Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, PSF, OLC (tenant); MNDCL-S, MNDL-S, FFL (landlord)**

Introduction

This hearing dealt with an application by the tenant submitted on February 10, 2021 under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- 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*;

This hearing also dealt with an application by the landlord submitted March 4, 2021 under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended. The landlord attended with his spouse and agent KM ("the landlords"). Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity

was given to ask questions about the hearing process. The tenant acknowledged receipt of the landlord's Notice of Hearing and evidentiary materials.

Preliminary Issue – Service of Notice of Hearing and documents by Tenant

The landlords denied receipt of the tenant's Notice of Hearing and materials. Accordingly, the circumstances surrounding service were examined and each party provided affirmed testimony.

The tenant submitted her application on February 4, 2021. The landlords submitted their application on March 4, 2021.

The tenant testified she posted an envelope containing the documents and a USB flash drive to the landlords' front door on April 20, 2021. The tenant submitted photographs of the envelope and the numbered door.

The tenant had lived in the basement suite and the landlords had occupied the upstairs during the 10-month tenancy. The building was on a small acreage and no one else lived in the building at the time of posting. The tenant testified she had no doubt that the landlords had received the evidence and was not informed otherwise until the hearing. The tenant submitted a copy of a subsequent text to the landlords discussing the evidence she served based on her assumption they had received it, especially the USB flash drive containing many video files.

The landlords denied receipt of the tenant's documents. If the envelope was indeed posted to the door as testified by the tenant, they could provide no explanation for the failure to receive. The landlords stated that they lived in the home which had several doors. They theorized they may not have looked at the door. During the hearing, the landlords checked the door and confirmed the envelope was not there. They acknowledged that no one else lived in the building after the tenant vacated at the end of February 2021.

The Rules of Procedure set out how digital evidence is to be served and includes, in part, the following:

> ***3.10.5 Confirmation of access to digital evidence***
>
> *Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain*

access to the evidence.

…

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The tenant acknowledged she did not comply with the above Rule 3.10.5. As the tenant did not comply with the above Rule, I find the tenant did not properly serve the USB flash drive. I will not consider the video files submitted by the tenant in support of her claim.

I will now turn to a consideration of the remainder of the evidence which the tenant testified she posted to the landlords' door as discussed earlier.

Section 89(2) sets out how the Notice of Hearing and evidence package are to be served as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Section 71(1) of the *Act* authorizes the RTB Director to make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is

sufficiently given or served for purposes of this Act.

I have considered the testimony of the parties. I find that the posting was a reasonable method of service in the circumstances at a door the tenant fairly believed would be accessed by the landlords. I find the tenant referenced the documents in a subsequent text to the landlords, the frequent method of communication between the parties which indicated to me she served the documents and expected a response from the landlords. The landlords acknowledged that they had blocked the tenant's number on February 10, 2021 and may not have received her messages. However, I find the landlords have not provided a plausible reason for the failure to receive the envelope.

I find the tenant has provided credible evidence that she posted the documents on April 20, 2021, thereby effecting service 3 days later pursuant to section 90, that is, on April 23, 2021. Pursuant to section 71(1)(c), I find that the tenant has sufficiently served the Notice of Hearing and evidence package (except for digital files on the USB) upon the landlords on April 23, 2021.

As I found each party served the other in accordance with the *Act*, I continued with the hearing.

Preliminary Issue # 2 - Claims

The tenant testified that she has vacated the unit and the only remaining claim is monetary compensation. Accordingly, the tenant's claims under section 62 are dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to:

- 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*;

Are the landlords entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the parties' submissions and arguments are reproduced here. The lengthy hearing (1 hour and 40 minutes) included divergent perspectives on key issues, each party submitting witness and personal statements, and both filing many documents. Only admissible, relevant, and important aspects of the claims, the facts and my findings are set out below.

The parties agreed to the following. Starting May 1, 2020, the tenant rented the unit, a 1-bedroom suite, in the basement of the landlords' home. The landlords lived in the suite above the unit with their three young children. During the first 9 months of the tenancy, a second basement suite was occupied. The occupant moved out in January 2021.

