



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing is a continuation of a hearing which began on December 03, 2020. The hearing was adjourned on the terms of my Decision filed that day. The previous hearing lasted 65 minutes.

The female tenant HY attended for all tenants, the other two tenants being her spouse WL and her 12-year old daughter, along with the landlord’s acquaintance and translator JO (“the tenant(s)”).

The landlord YL attended for both landlords who are spouses (“the landlord”). The attending female landlord affirmed that she and her husband, the male landlord, are together the landlords of the unit.

All parties had opportunity to provide affirmed testimony, present evidence and make submissions.

The female tenant acknowledged service on behalf of all tenants. The female landlord acknowledged service on behalf of the landlords. No issues of service were raised.

The hearing began 7 minutes after the scheduled time as I had technical issues in connecting to the call. The hearing continued for 93 minutes.

Preliminary Issue # 1 – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord repeatedly interrupted the tenant and me. Several times I asked her to allow the tenant to speak without disruption. Despite numerous warnings, the landlord continued to interrupt, to argue and to voice a different version of events when it was the tenant’s opportunity to testify. I warned the landlord not to raise her voice several times, to little effect. I asked the landlord many times not to yell. When the landlord gave testimony, I asked her several times not to repeat herself; the landlord ignored the requests.

The landlord seemed upset, indignant, and argumentative throughout the hearing. She disrupted the orderly conduct of the hearing.

The hearing took longer at 93 minutes because of the repeated interruptions and disruptive behaviour by the landlord.

I cautioned the landlord not to repeat the inappropriate and disruptive conduct at any future hearings at the RTB, as this behaviour will not be tolerated; I warned the landlord about the possible procedural consequences.

I encouraged the landlord to attend with a translator or other assistance at any future

hearings to avoid a repetition of her behaviour at this hearing.

The cumulative hearing time of both hearings was 2.5 hours.

Preliminary Issue # 2

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

Both parties submitted substantial verbal and documentary evidence. The tenant was often tearful and distraught. As mentioned, the landlord was disruptive, raised her voice and interrupted.

The tenant testified and as well submitted a written document outlining the history of the tenancy setting out the particulars of her claim. They also submitted a Monetary Order Worksheet. The landlord disagreed vehemently with almost every aspect of the tenant's version of events. The landlord in turn submitted many documents as evidence.

The documents submitted by the parties included many photographs and videos as well as copies of texts and correspondence, some of which were not in English and were not translated.

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The tenant submitted a tenancy agreement which is in the standard RTB form; included items include a refrigerator, heat, and furniture. The unit is a basement apartment; the landlord and family lived overhead. The agreement stated that the tenancy started on October 1, 2019 and was for a fixed term ending October 1, 2020. Monthly rent is stated as \$1,500.00 payable on the first of the month. The tenant paid a security deposit of

\$1,350.00. The agreement contained handwritten notes in another language which were not translated. The agreement showed the landlord signed on September 30, 2019 and the tenant on October 7, 2019.

The parties disagreed on the amount of rent paid. Although the written agreement provided for rent of \$1,500.00, the tenant stated they paid \$1,350.00 for eight months with \$300 paid in the final month (June 2020), for a total of \$11,100.00. The tenant said they were forced by the landlord to sign the agreement for the higher rental. The tenant believed the landlord wanted to raise the rent at some point and intended to use the signed agreement to force the tenant to pay more money in the future. The tenant testified the landlord required the rent be paid in cash and refused to issue receipts.

The landlord disagreed with the tenant's explanation of why the agreement said the rent was \$1,500.00 monthly when the tenant only paid \$1,350.00. The landlord's explanation was unclear. The landlord testified that the tenant did not pay \$11,100.00 but the landlord did not clarify how much they received. The landlord denied this assertion but did not produce a ledger, financial records, or other evidence establishing the amount of rent paid.

The parties agreed the tenant paid the landlord the security deposit of \$1,350.00 and that it has not been returned to the tenant.

