Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation for loss, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

Preliminary Issue – Late Evidence Submitted by the Landlord

The landlord submitted evidence after the hearing was completed for consideration.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

This late evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I did not inform either party during the hearing that I would allow further evidence to be submitted, nor am I satisfied that the tenants were served with this late

evidence. I am also not satisfied that the landlord had obtained the tenants' consent for this late evidence to be admitted.

I find it would highly prejudice the tenants to admit this late evidence, and therefore this late evidence was excluded for the purposes of this decision.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy originally began on May 1, 2018. On April 5, 2019, the tenants signed a new fixed-term tenancy agreement for a 12 month term commencing on May 1, 2019. Monthly rent remained the same at $1,900.00, payable on the first of the month. The landlord had collected a security deposit in the amount of $950.00, which has been returned to the tenants after the tenants had moved out on May 31, 2020.

The tenants are making a monetary claim in the amount of $10,606.56 as set out in the table below, plus recovery of the filing fee. The tenants noted in the hearing that they wished to make the correction of 8.5 hours to 8 hours for the calculations below.

For	Amount	Calculation
5% of rent for loss of use & quiet enjoyment when scaffolding up (2019-08-01 to 2020-5-31)	$952.60	5% x 305 days x $62.47 rent / day

21.62% of rent for loss of use of balcony, based on square footage (2019-08-07 to 2020-5-31)	$4,038.33	(200 / 925 sqft) x 299 days x $62.47 rent / day
50% of rent during construction hours, for significant loss of quiet enjoyment when jack-hammering begins (2019-10-14 to 2020-5-31)	$1,825.17	50% x 165 week days @ 8.5 hrs / day x $62.47 rent / day
Remaining 50% of rent during construction hours, for complete loss of quiet enjoyment, can't escape (2020-03-17 to 2020-5-31)	$600.49	50% x 54 week days @ 8.5 hrs / day x $62.47 rent / day
Total Therapy, registered massage therapist, 2 visits, partially reimbursed by employer	$65.50	$32.75 + $32.75
Airbnb, accommodations during window replacement	$1,018.84	$872.59 + $146.25
Meals and incidentals during window replacement, based on NJC travel allowances	$761.60	$108.80 x 7 days

Meals and incidentals during interior repairs, based on NJC travel allowances	$440.40	$110.10 x 4 days
Private accommodations during interior repairs, based on NJC travel allowances	$150.00	$50 x 3 nights
7.5 hrs vacation leave on 2020-04-01 to vacate suite for interior repairs	$392.18	7.5 hrs x $52.29/hr
5 hrs sick leave 2020-04-15/16 due to complete loss of quiet enjoyment	$261.45	5 hrs x $52.29/hr
Filing Fee	100.00	
Total Monetary Order Requested:	**$10,706.56**	

Both parties confirmed that prior to the signing of the new tenancy agreement, the landlord had warned the tenants that an extensive repair and remediation project might start, but the tenants were not provided with the specific timeline. The tenants testified that they had agreed to the new fixed term although they wanted to continue on a month-to-month basis, unaware that the previous fixed-term tenancy would automatically convert to a month-to-month agreement. Both parties confirmed that it was after the new agreement was signed, that the project was confirmed to begin shortly. The tenants attempted to negotiate with the landlord a resolution, but both parties were unable to achieve a mutual resolution of the matter. The tenants testified that they had considered moving, and requested to convert the tenancy to a month-to-month term. The tenants testified that the landlord had retained legal counsel, and was

informed that the landlord would only agree to change the terms of the tenancy on the condition that the tenants agreed to sign a Mutual Agreement to end the tenancy on a specific date. The tenants testified that they had only a week to respond to the offer, and eventually were informed that no further negotiations were possible.

The tenants testified that although the landlord did communicate the possibility that the project would proceed, the tenants were unaware of the full extent of the losses and inconvenience that the repairs would cause. The tenants expressed concern over being able to find new housing within a limited amount of time.

The tenants submitted the above monetary claims as calculated above associated with the losses and discomfort the tenants experienced due to the repairs and remediation. The tenants testified that in addition to the noise and disruption, the tenants were also concerned about their personal safety as the documents included warnings of possible criminal activity due to the scaffolding. The tenants testified that the loss of the balcony was significant to them, and was the primary reason why they chose to rent this particular suite.

The tenants also testified to the loss of privacy and natural light, which affected their mental health. The tenants testified that the disruption became so unbearable that they had to seek out quiet places to go like the lobby.