The parties agreed as follows. Rent was $1,060.00 monthly paid in cash on the first of the month; no receipts were provided. There was no written agreement. The tenant paid equal security and pet deposits in the total amount of $1,060.00 ("the security deposit"). The tenant moved out on February 28, 2021, after 10 months. The landlord has kept the security deposit without authorization from the tenant. The tenant provided her forwarding address when she moved out.

The parties agreed that no condition inspection was conducted on moving in because of the pandemic. The tenant submitted a copy of a text scheduling an inspection date/time before she left; the text was not acknowledged, and the inspection did not take place. As stated earlier, the landlords had blocked the tenant's number and the tenant stated that she was unaware of this at the time. The landlords' submitted a Final Notice for Inspection at a time shortly after the tenant moved out which the tenant did not attend. No inspection on moving out took place.

The tenant did not provide one month's notice and the landlords seek to retain the security deposit as compensation for the failure to provide notice. The landlords clarified that they are not claiming compensation for damages to the unit. The tenant seeks

compensation for loss of quiet enjoyment during the tenancy.

The tenant submitted a Monetary Order Worksheet in support of her claims. She clarified her claim during the hearing as follows:

1. Reimbursement for failure to provide hot water – 10 months x $50.00 = $500.00
2. Dryer – failure to provide for February 2021 - $40.00
3. Rental reimbursement – 70% for “noise, privacy, discrimination, retaliation, threat” - $9,368.00
4. Reimbursement of last month’s rent for breaking contract - $1,060.00
5. Moving costs - $500.00
6. Reimbursement of the filing fee

In one of her submitted written statements, the tenant stated in part as follows:

> *I am a Graduate student and a research assistant that works and attends school from home. My ability to work and focus on my career are severely negatively affected by the landlords.*

The tenant testified that her complaint to the municipality in mid-February 2021 summarises her grievances about the landlords and the unit. A copy of the complaint to the City was submitted which stated as follows:

> *I rent an illegal suite. My landlord is bullying me by controlling the hot water, making insane noise, restricting my movements, my guests, denying me the 30m2 of space for my secondary suite. They installed a bouncy castle inside their house three days ago and have been running it inside ever since. It literally sucks the doors of my not fireproof suite. They have three units they have been illegally renting and not providing tenant rights. This place needs to be shut down.*

During the hearing, the tenant clarified that her complaints included the following: noise from the landlords upstairs, unreliable hot water, inadequate parking, unlawful entry into the unit, the broken dryer for one month, the leaking kitchen sink, and wilful retaliatory actions (yelling, notes, constant texting, and so on) by the landlords.

The key complaints were the hot water issue and the noise. These are examined.

The tenant submitted substantial testimony and supporting evidence that the provision of hot water to the unit was unreliable and unpredictable. The water temperature would

vary without warning and sometimes the temperature was scalding. Sometimes there was no hot water at all. The tenant said she repeatedly asked the landlords to fix the problem starting shortly after she moved in and any effort by the landlords was ineffectual. The tenant submitted copies of many texts. For example, in one text, she stated:

> *Hello. It's December 14, 2020 and just a second friendly reminder that water pressure and constant reliable hot water are still issues I am having. Thank you for your further attention to the matter.*

The landlords stated that there was nothing wrong with the hot water system and the tenant had all the hot water she needed. In one undated text, the landlord stated:

> *Re hot water – I've been in your suite multiple times to deal with your claims of hot water issues and I have at no point found any shortage of hot water. Furthermore I can hear that on a daily basis you take showers for 15-20 minutes per day ergo there is plenty of hot water and it is of reasonable temperature for your to shower in for that length of time.*

With respect to the noise from upstairs, the tenant submitted copies of many texts asking the landlords to reduce the volume of the noise. For example, one text states:

> *Hello, friendly reminder you the above people and that noise transfer of running children is too much [sic]*

The tenant testified that the noise from the landlords' upstairs home grew increasingly bothersome.

