Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

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 the return of double the $475.00 security deposit; and a monetary order for damage or compensation under the Act for the Tenant of $6,442.00.

The Tenant and her advocate, D.A. ("Advocate"), and the Respondents, B.T. and B. M., 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.

The Tenant said she served the Landlord, B.M., at the Landlord's address for service, as set out in the tenancy agreement. The Tenant said she sent this by Canada Post registered mail, and she provided a tracking number for proof of this service. The Landlord, B.T., denied that he was properly served; however, the Tenant said that she sent one package to the Landlord, B.M., who is the only landlord named in the tenancy agreement. Only one Landlord is named in the tenancy agreement, but the two partners attended the hearing and argued this repeatedly, even after I had said I had made a finding in this matter. I found that the Tenant had properly served the Landlord, B.M., despite the Respondents' propensity to keep bringing it up in the hearing.

Given that only one of the Respondents in attendance was a signatory to the tenancy agreement, I find it necessary to amend the Application to include only the named Landlord, pursuant to the tenancy agreement. Accordingly, I amended the Respondents' name in the Application, pursuant to section 64(3)(c) and Rule 4.2. During the hearing it also became apparent that the Landlord's name was recorded

backwards, with his first name last and last name first. I also amended this, pursuant to 64(3)(c) and Rule 4.2.

Preliminary and Procedural Matters

The Tenant provided her email address and the Landlord's mailing address in the Application. The Parties confirmed their understanding that the Decision would be sent to both Parties and any Orders sent to the appropriate Party in this manner.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2013, with a monthly rent of $1,080.63 (at the end of the tenancy), due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $475.00, and no pet damage deposit. They agreed that the tenancy ended on February 29, 2020, and that the Tenant sent the Landlord her forwarding address in a priority post letter dated February 21, 2020. The Parties agreed that a condition inspection was done at the start of the tenancy by the Landlord's real estate agent who had rented it out for the Landlord. The Parties agreed that the Landlord provided the Tenant with a copy of the condition inspection report ("CIR") after the move-in inspection. The Parties agreed that they did not do a move-out condition inspection of the rental unit at the end of the tenancy.

The Tenant submitted a monetary order worksheet with the following items setting out her claim.

	Receipt/Estimate From	For	Amount
1	Landlord	Damage deposit doubled	$950.00
2	Moving company	Moving from rental unit	$472.00
3	Online	Damaged personal property	$800.00
4	Notice of rent increase	Loss of quiet enjoyment	$4,320.00
		Total monetary order claim	$6,542.00

In her Application, the Tenant said: There were several leaks and floods in the rental unit that the Landlord failed to repair, which caused a lot of damage to my personal belongings.

In the hearing, we went through the items one at a time.

#1 DOUBLE THE SECURITY DEPOSIT → $950.00

I have included more testimony than is necessary for this claim in order to provide some background for other claims in the Application.

In the hearing, the Advocate explained this claim as follows:

> For the security deposit, we're asking for double, because the Landlord failed to return the security deposit even after the 15 days with the forwarding address, pursuant to section 38(6) of Act. The Landlord did not speak to the Tenant or ask permission in writing to retain it. The Landlord must apply to the Residential Tenancy Branch to retain it, therefore since he did not, we believe the Tenant is entitled to double.

The Landlord replied, as follows:

> We mentioned we were both away and by the time we returned, then there were issues; there was damage to the suite, which we needed to put a claim in. We didn't get a complete month's notice - one month clear notice - so we didn't do that. We didn't get around to – we didn't file a claim. I can still do that. But there was damage that we had to repair. It's been a tough year for everyone, and it's been very difficult.

The Advocate said:

> In response to them saying she did not give one month's clear notice, [the Tenant] having to move out with her notice was an act of self-preservation. The rental unit was practically uninhabitable, and she had made many requests for repairs. Her physical and mental health and that of her child mattered. And it's a breach of a material term on the part of the Landlord, because it's their duty to effect repairs and maintain the unit as healthy and safe, which they did not do. That's why she had to leave on short notice.

