only reason that this kitchen has now been completed is because I was forced to take my landlord to arbitration (May 26/2020); there was an order set out for him to complete the repairs 'in a reasonable amount of time'. I was told to reapply for compensation at a later date. The amount of hours it takes to organize these dispute hearings alone should be fully compensated, and I have allowed for that within my monetary order.

[K.L.]

In the hearing, the Tenant said that the kitchen was taken away on February 3, 2020. She said that on March 12, it was scheduled for repairs, but the Tenant said she did not hear from anyone about it until May 1, 2020. The Tenant said that the repairs were started on June 9, 2020 and were completed on June 26, 2020.

The Tenant's claim is set out in the following monetary order worksheet:

	Receipt/Estimate From	For	Amount
1	\$50 x 12 days	March 1 – 12, 2020	\$600.00
2	\$60 x 19 days	March 13 – 31, 2020	\$1,140.00
3	\$65 x 30 days	April 1 – 30, 2020	\$1,950.00
4	\$70 x 31 days	May 1 – 31, 2020	\$2,170.00
5	\$75 x 26 days	June 1 – 26, 2020	\$1,950.00
		Sub-total	\$7,810.00
6	Bank statements	Restaurants/Take out	\$1,151.00
7	International furniture store receipt	Makeshift kitchen counter	\$192.00
		Sub-total	\$1,343.00
		Total monetary claim	\$9,153.00

In the hearing, the Agent said

Her and I are on great terms, and I want to come to a resolution. I was on a medical leave and came back at the end of April. [D.] was taking over while I was away, and when Covid happened. They did have a contractor for all the units, but then that contractor refused to do the work, and was very scared of Covid. I couldn't convince him of all the safety protocols to be safe. [The Tenant] came up with a lot of things that he could be safe. I talked with the owner about another contractor, and it took a long time. We went through arbitration a month ago and I was advised to fix Ms. Lee's unit in a timely manner. While [D.] was in charge, he didn't respond to [the Tenant] the way he should have, but I am back, and everything is working the way it should be.

The Agent said the following about the Tenant's monetary claim:

Seeing this now, I'm not sure what the \$7,800.00 is for, but that seems extraordinarily high. We tried to settle. We offered \$500.00 per month, and [the table] and the take out food. She definitely deserves compensation, but the \$7,800.00; I don't know what that is.

It did eventually get done. She did suffer, and compensation of some sort is agreed upon.

The Agent said that the Landlord's total offer is as follows:

March through June @ \$500.00 per month [= \$2,000.00], plus \$705.62 for the table and the take out food.

Where did the total came from? The [table] receipt – we may have got that wrong. And then the food receipts for the total she had given me previously. On [the Tenant's] USB drive for her claims, it doesn't explain everything. We don't have receipts for all the food, but I don't dispute that.

The Tenant said:

Yes, I've submitted all of my bank statements, which show each and every takeout, and I also sent the receipt for the [table]. All receipts are shown in bank statements for 4 or 5 months. These number have obviously changed, because it was May and now it is July. The Landlord rejected my counter offers and also refused to schedule a date for the repairs. On May 7, we were trying to come to an agreement for compensation. He gave me an offer, and asked if I'd take \$16.00 a day, equalling \$500.00 a month. With three months without a kitchen at that point, \$16.00 a day is nothing. He ignored my counter offer, and he is still sticking with his original offer. That's why my compensation each month has gone up. I was alone ... he ignored my counter offers. And he has stuck with the same thing the whole time. By June 26, the take out is not the same as it was on May 7.

The Agent said:

There are a couple things, when she says we were ignoring her. The owner wasn't going back and forth regularly. When she said that her offers were ignored, that's untrue. I've been trying to get this cleared up. Her opinion of what she thinks was happening is not accurate.

The Tenant said:

I will agree with [the Agent], but I was ignored for 12 weeks prior to [the Agent] coming back on May 1 for my first interaction with her. Up until May, I was ignored after emails, the photos, the videos in evidence. It had already been

going on for 12 weeks. That's not my problem - what goes on in the property management company. I was sitting without a kitchen for three months.

[The Agent] came and got everything organized by June 9. It took a month and a half - 147 days of not having a kitchen; 17 weeks without a kitchen. I spent 147 days without a kitchen. That's the bottom line. There's no reason for it. The contractor refusing to work is not an excuse; there are hundreds of contractors, In the end the actual work only took 18 days. None of this needed to happen.

The Agent said:

The global pandemic was in effect for all of us. Contractors were working in a different capacity. I did my best to find people. We were all terribly affected by this. It's not an excuse. We got it done as soon as possible.

When I asked them for their final statements, the Parties stated the following. The Tenant said:

I'm just saying that we agreed upon these facilities, but they were taken away from me for an extended period of time - 147 days. Yes, I was ignored for the first part of it. The second part still did not need to take this long. I believe the Landlord just doesn't like to pay people to do things, I think that's the bottom line. I spent an entire spring time without facilities I paid for. Actually, after having living in this situation – the compensation is quite fair.

The Agent said:

She doesn't think the Landlord likes to do things. I have been working here for a year, and he has never refused to do work that needs to be done. I came back and worked as quickly as possible in the Covid. I talked with her, and her situation wasn't reasonable my any means. I did not ignore her, and I got things done quickly.

Analysis

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

Before they testified, I let the Parties know how I would be analyzing the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. 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”)

The Agent’s evidence is clearly that the Tenant did without services or facilities that were promised in the tenancy agreement, but not delivered, and that the Landlord believes the Tenant should be compensated. The issue is in terms of how much.