As stated, in January 2021, the adjacent suite in the basement became vacant. In there, the landlords installed a "bouncy castle", a large, inflatable structure, a picture of which was submitted. The tenant testified the noise was intolerable from the landlords' children's playing on the bouncy castle several hours a day; as well, air flow to her unit was disrupted.

The landlord acknowledged the bouncy castle was inflated in the adjacent suite. However, the parties disagreed on how many hours/days the bouncy castle was inflated and used by the landlords' children.

The tenant claimed the landlords' raised the noise volume in retaliation to her

complaints. The landlords claimed they did everything possible to lower the volume of noise, such as enrolling the children in day care.

The parties agreed that their relationship became more strained. In her written submissions, the tenant stated,

> *There are text messages that show that I did notify them of the noise and their reply of "too bad, you can leave".*

In an undated text from the male landlord, he stated the tenant could move out and "I will not require 30 days notice if you find something sooner." The landlord acknowledged in the text that the tenant was having challenges in locating a new place. He invited her to "carry on with whatever idle threats you want to make. I cannot change what actions you decide to take to try to make mine and my families life miserable."

In support of both the noise and water complaints, the tenant submitted substantial documentary and verbal evidence including signed witness statements.

A signed witness statement from her friend AT was submitted. AT stated she had been in every suite the tenant had ever rented and had visited the tenant in the unit several times. AT stated she stayed with the tenant for a week in January and was "unable to shower because the hot water was being manipulated by the upstairs"; that is, the landlords would start running the hot water which made it unavailable for the tenant's use. During the visits to the unit, AT observed that the landlords sent many "unsolicited texts" to the tenant, including an objection to AT's "rusted old" car parked outside. AT observed the female landlord "scowling, glaring, and watching [our] every move". AT stated, "The noise level in the house is absurd; no parent should be allowing their children to behave like that."

The tenant submitted a signed witness statement from GF who stated he worked with the tenant for the last 5 years. During his visits to the tenant he observed the following, as written:

> *(a) too much noise from the overhead tenants, (b) discrimination from [the female landlord] through unsolicited texts, (c) glaring, eye rolling, and poor behavioural conduct from [the female landlord] at me, at [the tenant], as well as staring into [the tenant's] house and windows, (d) the constant parking and noise (bobcat, blower) immediately outside [the tenant's] windows - despite parking for 7+ cars out front away from [the tenant's] houses, (e) lack of hot water from all three taps*

in the house, (f) three unsolicited and unannounced drop bys to [the tenant's] house/door by [landlord], (f) the drop in noise when their parents are around, the intensification of noise sent to me from [the tenant] that show the increase in noise after I leave.

…

I have watched [landlords] gaslight [tenant] and tell her that her problem is "in her head", "her own use", or "her own problem". I am here to corroborate that, in fact, [tenant] is entitled and protected from the experiences that she is having with the [landlords]. The [landlords] are discriminatory, retaliatory, vindictive, and ignorant to [the tenant].

…

[The tenant] is in need of protection from these bullies and these bullies should not be allowed to win or inconvenience [the tenant] in any way. Further, these people should not be allowed to rent again.

The tenant submitted a signed witness statement from Dr. SB-D who stated she is a professor and a researcher; the tenant is employed as her research assistance. SB-D described the tenant as a "dedicated, dependable, trustworthy, caring, mature student and research assistant". She stated that the tenant informed her twice about her problems with her landlord. SB-D stated that their video meeting in November 2020 had to be rescheduled as the tenant was crying and upset about her living situation.

The tenant testified that shortly after she submitted her complaint to the municipality in mid-February 2021, a representative from the City came to the property and spoke with the landlords. She testified that she spoke with the by-law officer who informed her that the landlords were ordered to provide 30-day notice to the tenant and stop renting the suite. The tenant testified to accelerated and increasing noise and other forms of retaliation by the landlords after this. For example, the tenant testified that the dryer did not work for the month before she left. Parking disputes intensified.

On February 20, 2021 the tenant gave notice she was moving out at the end of February 2021. She stayed somewhere else for a week before returning to the unit to pack and clean.