The Tenant said:

> It was an inadequate living situation – we couldn't stay there. I was electrocuted in the suite. The damage they claim is not true. I have the CIR in front of me: it was dirty, and in fair and poor condition [at the start of the tenancy]. Things in the suite weren't working, like the kitchen taps and stoppers. There were issues before I even moved in. I took a lot of pictures before I left, and I kept it clean.

The Tenant submitted a record dated January 29, 2020, from an emergency department at a British Columbia hospital, which states that the Tenant suffered a "low voltage electric shock".

The Tenant said that the leakage in the unit resulted in a flood. She said:

> The flood was all the way down the hallway - 10 feet - so when I entered the suite and switched the light switch, I got electrocuted. The carpet was soaked and both my (bare) feet were in water or sewage back up and I went to [the hospital].

The Advocate said:

> The way the Landlords have treated this hearing - they got the package since last November, and they didn't respond. I was surprised they attended. It's the same manner they treated the request for repairs – lackadaisical, a nonchalant attitude they've always presented.

The Landlord said:

> I find it hilarious the way they are describing the unit. I have evidence of doing those maintenance and repairs. In November and December there was substantial work done, while she was there. The kitchen sink – all replaced. We have always - and she knows it - every time she calls for anything, we would have someone there in a day or two. I have evidence that we can't submit. But the guys trying to make arrangements had to go by her schedule. They couldn't come in the morning or evening; she'd text messages refusing entry to people. I have evidence of invoices. We have pictures taken in December of how much work is done.

The Landlord did not submit any evidence to the RTB for consideration in this matter.

#2 MOVING EXPENSES → $472.00

The Advocate said that this related to the fact that the Tenant had to make "an emergency move", which wasn't planned. "That's why we're claiming moving expenses," she said. The Tenant submitted a moving invoice for the amount claimed.

When asked to reply to this claim, the Landlord talked about something unrelated.

#3 DAMAGED PERSONAL PROPERTY → $800.00

The Tenant explained the circumstances surrounding the leakage in the rental unit.

She said:

> The toilet from upstairs – a pipe broke on January 29, 2020 - and sewage backup came down into my suite. It came from the ceiling roof and the walls; through the white ceiling there were brown soggy marks. It leaked down through walls, into the utility cabinet outside of the bathroom. The first bad flood was on October 7, 2019.
>
> I tried texting and calling both of them right away. I got no response from them. One of them responded hours later, but nobody answered right away. I just remember them asking where it was coming from and saying that someone would come soon. I was using every towel in my house to soak up the feces and urine water.

In answer to the question of what was done in this situation, the Tenant said:

> Nothing, really. From January 29 to February 3, they came in to paint and clean out the furnace and a little bit of drywall was done in the ceiling and the bathroom to repair a big hole. That didn't solve the problem. After the October 7th flood – nothing was done at all. I applied to the RTB for the first time. They were ordered to do the repairs, but they didn't do anything, until the second flood.

The Tenant said that in October 2019, she applied for an Order for emergency repairs through the RTB. She said that the Landlord was ordered to make repairs to the rental unit, based on the flood that happened on October 7, 2019.

The Landlord said:

> There was an amount of work done, part of what was in the Order. There were renovations done in November and December. All that work was done in November and December to complete what was in the Order. Painting, flooring, repairs to the closet, and some drywall was done in November and December 2019. The furnace cleaning was done, too.

The Landlord did not submit any documentary evidence to support the claim that repairs were completed in November and December 2019, pursuant to the RTB decision.

The Tenant said:

> I disagree. October 7th was the first flood, October 17th the RTB Application, November 14th was the hearing, and November 19th the decision. December - nothing was done, and nothing in January, and then the flood at the end of January.