The Tenant’s rent was \$1,924.00 per month at the time of the hearing. Her initial claim for \$50.00 per day for 12 days in March works out to be 81% of the March rent, if this rate were continued for the 31 days of March.

Policy Guideline #22 (“PG #22”), “Termination or Restriction of a Service or Facility” states: “This Policy Guideline deals with termination or restriction of a service or facility that is provided by the landlord under a tenancy agreement.”

In the tenancy agreement, clause 3 states: “No furnishings, equipment, facilities, services or utilities will be provided by the landlord and included in the rent EXCEPT those checked below, which the tenant agrees are in good condition and which the tenant and his guests will use carefully.”

The items checked include: Fridge, Stove, Dishwasher, and Garburator. I find that this constitutes a kitchen in the rental unit. However, I find that the Parties agreed that the Tenant was without these services from March 1, 2020 though to June 26, 2020, or the better part of four months or 118 days. I, therefore, disagree with the Tenant’s claim that she was without a kitchen for 147 days or 4.9 months.

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.

Under section 1 of the Act, in “Definitions” it states

“**service or facility**’ includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit: (a) appliances and furnishings; . . .”

PG #22 states:

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

An “**essential**” **service or facility** is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Based on the evidence before me, overall, and because it is consistent with common sense and ordinary human experience, I find that the kitchen was an essential service or facility that the Tenant was paying for with her rent. People eat throughout the course of a day, and some people need to use the kitchen appliances every day. I find that the undisputed evidence before me is that the Tenant was without the essential service of a kitchen for just under four months or for 118 days. Given the fundamental nature of a kitchen to the Tenant and her son, I find that the Tenant is eligible for compensation for this loss of use.

Further, 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.

. . .

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of

the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

- See also *Policy Guideline 16: Compensation for Damage or Loss*

Given the importance of a kitchen to a tenant, and I find that the loss of the kitchen to this Tenant was significant, I find that the length of time that it took the Landlord to remedy the situation was unreasonable. This is especially true, in that the elimination of the kitchen arose prior to the start of the state of emergency, although only weeks before. Given the proximity of the loss of the kitchen to the start of the state of emergency, I find that this element of the delay was not the fault of the Landlord.

Policy Guideline #16 ("PG #16") states:

B. DAMAGE OR LOSS

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 (see Policy Guideline 6);
- 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.

C. COMPENSATION

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. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

PG #16 states that these criteria may be applied when there is no statutory remedy. The Tenant has claimed the recovery of rent exceeding 80% of rent for the duration of the loss of facility. However, the Tenant was unable to explain the basis for this amount of compensation. I find that the Tenant retained the ability to eat in the rental unit with take-out services, and to sleep and live in the rental unit. Based on the amount of time a reasonable person generally uses the kitchen facilities, I find that the Tenant was denied the use of approximately 40% of the rental unit, plus expenses such as take out or eaten out costs. Accordingly, I find that the Tenant is eligible for a loss of \$769.60 per month or \$24.83 per day. As a result, I award the Tenant **\$2,929.94** for the 118 days that she was without a kitchen, pursuant to section 67 of the Act.

Further, I find that the Landlord did not dispute the Tenant's eligibility for reimbursement of the food she was not able to prepare in the rental unit. However, the Tenant would have incurred food costs, if the kitchen facilities were not eliminated. I, therefore, decrease the amount of the Tenant's meal reimbursement by 35% to represent a portion of these costs that the Tenant would have had to incur in food costs, if the kitchen were left in place. I, therefore, find that the Tenant is eligible for 65% of the \$1,151.00 she claimed, or \$748.15. I award the Tenant with recovery of **\$748.15** for the cost of meals purchased during the time without kitchen facilities, pursuant to section 67 of the Act.

The Tenant's evidence is that, but for the loss of kitchen facilities, she would not have needed to buy the \$192.00 table to serve as temporary counter space. I find that the Agent's evidence is that the Landlord offered to compensate the Tenant for this cost, therefore, I award the Tenant with recovery of **\$192.00** claimed for this item, pursuant to section 67 of the Act.

Award Summary

	Receipt/Estimate From	For	Amount
1	118 days without kitchen facilities	Daily rent reduction for loss of service of \$24.83 per day	\$2,929.94
2	Meal out costs	Loss of ability to cook	\$748.15
3	Table purchase	Interim counter space	\$192.00

		Total monetary claim	\$3,870.09
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Based on the evidence before me overall, I find that the Tenant has provided sufficient evidence to establish that she was eligible for a monetary award of \$3,870.09, pursuant to sections 65 and 67 of the Act. Given her success in this Application, I also award the Tenant with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act, for a total monetary award of **\$3,970.09**, which I award to the Tenant from the Landlord. The Tenant is authorized to deduct this amount from future rents to satisfy this award, pursuant to section 65(1)(f) of the Act.

Conclusion

The Tenant is successful in her Application for compensation for the losses she suffered in having her kitchen services terminated from March 1 through to June 26, 2020. The Tenant is successful in her claim for compensation of \$3,870.09. The Tenant is also awarded recovery of the \$100.00 Application filing fee. The total the Tenant is awarded from the Landlord in her Application is **\$3,970.09**. The Tenant is authorized to reduce her upcoming rent by this month to satisfy this monetary award.

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: September 08, 2020

Residential Tenancy Branch