



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on December 11, 2020, and March 5, 2021. The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act").

Both sides attended the hearing and provided testimony. Both parties had additional people in attendance to help present their case. However, each party will be referred to generally (the "Landlord", and the "Tenant"). All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant stated she gave the Notice of Hearing and her initial evidence package (from November 2, 2020) to the Landlord's daughter, on November 7, 2020. The Landlord confirmed receipt of this package. The Tenant stated she also sent the Landlord a few different emails, with videos, and more evidence, on or around November 29, 2020, and December 2, 2020. As stated in the hearing, email is not an approved method of service under section 88 or 89 of the Act. Further, the Landlord stated she did not have time to review any of the evidence, as she did not receive the evidence until a few days before the hearing, and before her evidence (as a respondent) was due.

The Tenant was required to ensure the Landlord received all of her evidence, no later than 14 days before the hearing. As this was not done, without any reason as to why it was not done, I find the 2nd and 3rd evidence packages submitted by the Tenant are not admissible and will not be considered further.

The Landlord stated she posted her evidence package to the front door of the rental unit on November 30, 2020. The Tenant confirmed receipt of this package but did not say when. Pursuant to section 88 and 90 of the Act, I deem this package was received by the Tenant on December 3, 2020, 3 days after it was left at the door. Since the Landlord was the respondent, I note she had to ensure the Tenant received her evidence 7 days before the hearing, which appears to have been done. I find the Landlord sufficiently served her evidence.

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.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, and discussing the outstanding issues with the parties during the hearing, I determined that the most pressing and related issues before me deal with whether or not the Tenant is entitled to a rent reductions. In making this determination, I considered that most of the repairs to the rental unit have been substantially completed, and the bulk of the Tenant's concerns at this point relate to what amount she is owed. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the application with the exception of the following ground:

- I want to reduce rent for repairs, services or facilities agreed upon but not provided

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction for the issues she has raised?

Background and Evidence

The Tenant is seeking a retroactive reduction in rent she paid over a period of 11 months where she believes she lost value in her tenancy as a result of the Landlord's failure to repair and maintain the rental unit in a way that did not impact her enjoyment of the space. The Tenant asserts she lost quiet enjoyment of her space for this period of time. The Tenant is seeking a rent reduction of \$550.00 per month, over an 11 month period from December 2019, until November 2020.

Both parties agree that monthly rent was set at \$1,775.00 and was due on the first of the month. The Landlord holds a security deposit in the amount of \$887.50. The Tenant rents a suite in the lower floor of the house. The Landlord lives in the upper unit, and has some space on the lower level as well.

The Tenant is seeking a rent reduction for 4 main items, as follows:

1) Dishwasher flood - December 2019 – November 2020

The Tenant explained that the Landlord's dishwasher flooded on December 24, 2019, and damaged part of the ceiling in her suite, as well as part of the wall, near a window. The Tenant stated that the Landlord brought in workers to open up the ceiling and dry in out on December 26/27, 2019. The Tenant stated that the Landlord thought about replacing the whole ceiling of the unit, which would have meant she had to vacate for a period of at least a week. The Tenant expressed to the Landlord that she wanted the Landlord to just repair the holes, not the whole ceiling. The Tenant stated that the Landlord took until November 16, 2020, to properly fix the ceiling and the area around the window, which was around 11 months.

The Landlord stated that the flood happened on December 25, 2019, just after dinner. The Landlord provided a copy of her claim number and the date of loss. The Landlord stated that she immediately involved her insurer, and they came to remediate and dry out the Tenant's unit with fans for the next few days. The Landlord stated that she had to wait for the insurance to give her a quote and process the claim. As such, the initial time delays were out of her hands. More specifically, the Landlord stated that she did not get a quote for the repairs from the insurer until February 19, 2020. The Landlord provided a copy of the email into evidence.

The Landlord also provided copies of emails with both the Tenant and the insurer, leading up to February 19, 2020, where the Landlord was taking steps to ensure the

process stayed on track. The Landlord asked the insurer to pay out her claim so that she could complete the work on her own, with the money.