The tenant explained the background of the tenancy. The couple and their daughter were new to the city and were recent immigrants to the country. They saw an ad for the apartment before they moved. The apartment was advertised at \$1,250.00 rent.

The tenant accepted the unit sight unseen. However, when the tenant went to the apartment for the first time, the landlord demanded a higher rent. The tenant testified they had no other place to go, were surprised and unprepared for the demand and were unfamiliar with the country and the law. They believed they had no choice but to agree to a higher rental of \$1,350.00 and to sign the agreement as it was presented.

The landlord vehemently denied the tenant's version of events. The landlord explained that upon arrival, the tenant wanted two bedrooms instead of one and the rate was accordingly higher. While this explanation explained the increase from \$1,250.00 to \$1,350.00, the landlord did not provide an explanation for the higher rent set out in the written agreement.

The tenant provided testimony about the events that followed. They said that the

landlord's behaviour from the beginning was offensive and unlawful. The landlord's conduct worsened as time went on. The behaviour escalated until they felt terrorized and frightened. They likened the landlord's actions to an abuse of human rights. The tenant was emotional and distressed as they described what took place.

The tenant submitted a document titled "Amount Statement" which described events from their perspective. Key were poor living conditions which did not match the advertisement for the unit, constant surveillance by the landlord of every coming and going, and threatening behaviour particularly toward the tenant's 12-year old daughter. The tenant summarized their version of events in their Application which stated in part as follows, as written:

[...] the landlords deceived and bullied tenants, how arrogant they are so aggressive that they violated the rights of the tenants in terms of safety, residence, freedom, privacy, personality, health, etc. They have never complied with any laws and regulations, did not want to fulfill any obligations. On the contrary, they restricted the tenants with their own rules so madly for money. As new immigrants, we came to Canada full of hope, but suffered deception and bullying.

The following is a summary of the tenant's evidence with excerpts from the written submissions:

1. Throughout the tenancy, the tenant said they were caught in a "well-designed trap" from which they could not extricate themselves because they were new immigrants during a pandemic without adequate income.
2. The landlord misled the tenant in the online advertisement to which they replied. The ad was misleading about the size of the unit, the number of bedrooms and the rent. The rent was advertised as \$1,250.00 but the landlord raised the amount when they arrived. The tenant believed they had no option but to go ahead with the rental as stated above.
3. The landlord demanded a security deposit more than the amount allowed by law, refused to do inspections, and demanded rent payments in cash without providing a receipt. The tenant was uninformed about tenant laws in the province.
4. The landlord promised an adequately furnished suite in the online rental; instead the unit was poorly and insufficiently furnished. For example, the landlord gave the tenant old, damaged floor cushions, photos of which were submitted, instead of one bed. One adult had to sleep on them.

5. As well, the refrigerator provided by the landlord did not work from the beginning, causing spoilage of food for eight months until it was replaced. The tenant asked the landlord many times for a proper functioning refrigerator but was refused. The landlord finally replaced the refrigerator in May 2020, a month before they left. The tenant complained the family lost considerable money on spoiled food because of lack of refrigeration. The tenant submitted many photographs of the refrigerator as well as of frozen and spoiled food.
6. The unit was poorly heated and constantly cold which was exacerbated by an adult having to sleep on the floor and not in a proper bed. There was mold. The landlord constantly complained to the tenant how much heat they were using and demanded they turn the heat down, coming into the unit without notice or even knocking to complain. The tenant stated in the written submissions, "The hallway, bathroom, and dining room were wet, cold, and mossy."
7. The tenant testified that the landlord invaded their privacy in many ways. For example, the landlord refused to provide the tenant with a mailbox key until December 2019. Throughout the tenancy, the landlord constantly monitored and sorted through their mail.
8. The landlord watched every movement of the tenant family from their windows upstairs. The tenant stated the landlord invaded their privacy. In the written submissions, the tenant stated, as written:

They wanted to monitor all our life details. We had to cover the windows of the living room and dining room, even covering all the windows in the daytime to avoid peeping. [The landlord] insulted we were sneaky. She always entered our living room through the linking door to check the heater switch etc. She eavesdropped behind the linking door. We couldn't speak over the phone for the private information and talk about the tenancy. We stuffed the door gap with paper and cotton cloth and used a cabinet to cover the linking door to prevent them. When I told [landlord] she had harassed our life too much, she answered it was communication, no harassment.