The Landlord said:

> She's denying that anything was done. There were people texting her back and forth coming to the property. I don't know what her purpose is, but she's not telling the truth.
>
> The flood she's talking in October – that she didn't respond. Of course, we responded, and as soon as we heard. There was a clean up. We sent someone the same day to carry out the floors; we had the plumber on the same day. Both the tenant upstairs – the claw tub had overflowed. It's the same tenants it happened again – we had to let them go. They still managed to flood it.

I asked the Tenant how she calculated the amount claimed for this matter.

The Advocate responded:

> [The Tenant] has a list of everything that was damaged, that she wrote – on page 9 of her evidence package. We estimated the cost of those online. It's an estimate of what the items cost. See pages 3 – 5 of her evidence. The estimates are of the things damaged, not any compensation for these items damaged. They include toiletries and necessities that she had to get on her own later, but she didn't keep the receipts.

The Landlord said:

> It's not our fault. There was nothing … you can say the tenant upstairs overflowed, over-flushed it. What is our fault? Why are we responsible for that? Tenant insurance covers this type of stuff. They should have their own insurance for their property. Landlords carry only landlord insurance. As soon as we found out, we dispatched help - had carpets cleaned, upstairs taken care of. She still went ahead with the order and we did whatever we were asked to do. We replaced it with hardwood flooring – the hallway carpeting – we washed. Why should we be responsible for her belongings? We didn't cause it, it happens. She should have had tenant insurance to cover belongings.

The Tenant confirmed that she did not have any insurance for her possessions.

The items for which the Tenant claimed compensation include:

$3.88	Q tips
$3.00	Floss
$4.99	Floss picks
$23.99	Tide pods
$6.99	Disposable razors
$59.99	Electric toothbrush
$16.00	4 toothbrushes
$199.00	Utility cupboard
$50.00	Devil's club
$4.00	Toothpaste
$5.00	Kids' toothpaste
$95.00	Electric razor
$6.00	3 Loofahs
$40.00	2 Hair brushes
$6.00	Pads
$200.00	10 towels
$21.00	3 face towels
$8.00	Tampons
$75.00	Buddha [something]
$29.99	Bathmat memory foam
$857.83	**TOTAL**

#4 LOSS OF QUIET ENJOYMENT → $4,320.00

The Tenant said:

> I just wanted to say from the CIR, there were issues from the start with the taps, in sinks - no stoppers - tile walls, trim, dryer…, before I moved in. I didn't have access to heat the whole time I lived there. There were at least three, bathroom ceiling leaks, kitchen and living room leaks. When a plumber came after a pipe break, he mentioned that pipes were corroded and there's possible mould from the water damage. These are issues of great negligence from the Landlord, with the most recent being the sewage back up - even when I got electrocuted. Nothing was done for these repairs – almost five months, not four months.

The Tenant said that the amount claimed is: "…the rent times the [four] months for when I didn't enjoy it."

The Advocate said:

> Section 67 of Act – [the Tenant] has said that the Landlord was always aware of the issues with the rental unit. There was never really a time when she enjoyed the unit she was paying for. There were various issues from May 2016 through 2019, and the Landlord did barely anything.
>
> The Landlords kept saying they fixed issues in November and December, but this didn't solve anything – there was another big flood on January 29. It was not until February 3 that he did anything - minimal painting, window dressing - only minor things to do with a significant issue. [The Tenant] had to stay with her Mom, so she took her child to services, after being electrocuted. She suffered from a stuffy nose and other health issues from living in an unsanitary environment. She had to be away from the rental unit a large part of the time.