The Landlord stated that she spoke to the Tenant about the scope of repairs to the ceiling, and the Tenant asked if the repairs could wait until March 2020, as this is when March break was set to occur. The Landlord stated that she tried to set the work up for March 16, 2020, and she provided a text message she had with the contractor showing this as the date to do the drywall work. The Landlord stated that she had a second contractor come to give a quote on February 24, 2020,

Around this time, COVID cases started to increase, and the Tenant informed the Landlord that she would not be going away for March break any longer. The Landlord stated that the Tenant asked for the repairs to be completed at a later time, when she was away. The Landlord explained that the Tenant is a teacher, who ended up working from home for the rest of the school year due to COVID. The Landlord stated that towards the end of June, she reached out to the Tenant, and asked if she would be going away over the summer, in an attempt to schedule the work on the ceiling. The Landlord stated that the Tenant said she would not be going anywhere due to COVID, and to wait until she was going somewhere.

The Landlord stated that on August 22, 2020, the Tenant sent her a text message asking to talk about something important. A copy of this text message was provided into evidence. The Landlord stated that the Tenant said she was thinking about moving but was unsure when. The Landlord provided a written statement from her adult daughter, who was present for the conversation the Landlord had with the Tenant on August 22, 2020, about ending the tenancy. She stated that the Tenant came upstairs, and informed the Landlord that over the next few months, she would be looking to buy her own place, and will likely not stay until the end of the lease. The Landlord's daughter stated that the Tenant suggested that the Landlord should wait to do the ceiling repairs until they moved out.

The Landlord stated that following this conversation with the Tenant, in August, the only time the Tenant made it clear she wanted the ceiling repairs done was on October 18, 2020, when she sent a letter to the Landlord saying she would reduce rent by \$550.00, due to the bathroom faucet leak (since May), the holes in the ceiling, the loss of use of some exterior spaces, and concerns over access to an additional bedroom beside the rental unit. The Tenant provided a copy of this letter. The Landlord responded by letter, about a day later, stating that the Tenant is not legally allowed to reduce rent. The

Landlord also noted that she will proceed to complete the repairs, as it was now apparent the Tenant didn't want her to wait.

The Landlord explained that the whole reason she waited was to accommodate the Tenant's concerns over access, COVID, and her health, so she felt a bit blindsided when the Tenant asked for rent reductions when the delays were to accommodate the Tenant. The Landlord stated she would proceed to have the repair done as soon as possible. Following this, the Tenant sent another letter to the Landlord demanding that the repairs be completed by the end of October 2020, or else she would not pay rent for November.

The Landlord explained that she called the first ceiling contractor on October 20, 2020, and he was not available to do the repairs. A second contractor was called, and he was available in mid-November. The Landlord stated that the contractor told her it would take 4-5 days. The Landlord stated the Tenants requests to complete it in 1 day were not reasonable.

The Landlord stated that if it were up to her, she would have completed the work as soon as possible back in early 2020, but the Landlord stated that the Tenant is very difficult to deal with, generally, so her approach was to accommodate the Tenant's requests to wait till she was away to do the work. The Landlord explained that the contractor informed her on November 12, 2020, that he could start the work on November 16, 2020, as per the text message provided into evidence. The Landlord stated that on November 16, 2020, the contractor texted her to delay the work by one day. The work commenced on November 17, 2020, and lasted for a few days. The Landlord cleaned each day after the work was done, and tried to inform the Tenant when work was completed early, so the Tenant could get back into the rental unit.

The Landlord stated that she gave the Tenant written notice of more than 24 hours in advance each time before entry was required for the work. The Notice of Entry forms were uploaded into evidence, which show the Landlord, on November 14, 2020, informed the Tenant that ceiling repairs would commence on November 16, 2020, and November 17, 2020, from 10-4pm. The Landlord posted another Notice of Entry on November 16, 2020, a copy of which was also provided into evidence, to gain access for ceiling repairs on November 18, 19, and 20th between 10-4pm.

On November 17, 2020, the Tenant texted the Landlord while the repair work was going on to say that the Landlord did not have her authorization to complete the work because the second Notice to Enter cancelled the first Notice. The Landlord clarified that both

Notices were still valid and necessary and that the Tenant had no right to prevent access at this point. The Landlord also stated that the Tenant emailed multiple times trying to cancel the work on November 20, 2020, because she was going to be home. The Landlord explained that the work was going ahead at this point, and that the Tenant was free to be there, but couldn't prevent the work. The Tenant requested compensation for missing work that day. The Landlord explained that with the Tenant's threats to not pay rent for November, she had to push ahead with the ceiling repairs. The ceiling work was completed on November 20, 2020, and the ceiling light was re-installed around the end of November after a series of hostile interactions.