9. The landlord attempted to extract extra money from the tenant unfairly; for example, the landlord falsely claimed the tenant damaged the outside gate and the tenant had to pay for it. The tenant claimed she did not damage the gate which the landlord eventually locked to make it difficult for the tenant to come and go.
10. The tenant continued to complain to the landlord about what they were doing and how they were treating the tenant family. The tenant said the landlord's response was to retaliate in ever more frightening and bullying ways; for example, the

landlord started banging on their door or the ceiling of the unit at odd hours of the day or night, alarming the family.

11. The tenant described feelings of fear and helplessness.
12. The tenant stated that the landlord “constantly threatened me and my husband”; and “the [Landlord] threatened my daughter’s life, yelled to me: “Be careful! You will lose your daughter’s life!””.
13. The tenant believed that if they did not do what the landlord said, the landlord would harm or kill them or their daughter. The tenant stated in her written submission, as written:

They harassed me every day. Both my husband and I even were afraid that they could kill us irrationally, and we couldn't do anything. [Landlord] often used a heavy iron tool to smash my door. They used heavy stuff to smash the floor right over my bed in the living room around 1:30 AM after midnight. My daughter and I could not live normally. My daughter was afraid to live alone in the bedroom. I had to call the police several times. They provoked my family relationship. They attempted to cover up all truth by sending a lot of messages that threatened my husband and discredited me.

14. The tenant claimed loss of health and medical expenses caused by the landlord’s actions.
15. The tenant reported that the intimidation and abuse worsened when the male tenant had to leave the country during the pandemic. The tenant stated in the written submissions, “*My daughter and I felt that we were living in jail, suffering from inhuman treatment.*”
16. The landlord entered the unit on May 28, 2020 with the landlord’s son while the adult tenants were away; only the tenant’s daughter was in the unit. The landlord told the tenant’s daughter to go into the bedroom and stay there. Then the landlord inexplicably remained in the unit for over an hour. The tenant believed the landlord went through their private papers and searched personal belongings.
17. When they continued to complain about the landlord’s activities, the landlord accused the tenant of being mentally unwell.
18. The tenant reported the actions of the landlord to the police on more than one occasion. The police instructed that the tenant to deny the landlord entry which was not practical given the layout of the unit and ease of access by the landlord.
19. Throughout the tenancy, the tenant looked for alternate housing. Their efforts were unsuccessful for many months because of the pandemic and unavailability of affordable housing.
20. The tenant finally found alternate accommodation. They provided written notice to the landlord on May 23, 2020 that they were moving out, a copy of which was submitted. The tenant was so afraid of the landlord that they moved out secretly

before the end of June 2020.

21. As the tenant was deeply afraid of the landlord, the tenant returned the key and provided their forwarding address on June 30, 2020 while accompanied to the unit by the police. The forwarding address was also sent by registered mail to the landlord on July 22, 2020. Copies of the notices and proof of mailing were submitted as evidence.
22. After the tenant moved out, the landlord followed the tenant to find out where they lived. The landlord then contacted the tenant's new landlord and made disparaging and untruthful comments about the tenant. The tenant said this "ruined" the new tenancy.
23. The tenant said they wanted a condition inspection of the unit on moving out, but the landlord refused to cooperate. The landlord acknowledged there was no inspection on moving in or moving out.
24. The landlord refused to return the security deposit.