The Landlord said:

> She said they didn't fix anything. She had big parties, the police came – she's renting a basement, not a party house. 10, 12, 20 people were coming every weekend.
>
> The relevance is when she was saying she wasn't enjoying the unit, she was having parties. How many times were the police was called there? The upstairs

> tenants got upset and they called the police; there was so much disturbance in the house. Of course, she enjoyed it, but it makes me kind of angry that she . . . she's lying totally. If I'm given the time, I can give you evidence of what was done. I can produce all of that. I was not able to communicate with my partner about this.
>
> It's been – when people lie, that's not fair. The house is… I can submit photographs - it is essentially the same as it was then. I will challenge anybody to find problems with it. She can make up stories. Since she moved in, the inspection was done, and everything was updated - whatever was marked. They were taken care of in the first few days, because she checked it. Different people were living with her, her mother. It is a crime that if the Landlord is too nice, they take advantage. She had people living there.
>
> I still intend to put a claim in for my lost rent for one month. I can still claim the damage, because she didn't give us the opportunity to do a final inspection when she moved out. We would have had the difference between the start and the end. If she had called me, I would have arranged to have someone do the move-out inspection.

The Advocate said:

> I'd like to draw your attention to page eight of the Tenant's evidence, which is a letter from a mental health worker who has been speaking to [the Tenant] since 2018, and who said that [the Tenant] had not enjoyed the unit she was paying for. All the talk of doing this and having parties; we have documentary evidence to show that she did not enjoy the unit that she paid for. And her mother [L.] was there. We also take exception that anyone is lying. Everyone has had the chance to present evidence. There's no need for name calling. She has expressed to me that most of her interactions with the Landlords were filled with them saying nasty things to her, shouting her down, talking over her, not letting her speak. That's the practice with these Landlords according to [the Tenant].

The Tenant submitted a letter from a mental health worker dated January 9, 2020. This letter states:

> To Whom It May Concern: January 9, 2020
>
> I am a mental health clinician with [I.C.Y.M.H.]. I have been working with [the

Tenant] and her son [K.] since March 2018.

During this time, I have witnessed [the Tenant] overcome many obstacles that have come her way. Most recently, [the Tenant] has been challenged with the rising cost of living in the [area] and has had many incidences with her housing and her landlord. Due to the rising costs of rentals, and her limited abilities to work due to her responsibilities regarding her son's mental health, she has not been able to move despite the substandard living situation that she has had to endure for some time. It has been my concern that the stress she has had to withstand due to her circumstances has impacted her own mental health and finding suitable and affordable housing for her and her son would be of great importance to improve her situation on many levels.

I am imploring you to consider [the Tenant's] application as an emergency situation and find her and her son housing at the earliest possible time.

Sincerely,

Signature
[J.D.]
ICYMH Clinician

Analysis

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

#1 DOUBLE THE SECURITY DEPOSIT → $950.00

I find that the Tenant provided her forwarding address to the Landlord on March 5, 2020, five days after it was mailed to the Landlord. I find that the tenancy ended on February 29, 2020 when the Tenant moved out. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $475.00 security deposit within fifteen days of March 5, 2020, namely by March 20, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that he returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlord failed to comply with his obligations under section 38(1) of the Act.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

I, therefore, award the Tenant **$950.00** from the Landlord in recovery of double the security deposit, pursuant to sections 38 and 67 of the Act.

#2 MOVING EXPENSES → $472.00

The Tenant's Application monetary claims includes moving costs. My authority to award compensation is restricted to section 67 of the Act, which is limited to claims where damage or loss has stemmed directly from a violation of the tenancy agreement or a contravention of the Act by the other party. I, therefore, have no ability to return the costs associated with moving to a new rental unit, and I decline to award the Tenant recovery of these costs. This claim is dismissed without leave to reapply.

#3 DAMAGED PERSONAL PROPERTY → $800.00

When an applicant seeks compensation under the Act for loss, she must prove on a balance of probabilities the following four steps before compensation may be awarded:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the applicant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the applicant did what was reasonable to minimize the damage or loss.

("Test")

The evidence before me is that the rental unit flooded in October 2019, because the upper tenant overflowed the bathtub. The Tenant said that the Landlord did not do any repairs following this flood, but that they were ordered to make repairs in a decision of another RTB arbitrator dated November 19, 2019.

The cause of the flood in January 2020 was different from the flood of October 2019 – the first was an overflowing bathtub, and the second was leakage of sewage water.

