



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDCL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Property Manager stated that on January 22, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on January 18, 202 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 14, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was delivered to the Landlord's business address on May 18, 2021. The Property Manager acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for lost revenue and to retain all of part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 09, 2017;
- the Tenant paid a security deposit of \$1,100.00;
- at the end of the tenancy rent of \$2,335.00 was due by the first day of each month;
- in late September of 2020 the Tenant was given written notice that the plumbing in the residential complex would be replaced and that work would commence at the end of October of 2020;
- work on the plumbing in the residential complex commenced at the end of October of 2020;
- on December 16, 2020 the Tenant sent the Landlord an email, in which he declared he was moving due to concerns about on-going construction in the unit/building;
- the notice given on December 16, 2020 declared that the Tenant would vacate by December 31, 2020;
- the rental unit was vacated on December 31, 2020; and
- no rent was paid for January of 2021.

The Property Manager stated that the:

- the plumbing project in the residential complex was completed in the middle of January of 2021;
- the Landlord is seeking lost revenue for January of 2021, in the amount of \$2,335.00, as they were unable to re-rent the unit until March 15, 2021;
- the Landlord began advertising the rental unit on December 20, 2021;
- the rental unit was habitable in spite of the plumbing project and holes being cut into the walls;
- there are two bathrooms in the rental unit; and
- the Tenant was able to use one of the bathrooms in the rental unit when the other bathroom was under repair.

The Tenant stated that:

- he regularly requested information about details of the plumbing project;

- he was not provided with adequate details about the schedule and nature of the repairs;
- he never provided the Landlord with written notice that he would end the tenancy if the Landlord did not address his concerns about the plumbing project;
- he never mentioned that he was thinking of moving until December 16, 2020, when he gave the Landlord notice that he was moving on December 31, 2020;
- the plumbers cut holes in the drywall and removed insulation sometime after he stopped living in the rental unit on December 13, 2020;
- he does not know if he could have used the second bathroom in the rental unit, as he had stopped living in the unit before the tradesmen began working in this unit;
- there was a lot of dust in the rental unit as a result of the plumbing project, to which he is allergic;
- tradesmen were frequently in the unit;
- the construction was very noisy;
- they were frequently without water, sometimes for several days;
- he believes the rental unit was uninhabitable due to the plumbing project; and
- he has filed a claim for loss of quiet enjoyment of the rental unit, which will be the subject of a dispute resolution proceeding sometime in November of 2021.

The Landlord submitted photographs of the rental unit which were taken after the unit was vacated in December of 2020, which the Property Manager contends shows that the rental unit was habitable, in spite of the plumbing repairs.

The Tenant submitted photographs of the rental unit which were taken in December of 2020, which he contends shows that the rental unit was not habitable because of the plumbing repairs.

Emails exchanged between the parties at various times were submitted in evidence, in which the Tenants raise concerns about the upcoming plumbing project, including the need for tradespeople to access their unit. In these emails the Tenants request compensation for loss of quiet enjoyment of the rental unit however compensation was not offered to the tenants during the tenancy or at this hearing.

The Tenant submitted emails he exchanged with the contractor of the plumbing project after he vacated the rental unit, in which he is attempting to ascertain the safety of products used in the project.

The Tenant submitted notices that declare the water will be turned off in the residential complex between 8:00 a.m. and 4:00 p.m. on 1 day in November of 2020 and 3 days in January of 2021.

The Tenant submitted a notice that declares the water will be turned off in the rental unit and the unit will be accessed between 8:30 a.m. and 5:00 p.m. on 1 day in November of 2020.

The Tenant submitted notices that declare the rental unit may be accessed during the day on November 23, 2020, December 14<sup>th</sup> to 23<sup>rd</sup> of 2020, and January 4<sup>th</sup> to 13<sup>th</sup> of 2021.

The Tenant submitted a video that the Tenant declared was taken on December 31, 2020. This video shows the rental unit in good condition, with some minor areas in the final stages of a repair.