The landlord testified that the tenants had never brought up issues of stress until they filed this claim 8 months after they had moved out. The landlord testified that this was the second major project, and that the landlord had communicated with the tenants, and was clear in her disclosure before the tenants had agreed to sign a new tenancy agreement. The landlord testified that the repair dates were out of the landlord's control as they pertained to common property, and the landlord felt that she had she had done everything possible to prepare the tenants, or end the tenancy pursuant to a Mutual Agreement.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Furthermore, section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 28 of the Act speaks to a tenant's right to quiet enjoyment:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following…

(b) freedom from unreasonable disturbance;…

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 gives further clarification on the tenants' entitlement to quiet enjoyment and related compensation:

A. LEGISLATIVE FRAMEWORK

Under section 28 of the *Residential Tenancy Act* (RTA) and section 22 of the *Manufactured Home Park Tenancy Act* (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In this case, I find that at the time the tenancy agreement was signed, neither party was aware of the exact timeline the tenants would be affected. The tenants testified that although they were made aware of the possibility of the repairs commencing, the tenants wanted to continue with the tenancy on a month-to-month basis. The tenants' testimony was that they were only given the option of a fixed-term tenancy when a new agreement was signed on April 5, 2019. The tenants had originally signed a fixed-term tenancy agreement on April 8, 2018 for a term that was to end on April 30, 2019.

Residential Tenancy Policy Guideline #30 addresses fixed term tenancies. Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term only in specific circumstances.

As set out in Residential Tenancy Policy Guideline #30, the landlord can only include a vacate clause for the following circumstances:

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

• the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

• *the tenancy agreement is a sublease agreement*

Although both parties had initialed the portion of the tenancy agreement indicating that the tenants must move out of the rental unit on or before the last day of the tenancy, I find that the vacate clause was of no force or effect pursuant to the *Act a*nd *Residential Tenancy Policy Guideline.*

The tenancy automatically continues as a month-to-month tenancy on the same terms unless both the landlord and tenants agree to renew a fixed term tenancy with or without changes for another fixed term. The tenants testified that in this case they were informed that their only option was to renew the tenancy on a fixed-term basis, and were unaware that the tenancy would automatically continue on a month-to-month basis if they did not renew.

Although the landlord may argue that the tenants made the decision to enter into the new fixed-term agreement, I must still consider whether it was unconscionable for the landlord to require that the tenants to sign a new fixed-term agreement.

Residential Tenancy Act provides by section 5 that:

This Act cannot be avoided

> **5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 6 (3) provides:

> (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this Act or the regulations,
>
> (b) the term is unconscionable, or

> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 3 of the Residential Tenancy Regulation gives the following definition of "unconscionable":

> **3** For the purposes of section 6 (3) (b) of the Act *[unenforceable term]*, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

The tenants were presented with the option to continue the tenancy only on a fixed-term basis. Although the tenants had initialed the original agreement that they must vacate the rental unit at the end of the original term, the landlord did not have a basis to require the tenants to vacate pursuant to the *Act a*nd Policy Guidelines. I find that by initialing the vacate clause in the agreement, the tenants were led to believe that they would have no choice but to enter into a new fixed-term agreement or vacate the rental unit at the end of the original term.

This requirement for the tenants to enter into a new fixed-term tenancy agreement was for the benefit of the landlord as the original agreement would have automatically converted to a month-to-month agreement despite the initials requiring the tenants to vacate the rental unit.

The tenants had signed the new tenancy agreement even though they were opposed to a fixed term in light of the possible repair and remediation project, but were faced with the requirement to vacate if they did not do so. By signing a new fixed-term agreement, the tenants faced possible financial consequences if they were to move out before the end of the agreement. The question is whether the requirement for the tenants to move out, or enter into a new fixed-term agreement can be considered oppressive or grossly unfair to the tenants.

In *Murray v. Affordable Homes Inc.*, 2007 BCSC 1428, the Honourable Madam Justice Brown set out the necessary elements to prove that a bargain is unconscionable. She said at p. 15:

> **Unconscionability**

[28] An unconscionable bargain is one where a stronger party takes an unfair advantage of a weaker party and enters into a contract that is unfair to the weaker party. In such a situation, the stronger party has used their power over the weaker party in an unconscionable manner. (***Fountain v. Katona***, 2007 BCSC 441, at para. 9). To prove that the bargain was unconscionable, the complaining party must show:
(a) an inequality in the position of the parties arising out of the ignorance, need or distress of the weaker, which leaves that party in the power of the stronger; and
(b) proof of substantial unfairness of the bargain obtained by the stronger.
Morrison v. Coast Finance Ltd. (1965), 55 D.L.R. (2d) 710 at 713, 54 W.W.R. 257 (B.C.C.A.).