On her return, she found a typed notice taped to her door stating that an inspection would take place on February 24 at 12 pm "due to the abandonment of the unit". The tenant believed her right to privacy was infringed as the landlords could clearly observe her comings and goings; they knew she had not moved out and had invented an excuse which was noncompliant with the Act to go in to the unit. The landlord replied that they

believed the tenant had permanently moved out.

The landlords submitted considerable testimony as well as a lengthy written statement with many attachments, disputing nearly every aspect of the tenant's version of events. The landlords claimed that they had asked the tenant to be quiet at first, not the other way around, that they had done everything to live quietly and respectfully with the tenant, that the tenant had unauthorized overnight guests, and that the tenant was refusing to follow parking rules. They stated that the tenant informed them February 19, 2021 that she was moving out and provided her forwarding address.

The landlords acknowledged the dryer broke in early February 2021 and stated it was repaired within two weeks.

Parts of the landlords' written submissions are as follows:

> *Oct. 21/20 – [The tenant] sent text to [the landlord] at 6:02pm complaining about loud noise from the children during a zoom call. Around this date [the landlords] believe the tenant] started working from the unit. Up until this time [the tenant] left the unit Monday to Friday to go to work and other than a few loud nights when [the tenant] came home past 10pm, the landlords had no issues with her up until the time that her working situation seemed to change. [The landlord] family has 3 young children (now 6, 3 and 1) who always lived above the rental unit since [the tenant] moved in. The tenant never once complained about the noise from the children until around this date.*
>
> *Dec. 14/20 – [The tenant] sent text to [the landlord] complaining that the reliability of the hot water and water pressure in her unit being an issue and demanded it be fixed. Seeing as this was the first complaint about pressure, previous tenants had never complained [the landlord] surmised this was a comfort issue and not an emergency. Prior to [the tenant] moving in 4 adults all shared the hot water line in the home and never once complained about pressure or amount of hot water. [A letter from a previous tenant in support of this statement was attached).*
>
> *Dec. 15/20 – [The tenant] sent [the landlord] more text messages about the nature of her hot water issue.*
>
> *…*
> *Jan. 10/21 – [The tenant] sent text to WM stating the new valve helped somewhat. In the same text message [the tenant] advised for the past several*

weeks the hot water was apparently absent to the kitchen sink, intermittent at the bathroom sink and hot to freezing in the shower. Within 20 minutes of receiving the text message WM went and knocked on the door, [the tenant] let [the landlord] into unit. [The landlord] ran the kitchen sink faucet and found that there was hot water. [The landlord] advised [the tenant] he could not recreate the issue. [The tenant] got very upset and that was the last time she allowed [the landlord] to enter the unit in order to try to find out why she was having hot water issues.

…

Feb. 16/21 – [The tenant] reported unauthorized rental suite to city bylaw, bylaw attended the property and spoke to [the landlord]. They advised the suite would need to be decommissioned once the Tenant had moved out

The tenant requested damages as compensation for loss of quiet enjoyment and expenses as set out above.

The landlord requested authorization to keep the security deposit as the tenant had not provided one month's notice of moving out.

Analysis

While I have turned my mind to the documentary evidence and the testimony introduced in the 110-minute hearing, not all details of the submissions and arguments are reproduced here. The relevant, admissible, and important aspects of the claims and my findings are set out below.

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.

Credibility and Weight of Testimony/Evidence

In assessing the weight of the testimony and evidence, I found the tenant credible, well-prepared, and sincere. She was persuasive and forthright. Her claims were well supported by documentary evidence, such as copies of texts with the landlords and written witness statements.

In assessing the weight of the landlords' testimony and evidence, I observed that they appeared indifferent and unconcerned about the effect of the matters about which the

tenant complained, her primary concerns being the noise and hot water. They were not empathetic with the tenant's grievances which they dismissed as unreasonable and undeserved.

I find the landlords' actions as the tenancy went on and as described by the tenant were retaliation for what the landlord saw as unreasonable complaining. I find the landlords responded to the tenant's concerns with actions designed to worsen the tenant's situation and get her to move out, instead of improving the situation. I found the landlords throughout the tenancy lacked any comprehension of the effect of their actions on the tenant's loss of quiet enjoyment.