### Analysis

On the basis of the undisputed evidence, I find during the latter part of this tenancy the Tenant was required to pay monthly rent of \$2,335.00 by the first day of each month; that on December 16, 2020 the Tenant provided notice of intent to vacate the rental unit at the end of December, via email; and that rental unit was vacated on December 31, 2020.

I find that the Tenant failed to comply with section 45(1) of the *Residential Tenancy Act* (Act) when the Tenant failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on December 31, 2020 in accordance with section 45 of the Act, the Tenant needed to provide written notice to the Landlord on, or before, November 30, 2020.

As the Tenant did not give notice to end the tenancy until December 16, 2020, I find, pursuant to section 53 of the Act, that the earliest effective date of this notice was January 31, 2021.

I find that the Landlord made reasonable efforts to locate a new tenant for January but, in spite of those efforts, was unable to find a new tenant for that month. In spite of the efforts to mitigate their loss, I find that the Landlord suffered a loss of revenue for the month of January of 2021 that the Landlord would not have experienced if the Tenant

remained in the rental unit until the effective date of the Notice to End Tenancy, which was January 31, 2021. I therefore grant the Landlord's claim for lost revenue, in the amount of \$2,335.00.

Section 45(3) of the Act stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In regard to a material term, Residential Tenancy Branch Policy Guideline #8 reads, in part:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

*To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

*The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.*

*To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*  
*that there is a problem;*  
*that they believe the problem is a breach of a material term of the tenancy agreement;*  
*that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*  
*that if the problem is not fixed by the deadline, the party will end the tenancy.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.*

In regard to a tenant's right to quiet enjoyment, Residential Tenancy Branch Policy Guideline #6 reads, in part:

*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.*

*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.*

.....

*A breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the RTA and section 38 of the MHPTA a tenant may, with written notice, end a tenancy due to the breach of a material term. The standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the premises. Compensation for damage or loss may be more appropriate, depending on the circumstances.*

On the basis of the undisputed evidence, I find that the plumbing was being updated in the residential complex between late October of 2020 and the middle of January of 2021. The evidence shows that the plumbing project was quite disruptive, as the Tenant was without water on several occasions, tradespeople were accessing the rental unit; repairs were being made within their rental unit; and there was noise/mess typically associated to a project of this nature. I find that these repairs were a breach to the Tenant's right to the quiet enjoyment of the rental unit.

Whether the Tenant is entitled to compensation for this breach of his right to quiet enjoyment is not a matter to be determined at these proceedings. That is a matter that

will be determined at a future dispute resolution proceeding when the Tenant's application for such compensation is considered.

A landlord has both a right and an obligation to maintain a rental unit. I find that the Landlord was complying with his right and obligation to maintain the rental unit by having the plumbing updated in the rental unit. While I accept that the plumbing project was disruptive for the Tenant, I find that it was not a breach of a material term of the tenancy. As such, I find that the Tenant did not have the right to end the tenancy pursuant to section 45(3) of the *Act*.

Even if the plumbing project could be considered a breach of a material term of the tenancy, I would conclude that the Tenant did not have the right to end the tenancy pursuant to section 45(3) of the *Act* because he did not give the Landlord written notice that:

- informed the Landlord he believed the plumbing project was a breach of a material term of the tenancy agreement;
- directed the Landlord to correct the problem by a reasonable deadline; and
- informed the Landlord that he will end the tenancy if the corrections were not made by the reasonable deadline.

In these circumstances, the Tenant did not warn the Landlord that he was considering ending the tenancy until he December 16, 2020, when he provided written notice of his intent to end the tenancy on December 31, 2020.

In adjudicating this matter, I have placed no weight on the Tenant's submission that the unit was uninhabitable. Although the images submitted in evidence by both parties show that repairs have been made within the unit, those repairs do not, in my view, demonstrate that the Tenant could not live in the unit while those repairs were being made.

In determining that the Tenant could have lived in the unit, albeit with some inconvenience, during the plumbing project, I was influenced by the undisputed testimony that the Tenant could have used the second bathroom while the other bathroom was out of service.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,435.00, which includes \$2,335.00 in lost revenue and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$1,100.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,335.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: May 28, 2021

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Residential Tenancy Branch