2) Bathroom sink leak

The Tenant stated that the Landlord replaced the taps in the bathroom in October of 2019, and the new taps started to leak into the vanity cabinet. The Tenant stated that the tap was not fixed until November 3, 2020. The Tenant stated that it appeared to be the connecting hose on the faucet which leaked. The Tenant stated that she noticed the leak around a week after it was installed. The Tenant stated she does not recall when she first told the Landlord about it. The Tenant estimated that it was sometime in May 2020 that she told the Landlord about the leak in the bathroom sink area. The Tenant later stated that it was sometime in June that she told the Landlord about the bathroom faucet leak. The Tenant did not point out, which of the emails she uploaded pertain to this issue nor could she corroborate when she notified the Landlord about this issue, with any email or text message communications. Later in the hearing, the Tenant stated that the leak was around 6 months in duration, and implied it only began in May 2020, not right after it was installed as she initially asserted.

The Landlord explained that she was not told about the leak in the bathroom faucet until the end of June, and she had a plumber attend the unit to look at the faucet in early July. The Landlord stated that the plumber advised which parts to order, and the Landlord attempted to do so, right away. However, the store ordered the wrong part, so the order had to be resubmitted around July 21, 2020. The Landlord stated that the correct part did not arrive until September 14, 2020, and at the request of the Tenant, the Landlord waited until a weekend day to try and install the part.

The Landlord explained that she scheduled September 19, 2020, as a day to install the part, and she was told by the manufacturer that it would not require a plumber to install. The Landlord attempted to install this part herself but had troubles. Subsequently, the Landlord explained that she attempted to install the part again on September 26, 2020, but was unsuccessful in doing it herself, so she had to call the plumber. The Landlord

explained that she was able to finally reach the plumber in early October. The plumber advised her around October 13, 2020, that she needed to order a whole new faucet, because the issues with the faucet were worse than initially thought, which she did that same day. The Landlord stated that many of the delays were due to shipping and COVID, and were not her fault. The Landlord stated that she gave the Tenant notice and installed the brand-new faucet on November 3, 2020. The Landlord stated that the delay in installing the faucet was largely due to the company ordering the wrong part, then, when the part came, it did not fix the leak. The Landlord also noted that there were shipping delays due to COVID.

The Landlord explained that when she went to check on the leak from July 2020 onwards, she only ever saw very minor drips. The Landlord stated she provided a small bowl for the Tenant to put under the leak, but the bowl had very little water in it, despite the Tenants assertions she had to empty it all the time.

3) Doors abutting the rental unit which cannot be locked from inside the rental unit

The Tenant explained that part of the reason she is seeking a rent reduction is because there is a room that abuts her suite, which she cannot lock from her side. The Tenant stated that the Landlord uses the room off and on, and since she cannot lock the door from her side, she feels unsafe and nervous that people will come through from the Landlord's extra room next to her unit. The Tenant stated that the room was supposed to be a storage room for the Landlord, but sometimes the Landlord has guests stay there, which the Tenant worries will come into her unit.

The Tenant also stated that the Landlord would sometimes use this door to enter her unit when she was doing repairs. The Tenant stated that she only wanted the Landlord to use the main door.

The Landlord stated that this extra room is a room that adjoins the suite, but can be locked as to make it separate. The Landlord explained that she offers this room as an option for the suite to rent, in addition to the normal suite area. The Landlord stated that during this tenancy, she retained use of this room, except for a couple small windows of time where the Tenant was given access. The Landlord stated that during this tenancy, she had her nephew come and stay with her and he used that room. The Landlord stated that she spoke with the Tenant about it, to keep her apprised, but he only stayed there for a month. The Landlord stated she has no intention of renting the room out, as a separate rental, so installing extra security for the Tenant on her side of the door is not

really necessary. The Landlord stated that this room is rarely accessed and used, and the Tenant's concerns are not because of any real issues.

4) Landscaping issues and exterior mess

The Tenant stated that she is also seeking a rent reduction because the Landlord undertook large scale landscape and outdoor projects, starting in June 2020, which lasted until around October 2020. The Tenant stated that there was a period of about 5 months where there was materials and debris in and around her entrance and storage area. The Tenant stated that the Landlord's workers stored their wood and materials under the deck, where she would store some of her belongings. The Tenant stated that she didn't say anything at first, but it became hard to access her bicycles, her patio furniture, and her recycling in and around this area, due to all the materials and tools.