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.

Landlords' Claim

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act. Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows:

> *(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> *(a) is not earlier than one month after the date the landlord receives the notice, and*
>
> *(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The parties agreed that the tenant did not provide one month's notice.

I have considered the parties' testimony and the text by the male landlord in which he said the tenant could move out and they would not require notice. Both parties submitted a copy of the text in their evidence.

I find that the landlords agreed the tenant could move out without providing one month's notice. I find the tenant relied on this promise which took place during a complete breakdown of the relationship between the parties.

As the landlords agreed they would not require notice, I therefore find that the tenant

has not breached the Act. The landlords are not entitled to one month's notice. They are therefore not entitled to damages and compensation. They are not entitled to retain the security deposit. I direct the landlords to return the security deposit to the tenant.

As the landlords have not been successful in their application, I do not grant them reimbursement of the filing fee.

The landlords' claims are dismissed without leave to reapply.

Tenants' claim: moving expenses

The tenants claim $500.00 as moving expenses in vacating the unit although the tenant did not submit any receipts.

I find the tenancy ended according to an agreement between the parties. Accordingly, I find the tenant's claim for reimbursement of unspecified moving expenses does not meet the burden of proof required and I dismiss the tenant's claim in this regard without leave to reapply.

Tenants' claim: loss of quiet enjoyment

The balance of the tenant's claims (apart from the moving expenses 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 sufficiently quiet unit with reliable hot water. 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 *Ac*t 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 anxiety. I accept the tenant's

description of the unsatisfactory noise from the landlords living overhead and the unreliable provision of hot water as described. I accept the tenant's description as factual of all aspects of the conditions of the tenancy as she described.

I find the landlords repeatedly dismissed the tenant's complaints as detailed earlier in the Decision.

I find the tenant notified the landlords about her concerns and that the landlord failed to remedy the noise and hot water situation. I find the landlords should have remedied both issues by November 1, 2021. The landlords had ample time to correct the situations before this date and did not do so. I accept the tenant's evidence as described earlier that the interference with her quiet enjoyment increased after this date and was substantial, frequent, and ongoing for the final four months of the tenancy.

I accept their testimony that for the noise increased from November 2020 until the end of the tenancy four months later. I find the bouncy castle in an area adjacent to the tenant's unit to be a serious violation of her right to quiet enjoyment and an example of the landlords' indifference to the tenant's situation. I accept the tenant's statements about the violation of her privacy by the landlord in falsely concluding she had abandoned the unit, thereby giving them the pretense of the right to enter.

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 her ability to live peacefully in the unit for the last four months of the tenancy. I find that the tenant was significantly and increasingly unable to use the unit as expected and she became desperate to move out. I accept the tenant's evidence that they complained about the situation to the City as a desperate measure to prevent a future tenant from going through the same experience.

I find the loss of quiet enjoyment as claimed by the tenant extended for a period of 4 months. I find the tenant increasingly lost certainty during this time about whether they could quietly work and 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.

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 10-month period but was significantly deprived of their right to live peacefully by the landlord's failure to act or to respond adequately in the last four months. 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. The noise and inadequate provision of hot water became unbearable for the tenant who moved out for a week in February 2021 as she said she couldn't stand it anymore.

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 4 months.

I accept the tenant's claim and I find that they paid rent in the total amount of $4,640.00 in this 4-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 $2,320.00.

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

I dismiss the remainder of the tenant's claims without leave to reapply.

In summary, I award the tenant a Monetary Order of **$3,480.00** calculated as follows:

ITEM	AMOUNT
Security deposit	$1,060.00
Loss of quiet enjoyment	$2,320.00
Reimbursement of filing fee	$100.00
TOTAL MONETARY ORDER	**$3,480.00**

Conclusion

I grant a Monetary Order to the tenant in the amount of **$3,480.00.** 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.

I dismiss the landlord's claims without leave to reapply.

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: May 09, 2021

Residential Tenancy Branch