The landlord acknowledged the tenant called the police as the tenant testified, but said the complaints were completely unwarranted and baseless.

The landlord also acknowledged that the tenant's refrigerator did not work well. However, the landlord claimed that the tenant could have used the landlord's freezer. In any event, the landlord replaced the refrigerator in May 2020 in the eighth month of the tenancy. The landlord denied the tenant's food was spoiled from lack of proper refrigeration.

Other than this, the landlord denied the tenant's version of events in its entirety and the tenant's claim for compensation.

The landlord submitted 111-page document package which included a 29-page typed statement refuting every detail of the tenant's claim; over 60 attachments were listed including videos, photographs, and texts and correspondence (most of which were not in English and were not translated) . The landlord referenced each item mentioned by the tenant in their application and refuted each claim at length.

The landlord's key assertions are that they are the "victims", not the tenant. They provided adequate housing, the female tenant was "impatient, aggressive and irritable" and "mentally ill", the tenant refused to communicate and lied, the tenant kept the unit too warm, the tenant demanded too much, and the landlord complied with all laws. A summary of the main claims of the landlord are as follows:

1. [The female tenant] “has been pretty rude and hostile since her moving in the rental unit. She didn’t want to take her responsibility. While communicating payment of the rent with her, she said she would pay the rent only when the government requires her to do that.”
2. [The female tenant] *“treated this legal case in an irresponsible manner. She falsified the important evidence in order to avoid taking her responsibility and frame us. She gave the fake statement for claims \$35,000 to blackmail and extort us. Her lying, frame-up, extortion, madness and paranoia seriously destroyed our regular life and have a long-term negative influences on our emotional and physical health. She tried to smear our reputation. She resorted to personal abuse. She regarded our kindness, forgiveness, generosity as being weak and being easy to bully. Her amount statement was full of lying, frame-up, extortion, madness and paranoia. I didn’t find any evidences she offered can support or are related directly to her claims in part 1-5 of amount statement. She fabricated her story, and pretended to be a victim. Actually, we are victims in this case, she was totally a big trouble-maker, after she moved away from my rental unit, our life gets back on the right track, we feel how precious and gorgeous our quiet daily life is.*
3. The landlord claimed the tenant falsified and altered documents and *“interfered with our daily life seriously”*.
4. The landlord listed the contents of the unit and stated the tenant was satisfied with the furnishings when they rented the unit; any complaints were not justified.
5. The tenant consumed too much electricity, was *“rude and hostile”* and had a *“bad attitude”*. She often complained about the unit being cold. The landlord described the high temperature in the unit, the heating system in the building, the discomfort for the landlord’s family with the high temperature, and the efforts to convince the tenant to keep a reasonable temperature. Electricity bills reached *“historical peaks”*; copies of invoices were submitted.
6. The female tenant left the light on when nobody was home.
7. The landlord was forced to lock the outside gate because the tenant was trying to sublet the unit secretly. Also, the gate was locked at times *“to stay safe during COVOD-19 epidemic”*. The tenant damaged the gate.
8. The female tenant was a poor parent and often left her daughter at home.
9. The tenant chose the means of paying the rent and could have paid other than by cash.
10. The landlord kept the security deposit because of damage, lack of cleaning and not putting the furniture back in its original place.
11. The landlord claimed the tenant *“overused”* the police and other government services.

12. The landlord stated, *“In order to teach her a lesson and repress her illegal behaviour, those who refuse to repent will be punished.”*

The tenant brought this application on August 12, 2020. The landlord brought a separate application on December 3, 2020 under the file number referenced on the first page. The tenant stated the landlord’s application is retaliatory and baseless.

As set out in the Monetary Order Worksheet and Application, the tenant claimed a total of \$29,318.16 for the following:

1. Return of double the security deposit of \$1,350.00;
2. The sum of \$8,313.16 for compensation for loss of rights and privacy;
3. The sum of \$15,200.00 for loss of human rights,
4. The sum of \$2,700.00 for loss of food;
5. Rent from June 21 (date of moving out) to June 30, 2020 in a new unit - \$405.00.