The Tenant provided a few photos of small stacks of wood and some extension cords running near her patio area and her recycling area. The Tenant did not explain when these photos were taken, but suggested they were taken sometime in the summer of 2020.

The Landlord explained that in July 2020, she hired a landscape company to do some work in the yard, including building a fence. The Landlord stated that on July 28, 2020, the fencing contractor showed up and began to install the fence posts. Photos were provided into evidence of the work. The Landlord explained that the contractor was also there on July 29, 2020, and July 30, 2020. The Landlord stated that after this, she had to do some staining of the wood before the boards could be installed on the posts. The Landlord stated that the fence work was on hold for some of August while the boards were prepared. The Landlord stated that her nephew installed the fence boards from August 29, to September 12, 2020, for about 1.5 hours per day, every couple days. Since her nephew did not finish, she called the contractor to return.

The Landlord stated that she had some trees taken down on September 9, 2020, but those crews were only there for the day. On September 17, and September 28, and October 4, 2020, the contractor finished the fence boards. The Landlord explained that the fence is at the edge of the property and materials and equipment were not stored outside or on the Tenant's patio, or near her garbage. The Landlord stated that the only time the materials and tools were brought out and in the vicinity of the entrance/storage area was during the day the work was being done, and only for a short time, at which point the materials and the tools were put away again. In addition to this, the Landlord

stated that the only time materials were left near the suite, for a longer period, was for 3 days while the fence posts were setting at the end of July.

The Landlord stated that the Tenant never made any of her concerns about any of this known until October 18, 2020, which is 2 weeks after the work was completed. The Landlord feels it was merely a justification to reduce rent.

Analysis

A party that makes an application 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. The Tenant must also 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.

The Tenant is seeking a reduction in rent of \$550.00 per month, over an 11 month period, from December 2019 till November 2020 for 4 main items, as highlighted above. Monthly rent was \$1,775.00 and was due on the first of the month. The Tenant asserts she lost some quiet enjoyment of her unit, and the value of her tenancy was reduced by the Landlord's actions and inactions to repair the flood, the drywall, the bathroom sink leak and the mess in the yard.

Generally, I note the following relevant portions of the Act and the Policy Guidelines:

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.

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 provides:

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 in making repairs or completing renovations.*** [my emphasis]

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

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.

Section 32(1) of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings under the respective categories laid out by the Tenant on her application, and as summarized above:

1) Dishwasher flood - December 2019 – November 2020

Having reviewed the testimony and evidence on this matter, I find as fact there was a flood on or about December 25, 2019, which began in the unit above the Tenant, and infiltrated part of the ceiling and the wall near the window. I find that the Landlord

immediately involved her insurer, and mitigation began right away in an attempt to dry out the ceiling and the wall. The Landlord had to open up a section of the drywall in the ceiling and wall in order to facilitate drying.

I note there were several delays at the start of the process, whereby the insurer's and contractors took a few weeks to provide formal quotes and remediation plans. I note the Landlord received the formal quote from the insurer and the contractor around February 19, 2020, as per the email in evidence. It appears the Tenant conveyed to the Landlord that she was supposed to be going away for March break, and that this would be the best time to repair the drywall. I note the Landlord was not required to accommodate this delayed start date, but she did, in what appears to be an attempt to lessen the impacts on the Tenant.

I accept that there was also an emerging pandemic right at this time, and the Tenant cancelled her vacation plans once the pandemic worsened. It appears the Tenant requested that the Landlord continue to wait until she was away, prior to starting the repairs. The Landlord obliged, and waited, but with the worsening pandemic, the Tenant did not take vacation for the remainder of the spring and summer. The Tenant also appears to have been working from home, which made it difficult to perform the work, especially given the Tenant wanted the Landlord to perform the work while she was away.

I note the Landlord reached out in June sometime to ask if there would be any opportunity to do the ceiling repairs in the summer, but the Tenant indicated she would not be going away. The Tenant asked the Landlord to wait. Again, it appears the Landlord was trying to accommodate the Tenant during the summer of 2020, which she was not required to do.