I find that the Tenant has not provided sufficient evidence to indicate that the repair work that the Landlord was ordered to do in the November 19, 2019 RTB decision related to the flood in January 2020. I appreciate that the Tenant must have suffered some losses, as a result of the sewage leak; however, I find that she has not provided sufficient proof that the losses occurred as a result of the Landlord having violated the Act or tenancy agreement.

Further, I find that the Tenant did not provide sufficient evidence of the value of any losses, as she provided no receipts for the replacement of lost items. In addition, the Tenant did not indicate why she had to replace some items that could have been washed down with bleach. Overall, I find the Tenant did not provide sufficient evidence of the value of her losses.

In addition, the Tenant could have mitigated her losses by having obtained tenants' insurance.

Based on the evidence before me overall, I find that the Tenant did not provide sufficient evidence of the steps set out in the Test to meet her burden of proof in this matter. I, therefore, dismiss this claim for compensation without leave to reapply.

#4 LOSS OF QUIET ENJOYMENT → $4,320.00

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."

Policy Guideline #6 ("PG #6") states:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the 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.

When I consider all of the evidence before me overall, I find it more likely than not that the Tenant endured unpleasant living conditions for most of her tenancy, which resulted from the Landlord neglecting his obligations under the Act.

The Landlord acknowledged that there were insufficiencies in the rental unit from the start of the tenancy. He said that these insufficiencies "…were taken care of in the first few days, because she checked it." I find that if the Tenant had not mentioned the inadequacies in the rental unit at the start of the tenancy, that the Landlord would have ignored them. I find it more likely than not that the Landlord did not review the condition of the rental unit prior to this tenancy, to ensure that everything was in working order. I find that this adds credibility to the Tenant's position that there were notable deficiencies in the rental unit throughout the tenancy that the Landlord was remiss to repair. As a result, I find that the inadequacies in the rental unit affected the Tenant's ability to live peacefully, and securely, and to enjoy the rental unit.

I find that the Tenant was deprived of her right to quiet enjoyment of the rental unit for more time than she has claimed, but I still award her with her claim of **$4,320.00** from the Landlord, pursuant to sections 28 and 67 of the Act.

Summary

The Tenant is awarded recovery of double the $475.00 security deposit that the Landlord failed to return within 15 days of the end of the tenancy and receiving the Tenant's forwarding address in writing.

The Tenant's claim for moving expenses is dismissed without leave to reapply, because she did not prove on a balance of probabilities that this cost stemmed directly from the Landlord's violation of the tenancy agreement or a contravention of the Act.

The Tenant's claim for compensation for possessions lost, because of the flood on January 29, 2020, is dismissed without leave to reapply. I found that the Tenant failed to provide sufficient evidence that the Landlord was responsible for the flood, and for the value of the items, and for the need to mitigate such losses with tenant's insurance.

The Tenant's claim for compensation for her loss of quiet enjoyment of the rental unit is successful in the amount of $4,320.00, as she proved on a balance of probabilities that the Landlord's ongoing neglect of the rental unit from the start of the tenancy warrants compensation for the loss of quiet enjoyment of the rental unit.

Given that the Tenant was predominantly successful in her Application, I also award her recovery of the $100.00 Application filing fee pursuant to section 72 of the Act, for a total award of $5,370.00. I, therefore, grant the Tenant a Monetary Order of **$5,370.00** from the Landlord, pursuant to section 67 of the Act.

Conclusion

The Tenant's claim against the Landlord for return of double the security deposit is successful in the amount of $950.00. The Tenant is unsuccessful in her claim for compensation for lost or damaged personal property from a flood in the rental unit, as the Tenant failed to provide sufficient evidence to establish the Landlord's blame for the floor. The Tenant is successful in her claim for a loss of quiet enjoyment of the rental unit in the amount of $4,320.00. The Tenant is also awarded recovery of the $100.00 Application filing fee for a total award of $5,370.00.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$5,370.00**.

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: March 17, 2021

Residential Tenancy Branch