[29] The first part of the test requires the plaintiff to show that there was inequality in bargaining power. If this inequality exists, the court must determine whether the power of the stronger party was used in an unconscionable manner. The most important factor in answering the second inquiry is whether the bargain reached between the parties was fair (***Warman v. Adams***, 2004 BCSC 1305, [2004] 17 C.C.L.I. (4th) 123 at para. 7).

[30] If both parts of the test are met, a presumption of fraud is created and the onus shifts to the party seeking to uphold the transaction to rebut the presumption by providing evidence that the bargain was fair, just and reasonable. (***Morrison***, at713).

[31] The court will look to a number of factors in determining whether there was inequality of bargaining power: the relative intelligence and sophistication of the plaintiff; whether the defendant was aggressive in the negotiation; whether the plaintiff sought or was advised to seek legal advice; and whether the plaintiff was in necessitous circumstances which compelled the plaintiff to enter the bargain (***Warman*** at para. 8). The determination of whether the agreement is in fact fair, just and reasonable depends partly on what was known, or ought to have been known at the time the agreement was entered. The test in ***Morrison*** has also been stated as a single question: was the transaction as a whole, sufficiently divergent from community standards of commercial morality? (***Harry v. Kreutziger*** (1978), 95 D.L.R. (3d) 231 at 241, 9 B.C.L.R. 166.)

I find that the requirement of the tenants to move out at the end of the fixed term, or enter into a new fixed term agreement to be unconscionable within the meaning of the Regulation. I find that there is an inequality of bargaining power between the tenants and the landlord in circumstances where the tenants felt that they had no alternative but to accept the proffered agreement or find a new home. I find that the landlord had used this advantage in order to influence the tenants to agree to a new fixed term agreement that was more beneficial to the landlord than the tenants.

In this case, even though the landlord had communicated to the tenants that an extensive repair or remediation project was likely to commence with no confirmed start date, the tenants were under pressure to make the decision to find new housing, or stay for at least 12 months even with the possibility of an extensive remediation project that would take place within those 12 months.

Despite the fact that the landlord did disclose to the tenants that a significant and extensive remediation project was about to take place, I find that the tenants were presented with only two options: to move out or agree to a new fixed term agreement. I am not satisfied that it was communicated clearly to the tenants that the original fixed-term agreement would automatically convert to a month-to-month term, and that the tenants did not in fact have to vacate the rental unit or stay for another fixed-term. I note that both parties confirmed that there were discussions of a mutual resolution of the matter, but neither party was able to achieve a resolution and the tenancy continued for the duration of the entire fixed term. Accordingly I find that the tenants have the right under the *Act a*nd Policy Guidelines to file a monetary claim related to their loss of quiet enjoyment they experienced during the remediation project. 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. I will now consider each of the tenants' monetary claims.

The tenants filed a claim for loss of quiet enjoyment, with the claims broken down as follows:

1) 5% of rent for loss of use & quiet enjoyment when scaffolding up (2019-08-01 to 2020-5-31)
2) 21.62% of rent for loss of use of balcony, based on square footage (2019-08-07 to 2020-5-31)

3) 50% of rent during construction hours, for significant loss of quiet enjoyment when jack-hammering begins (2019-10-14 to 2020-5-31)
4) Remaining 50% of rent during construction hours, for complete loss of quiet enjoyment, can't escape (2020-03-17 to 2020-5-31)

Section 27 of the *Act* establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

> ***27*** *(1) A landlord must not terminate or restrict a service or facility if*
>
> *(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
>
> *(b) providing the service or facility is a material term of the tenancy agreement.*
>
> *(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*
>
> *(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*
>
> *(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

In assessing his claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept that the landlord had to restrict the tenants' access and use of the balcony for the duration of the repairs and remediation. I also find that the tenants' ability to enjoy their rental unit as intended under the tenancy agreement was significantly impacted. As noted above, if the tenancy had continued on a month-to-month basis, the tenants would have had the ability to exercise their right to move out with proper notice. In this case, I find that the tenants faced the difficult decision to move out with possible consequences, agree to a mutual resolution which the tenants did not feel was fair or beneficial to them, or stay and cope with the ongoing remediation and repairs. The tenants chose the latter. Despite all of this, as stated above, the burden is still on the tenants to support their claims.

The tenants applied for a 5% retroactive rent reduction for the loss of use and quiet enjoyment related to the scaffolding. Although the tenants referenced the impact the scaffolding had on them, including their fears that their safety was compromised, lack of privacy, and reduced light, I am not satisfied that the tenants had provided sufficient evidence to support the specific rent reduction claimed related to the scaffolding. Although I acknowledge that the scaffolding was up for at least 10 months, I am not satisfied that the tenants' safety was indeed compromised. I also do not doubt that the scaffolding did reduce the light and privacy for the tenants, but I am not satisfied that the tenants had sufficiently supported that the reduction was significant enough to justify a reduction in the rent claimed for the loss of quiet enjoyment related to the scaffolding. Accordingly, I dismiss this portion of the application without leave to reapply.