Based on the emails and texts, it appears the Tenant set up a conversation with the Landlord for August 22, 2020. Based on the witness letter from the Landlord, which I find to be reliable, I find the Tenant explained at that time that she would be looking for another place to move to, and to delay the ceiling repairs until she moved out. There is insufficient evidence to demonstrate that the Tenant made any other attempts to tell the Landlord she had changed her mind and now wanted the ceiling repairs done. As such, when the Landlord received the Tenant's letter on October 18, 2020, it caught her somewhat offguard, since the Tenant expressed dissatisfaction for numerous things, along with a threat to withhold rent.

I accept that, without more clear communication from the Tenant, it is reasonable for the Landlord to wait, as she did, in order to accommodate the Tenant's requests during the pandemic, especially given the ceiling repairs appear to be mostly cosmetic. Following the letter the Tenant gave the Landlord on October 18, 2020, the Landlord took steps immediately to complete the repairs, as it was now clear that the Tenant wanted them done. The contractors were scheduled to come and do the work within a couple weeks, and the work was completed shortly after that time. I find there is insufficient evidence that the Landlord failed to adequately notify the Tenant as to the times she required access to do the repairs. I do not find the Tenant was justified in telling the Landlord that she did not have authorization to do the repairs, due to the fact that the Landlord had issued a second Notice to Enter with more dates and times (after a scheduling anomaly).

I accept that it was a challenging year for both the Landlord and the Tenant, between the flood, the pandemic, and dealing with insurers, contractors, and evolving schedules. I find the Landlord went beyond what was required of her, by allowing the Tenant to have direct influence over when and how the repairs to the ceiling would be completed. I find it more likely than not that the Tenant substantially contributed to the delay in completion, to humour her request that it be done while she was away. I do not find the delayed completion was due to Landlord negligence or inaction. I find the Landlord took reasonable steps in a timely manner given the circumstances. I accept that the Landlord was trying to be accommodating, up until the time in October when the Tenant expressed she would withhold rent. I find the Tenant should have been more clear in her desires, particularly given the evidence showing the Landlord was waiting to complete the repairs in order to accommodate the Tenant's wishes and concerns.

The Landlord was not required to wait to do the repairs, but it appears the delays were largely caused by the Tenant's requests and changing vacation plans. I do not find the Landlord should be held liable for the delay in fixing the ceiling, given the totality of the situation. I dismiss the Tenant's request for compensation for loss of quiet enjoyment and use of the space due to the flood and subsequent drywall issue with the ceiling and the wall.

2) Bathroom sink leak

It is undisputed that the landlord replaced the sink and vanity in the Tenant's bathroom in October of 2019. Although the Tenant asserts the leak into the cabinet below the sink began shortly after it was installed, I find there is insufficient evidence to demonstrate the Tenant made the Landlord aware of this issue until many months later. Further, she

provided somewhat unclear and inconsistent testimony about when the leak started during the hearing. On one hand she suggested that the leak started right after the tap was installed in October 2019, and continued into the fall of 2020, but later in the hearing she stated that the leak only lasted 6 months. Ultimately, the Tenant did a poor job articulating when the leak started. There is little to no evidence that the issue was flagged to the Landlord prior to June 2020, which was nearly 8 months after the Tenant asserts it began. Had the leak been as impactful on the Tenants use of the space as she has alleged, it seems odd she did not raise the issue more clearly, with evidence to support she did so, much sooner.

I accept that there was an issue with the faucet, which caused some amount of dripping and seepage. However, the magnitude of the leak is very unclear, as is the date the Tenant made the Landlord aware of the problem. The Tenant has not proven the leak was at all substantial, beyond some dripping, which required monitoring.

After reviewing the Tenant's evidence, I note that her photo of the leak has a "date taken" time stamp of October 19, 2020, in the file attributes. There does not appear to be any documentation to support the leak started as early as the Tenant asserts, nor that it was as problematic as she alleges. Although the Tenant asserts the leak had been happening since October 2019, I note the photo, which appears to have been taken around a year after it allegedly started leaking, shows very little, if any water damage. Even if the photo was not actually taken on October 19, 2020, as the Tenant's photo indicates, I find there is insufficient evidence she lost any use of the actual sink and faucet. That being said, I accept that there may have been some loss of use of the cabinet space, which she had to keep clear in order to keep an eye on the drip. I also accept that there would be some inconvenience associated with having to monitor the leak during the summer of 2020.