The landlord requested the tenant’s claim be dismissed in its entirety without leave to reapply.

Analysis

Each of the tenant’s claims will be addressed in turn.

The parties submitted sharply contrasting narratives; each submitted many documents. Only key admissible facts and findings are referenced in this Decision.

In assessing the weight of the testimony and evidence, I found the tenant credible, well-prepared, and sincere. They were persuasive and forthright.

In assessing the weight of the landlord’s testimony and evidence, I observed that she appeared indifferent and unconcerned about the effect of her actions regarding the issues raised by the tenant. She dismissed their claims as unreasonable.

I find the landlord’s actions as the tenancy went on and as described by the tenant were retaliation for what the landlord saw as lack of gratitude and unreasonable complaining. I find the landlord responded to the tenant’s concerns with aggressive actions designed to worsen the tenant’s state and stop the complaints, instead of improving the situation. I found the landlord throughout the tenancy was primarily concerned about their own financial agenda while lacking any comprehension of the effect of their actions on the

tenant's loss of quiet enjoyment. I find the landlord's evidence to be self-serving and many of their actions to be non-compliant with the Act.

As a result of my assessment of the credibility of the parties, I gave greater weight to the tenant's account; where the evidence of the parties' conflicts, I prefer the tenant's version of events. I do not give significant weight to the landlord's testimony.

Security Deposit

The Act contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the Act, the landlord is required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposits pursuant to section 38(4)(a).

On a balance of probabilities and for the reasons stated, I make the following findings based on the testimony and evidence of both parties.

As agreed by the parties, the tenant paid \$1,350.00 to the landlord as a security deposit which is double the amount permitted under the Act.

Pursuant to section 38(1)(b), on the last day of the tenancy, June 30, 2020, the tenant provided their forwarding address in writing to the landlord in the presence of a police officer who accompanied the tenant to the unit. I find the landlord received the forwarding address that day. I find the tenant subsequently sent the forwarding address to the landlord by registered mail.

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit within 15 days of the first provision of the forwarding address as required. I find the tenant did not consent to the landlord keeping any part of the security deposit. I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I also find that the landlord extinguished their right to claim against the tenant's security deposit for damages, as per sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy.

Section 19 of the *Residential Tenancy Regulation* ("*Regulation*") requires that condition inspection reports must be in writing. Section 20 of the *Regulation* requires detailed, specific information to be included in the condition inspection reports.

The landlord has filed an application for alleged damages and compensation and an upcoming hearing is scheduled. However, the issue of the security deposit with respect

to the tenant has now been conclusively dealt with in this hearing.

I therefore grant the tenant an award in the amount of double the security deposit of \$1,350.00 for a total of \$2,700.00.

Loss of Quiet Enjoyment

The balance of the tenant's claims (apart from the rent claim) are akin to a claim for compensation for loss of quiet enjoyment.

In this case, the tenant claimed their right to quiet enjoyment was negatively affected because of failure of the landlord to provide a unit according to the agreement between the parties. In particular, the tenant claimed the refrigerator did not work, the unit was not adequately furnished, and it was poorly heated. As well, the landlord behaved in a manner that the tenant perceived as threatening, violating, and insulting. Relevant details of the tenant's claims have been recounted in more detail earlier in the Decision.

Section 67 authorizes the determination of the damage or loss and states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus

to prove their case is on the person making the claim.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

22. 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 [landlord's right to enter rental unit restricted];*
- d. *use of common areas for reasonable and lawful purposes, free from significant interference.*

[emphasis added]

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows:

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 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.

[emphasis added]

Considering the testimony and evidence, based on the Act, and pursuant to Policy Guideline 6, I find that the tenant has met the burden of proof on a balance of probabilities that the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently in protecting the tenant's right to quiet enjoyment.