The next claim relates to the loss of the use of the balcony. It was undisputed by both parties that the tenants lost the use of their balcony for the period stated in their application. Although I recognize that the tenants lost the use of this portion of the rental unit which they considered to be one of the primary reasons for selecting this rental unit, in considering their monetary claim for this loss the tenants must still establish how this loss has impacted them, and how this has resulted in a reduction in the value of their tenancy agreement. While the balcony does form part of the tenants' useable space, I am not satisfied that the tenants have demonstrated that they are entitled to a 21.62% retroactive reduction. The onus falls on the applicants to demonstrate the impact this loss has had on the value of the tenancy agreement, and in this case I find that the tenants have failed to sufficiently do so. Accordingly, I dismiss the tenants' monetary claim for the loss of use of their balcony without leave to reapply.

The next claim relates to the loss of quiet enjoyment related to the jackhammering, which took place over 7.5 months. I find the impact of this to be significant as it affected the tenants' ability to work and live in their rental unit, especially during the period of March to May 2020 when the tenants were required to work from home due to the pandemic. I find that the fact that the tenants were bound by the requirements of a fixed-term tenancy agreement that hindered their ability to move out with less financial consequence. Accordingly, I find that the tenants are entitled to monetary compensation related to the loss of quiet enjoyment due to the jack hammering. I find the tenants' proposed rent reduction of 50% to be reasonable, and accordingly, I allow a monetary

order for a rent reduction in the amount of **$676.76** (50% x 165 days @ 8 hours/day x $62.47).

The tenants filed for a further 50% rent reduction for the period of March 17, 2020 to May 31, 2020 for their inability to escape the construction during the period of the pandemic. I have considered this portion of the tenants' claim, and although the impact may have been greater during this time period due to the pandemic, I am not satisfied that this additional loss of quiet enjoyment can be attributed to the landlord during this period, nor am I satisfied that the tenants had sufficiently supported this additional claim for losses. Accordingly, I dismiss this portion of the tenants' claim without leave to reapply.

The remaining portions of the tenants' claims relate to specific expenses incurred by the tenants during the period of the remediation and repairs. I had already considered the tenants' claims for loss of quiet enjoyment under the *Act*, Any additional claims for losses must meet the criteria as set in the *Act a*nd legislation.

I have reviewed each individual claim, which included claims for alternative accommodation during the window replacement, meals and incidental during the window replacement, meals and incidentals during interior repairs, alternative accommodation during interior repairs, massage therapy, vacation leave, and sick leave.

Residential Tenancy Policy Guideline #5 addresses the duty of the claimant to mitigate loss:

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss[1]. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid

further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation[2]. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

The duty to mitigate losses is only one of the criteria that needs to be met when making a claim. As stated earlier in this decision, the claimants must not only prove the value of the loss, the claimants must also prove that the losses were solely due to the other party's contravention of the *Act* or tenancy agreement. Only after these requirements are met, can the applicant be successful in their claim. In consideration of the claim for physical therapy, I am not satisfied that the tenants had sufficiently supported that these treatments were necessarily due to the landlord's contravention of the *Act.* Accordingly, I dismiss the tenants' claim for reimbursement of the physical therapy without leave to reapply.

Similarly, I am not satisfied that the tenants had sufficiently supported that it was necessary for the tenants to make alternative arrangements for accommodation for the periods claimed. I find that the tenants failed to mitigate their losses associated with this claim, and the landlord cannot be held responsible for the tenants' decision to find alternative accommodation. Accordingly, I dismiss the tenants' claims for accommodation without leave to reapply.

In review of the tenants' claims for meals, I am not satisfied that the tenants had sufficiently supported that these expenses were incurred solely due to the landlord's contravention of the *Act* or agreement. Accordingly, I dismiss the tenants' claims for meals without leave to reapply.

Similarly, I find that the tenants had failed to establish that the claims for sick and vacation leave were losses that the tenants suffered solely due to the landlord's contravention of the *Act,* and I also dismiss these claims without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, and the tenants were only partially successful with their claim, I allow them to recover half of the filing fee.

Conclusion

I issue a monetary order in the amount of $726.76 in the tenants' favour which allows the tenants compensation for loss of quiet enjoyment plus recovery of half of the filing fee.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the tenants' claim 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: June 11, 2021

Residential Tenancy Branch