I find it more likely than not that there was a leak, although it is unclear when it started, and when it was reported to the Landlord. The Landlord cannot be held liable for not taking action on the issue if she was unaware of it. The Tenant cannot substantiate it was brought to the Landlord's attention prior to June 2020 and she provided an unclear account of when the leak actually started. In any event, the Landlord does not refute that she became aware of the problem around June 2020, and took steps in early July to hire a plumber, order the parts, and have it installed. I accept that some of the delays, following when the Landlord found out of the leak, were not the Landlord's fault. However, even if the Landlord sufficiently mitigated the impact on the Tenant after becoming aware, the Tenant may still be entitled to some compensation if her use of the space was impacted.

Given there is no evidence the leak was present and/or flagged by the Tenant to the Landlord prior to the end of June 2020, I decline to consider any loss of use or compensation before that time. With respect to the period of time following, when the leak was confirmed by the Landlord, and steps were underway to repair, I find the actual impacts on the Tenant's use of the space is somewhat poorly articulated and unclear. That being said, I accept that there would have been some impact in the use of the cabinet below the sink. Given the difficulty in ascertaining the exact date the leak started, how severe it was, and how much it impacted the Tenant, I find a nominal award is more appropriate.

"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, the Tenant was entitled to use of the bathroom vanity, under the tenancy agreement, and I accept there would have been *some* impact on that space for at least a couple of months. I award a nominal award of \$200.00, which represents approximately \$50.00 per month for the period of time from when the evidence shows the Landlord was made aware of the problem, and when it was fixed.

3) Doors abutting the rental unit which cannot be locked from inside the rental unit

Having reviewed this matter, I find the Tenants claims are largely rooted in her concern that the Landlord or someone from the Landlord's unit, would enter her space. I accept that the Tenant did not have a lock on her side of the door, which she could use to guarantee that no one from the other side of the door (in the Landlord's spare room abutting the suite) could enter at will. I find there is no evidence that this door was used inappropriately by the Landlord. I note the Landlord entered through this secondary door on at least one occasion (after giving proper Notice) to do some repairs to the suite, and the Tenant wanted the Landlord to use the main door instead. However, there is no requirement for the Landlord to only use the front/main door.

I accept the Landlord used the adjoining room mostly for her own purposes, and most of the time it was unoccupied. The room was not explicitly part of the space rented under the tenancy agreement. The Landlord at one point had her nephew staying in the room, and although this may have been highly palpable for the Tenant, given how close that room is to her living room, I find there is no evidence the Landlord, or any of her guests, entered, or tried to enter the Tenant's space in an inappropriate manner. I find the Tenant has failed to demonstrate that the issue with the doors to the spare room (and

the lack of locks) was such that she ought to be entitled to compensation for this matter. I dismiss this item, in full.

4) Landscaping issues and exterior mess

Having reviewed the evidence and testimony on this matter, I accept that the Landlord undertook some yard projects in the summer of 2020. The Tenant asserts the projects began in June 2020, but provided little evidence to substantiate this. The Landlord asserts the projects did not begin until the end of July. The Landlord provided detailed timelines with respect to what was being built, and when, starting on or about July 28, 2020. I find the Landlord provided a more clear and compelling account of the construction timeline and related activities. I have assigned it more weight and prefer the Landlord's version of events on this matter. I have considered that the Landlord stated she went out of her way to try and store as much of the materials and tools associated with the outdoor projects out of the way of the Tenant. The Landlord acknowledged leaving some wood in and around the Tenant's entrance, under the deck, and near the garbage area, but asserts this was only ever for very short periods of time (hours/days) when the actual work was being done.

I find the Tenant has not established that her use of the space or her enjoyment of the space was impacted in a material way, in any prolonged manner. I accept that the outdoor projects spanned a few months. However, there is insufficient evidence to demonstrate that there was a protracted and sustained impact to the Tenant over that period, and that the impact was not largely contained to a very small number of days. The photos show a relatively minor amount of materials and equipment and only represents one snapshot of time. Ultimately, I find the Tenant has not proven that she suffered a significant or substantial interference with her use of the related spaces over the course of the Landlord's exterior yard work. I dismiss the Tenant's claim for compensation for loss of use of her outdoor areas or for loss of quiet enjoyment of those spaces.

Given the Tenant was largely unsuccessful, I decline to award the recovery of the filing fee paid.

Accordingly, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$200.00, which is a nominal amount for the issue with the bathroom sink.

Conclusion

I grant the Tenant a monetary order in the amount of \$200.00. 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: March 5, 2021

Residential Tenancy Branch