I find the landlord was aware of the tenant's complaints through multiple verbal and texted complaints but failed to take reasonable steps to correct the situation or to adequately compensate the tenant. I accept the tenant's testimony describing their subjective experience of distress, frustration and fear for their physical safety when threatened by landlord as a result of which they complained to the police for help as evidenced by multiple police attendance at the unit. I accept the tenant's description of the unsatisfactory condition of the unit in terms of inadequacy of furnishings and provision of heat as illustrated in photographs of bedding and the thermostat. I accept the tenant's description as factual of all aspects of the conditions of the tenancy as she described.

I find the landlord knew at the beginning of the tenancy that the unit had significant deficiencies in its furnishings and a non-working refrigerator as the tenant learned when they moved in. I find the landlord repeatedly dismissed the tenant's complaints as detailed earlier in the Decision. I find the landlord retaliated and threatened the tenant.

I accept the tenant's evidence as described earlier that the interference with their quiet

enjoyment was substantial as well as frequent and ongoing for the duration of the tenancy. I accept their testimony that for the first 8 months of the tenancy, the refrigerator worked inadequately or not at all. I accept their statements about the violation of their privacy by the landlord.

I accept the tenant's evidence that they were alarmed, worried about their and their child's safety and health, and I find these fears to have been reasonable in the circumstances. I find the landlord engaged in bullying, threatening behaviour that terrorized the tenant family. I accept the tenant's testimony they were afraid for their physical safety. I find the landlord's actions in their totality to be a serious dereliction of their duty.

I find the landlord was aware of the tenant's complaints but failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord did not meet their obligations under the Act.

I accept the tenant's evidence that the situation was serious and had a profound effect on their ability to live peacefully in the unit. I find that the tenant was significantly and increasingly unable to use the unit as expected and they were desperate to move out. I accept the tenant's evidence that they reached out to the police for protection from the landlord. I accept the tenant's evidence that they were so afraid of the landlord, they moved out secretly and only returned the key when accompanied by the police.

I find the loss of quiet enjoyment extended for a period of 9 months as claimed by the tenant. I find the tenant lost certainty about whether they could safely live in the house. I find that the tenant's response to seek alternate accommodation to be reasonable and accept their explanation of the challenges they faced in finding a new place to live.

Over this period, I find the tenant experienced increasing discomfort, fear, uncertainty, and distress about the events they described.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

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.

I find the tenant was able to live in the unit during this 9-month period but was significantly deprived of their right to live peacefully by the landlord's failure to act or to respond adequately. I find that, while the source and extent of the disturbances varied from time to time, the tenant was consistently denied full quiet enjoyment for this period.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for 9 months.

I accept the tenant's claim that they paid rent in the total amount of \$11,100.00 in this 9-month period. I find it is reasonable that the tenant receive compensation in the amount of 50% of the rent paid which I find is \$5,550.00.

As I have found that the refrigerator was not adequate for 8 months of the tenancy, I accept the tenant's assertion that the family lost food to spoilage. As the total loss has not been proven, I award the tenant nominal damages of \$100.00 monthly for 8 months for an award of \$800.00.

I find the tenant has not met the burden of proof with respect to the rent expenses paid elsewhere for part of June 2020. I find that the landlord is not required to reimburse the tenant for this aspect of their claim.

The tenant is entitled to reimbursement of the filing fee of \$100.00.

In summary, I award the tenant a Monetary Order of \$9,150.00 calculated as follows:

ITEM	AMOUNT
Security deposit	\$1,350.00
Doubling of security deposit	\$1,350.00
Loss of quiet enjoyment	\$5,550.00
Compensation for food expenses	\$800.00
Reimbursement of filing fee	\$100.00
TOTAL MONETARY ORDER	\$9,150.00

Conclusion

I grant a Monetary Order to the tenant in the amount of **\$9,150.00**. This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

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: April 09, 2021

Residential Tenancy Branch