Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, RP, MNDCT, RR, CNL, OLC**

Introduction

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

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- 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 the filing fee pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony. The landlord stated he had English language speaking and comprehension difficulties and accordingly attended with his agent GP who assisted the landlord ("the landlord").

GP testified that he is a neighbour, tenant and friend of the landlord.

Both parties present made submissions. The tenant had amended his Application to include an Application to cancel a Two Month Notice. No issues of service were raised. The hearing process was explained.

The tenant submitted documentary evidence. The landlord did not submit documentary evidence.

1. *Recording*

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The parties had no questions about my direction pursuant to RTB Rule 6.11.

2. *Preliminary Issue – Inappropriate Behaviour by the landlord during the Hearing*

At the beginning of the hearing, I described the hearing process to the parties. I explained that an hour was scheduled for the hearing. To hear the evidence in that limited time, the parties were expected to be respectful and not interrupt each other. I informed the parties they would each have an opportunity to address the issues in turn.

Section 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. I asked him to stop many times. The landlord continued to interrupt and to argue with the tenant and me. As the hearing progressed, the landlord spoke louder until he was repeatedly yelling. I told the landlord to stop his behaviour to no avail. The landlord ignored my cautions and warnings. The landlord repeated his testimony in an argumentative and loud manner despite my asking him several times not to do so.

Throughout the hearing, the landlord appeared increasingly upset, argumentative, and disappointed in the hearing process. He questioned the fairness of the process. I asked to be allowed to speak so I could answer his questions. He repeatedly said the process was unfair despite my explanations of the Act and procedure.

As a result of the landlord's conduct, repeated interruption and disruptive behaviour, the hearing took 96 minutes.

I caution the landlord not to behave in the same inappropriate and disruptive behaviour at any future hearings at the RTB. This behaviour will not be tolerated, and they may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

3. Mediation

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the

Arbitrator).

Issue(s) to be Decided

Is the tenant entitled to the relief requested? Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties submitted considerable disputed testimony in a 96-minute hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agreed on the following details of the tenancy and the tenant submitted a copy of the tenancy agreement:

ITEM	DETAILS
Written tenancy agreement	yes
Copy of agreement submitted	yes
Type of tenancy	Monthly
Date of beginning	May 1, 2015
Date of ending	ongoing
Monthly rent payable on 1st	$973.75
Security deposit	$450.00
Pet deposit	no
Outstanding rent	no

The agreement includes a typed “Addendum to Lease Agreement” dated April 24, 2021

and signed by both parties. The Addendum states as follows (emphasis added):

> *It is hereby agreed that the following terms and conditions shall form part of the aforementioned lease agreement.*
>
> *1) Subject to Section 10(1) of the agreement, the tenant shall be responsible for any and all **cosmetic improvements** (flooring, tiling, painting, landscaping, general repairs and maintenance, etc.)*

The tenant stated that the rental unit is a fenced residential home with basement and garage. The unit is on a 45-acre blueberry farm owned by the landlord. The landlord and extended family live in a nearby home on the farm. When the tenant moved in, there was a rented mobile home on the property and two more rented mobile homes have subsequently recently been moved onto the property.

The tenant testified that the unit was in bad condition when he moved in. He agreed to fix it up. The parties agreed that he would do “cosmetic improvements” as set out in the Addendum. The tenant testified he has spent $4,000.00 on repairs and many hours of work, both without compensation requested or offered.

The tenant testified that all was going well until he asked for the landlord to do repairs beyond those he considered “cosmetic”. He said these were substantial and not covered by their agreement.

The tenant testified there were three major problems: the presence of rats, the garage roof, and eavestroughs. The tenant summarized his claim in the application as follows:

> *Due to ongoing neglect, the 30+ y.o. vinyl deck covering has peeled & split, causing severe leaking in garage below & the moldy, rat feces infested ceiling to collapse. Lack of eaves trough causing moldy walls & flooding in basesment. As a result, have lost use of garage & basement. Landlord has ignored verbal requests for 2 yrs, & written requests for 9 mos. Landlord refuses to fix. Need order to fix myself & deduct from rent.*

The tenant requested reimbursement of $535.50 for expenses he incurred for vermin extermination after the landlord refused to compensate him.

The tenant testified that the garage became unusable in January 2020 from a leaking roof which caused the ceiling to collapse; the building became wet and mold proliferate. The tenant submitted supporting pictures. As a result, the tenant had to stop using the garage where he was storing vintage automobiles.

The tenant also testified that eavestroughs on two sides of the building have pulled away from the walls; as a result, water flows down the exterior walls causing water damage to the house and mold. The tenant submitted supporting pictures. He stated that water damage to the basement made it unusable.

The tenant testified that he asked the landlord to look after the garage and eavestrough repairs many times and compensate him for the extermination costs. The landlord refused.

The tenant then brought an application to the RTB on December 9, 2020 for repairs. The tenant testified that the landlord cut off the tenant's access to municipal water soon after. The tenant testified that he switched to using well water which is "milky" in appearance and must be boiled before using. His access to municipal water has never been restored. The tenant requests that the landlord be directed to reconnect the unit to the municipal water system.

The tenant served the application for repairs in December 2020. In early January 2021, the landlord served a Two Month Notice to End Tenancy for Landlord's Use ("the first Two Month Notice"). The tenant amended his application within the allowed time to dispute the notice and request its cancellation.

The tenant's application was heard before an Arbitrator and resulted in a Decision dated February 25, 2021, the number for which is referenced on the first page. The tenant submitted a copy of the Decision.

In the Decision, the Arbitrator heard only the application to cancel the first Two Month

Notice. The Arbitrator cancelled the first Two Month Notice. The tenant's application for repairs was dismissed with leave to the tenant to reapply.

The tenant has reapplied, and this is the application being heard today.

The Arbitrator stated in part is the previous Decision:

> *The landlord argues that the tenant agreed last year that he would move out in a year. The plans for his son to move in are now delayed. The landlord testified that his son is 36 years old, married with 2 children. The landlord also has another son. Both sons and their families live in the landlord's house, also located on the residential property. In total, 10 people live in this house. The landlord needs to give the house currently occupied by the tenant to his son.*
>
> *The landlord acknowledges there is another house located on the land across the street which the landlord also owns. The landlord acknowledges he recently rented this house out to a friend in December of 2020. This house was not suitable for the son to live in because it is small and because the son's children could be hurt by traffic in crossing the street to the main house.*
>
> *…*
>
> *The tenant gave the following testimony. The landlord verbally told him in early December that the landlord was planning on moving migrant farm workers into the house in March or April.*
>
> *When he served the landlord with the original Application for Dispute Resolution for repairs on December 19th, the landlord called him, yelling and screaming. The next day, the landlord cut off the tenant's city water supply. On January 1st, the tenant gave the landlord his rent cheque. The landlord personally served him with 2 days later with the Two Month's Notice to End Tenancy for Landlord's Use on January 3rd.*

The landlord told him that if the tenant would "drop" the repairs application, he would "drop" the notice to end tenancy. The tenant did not provide documentary evidence to corroborate this.

The tenant testified that he is aware that the landlord owns 3 or 4 properties, including 3 trailers on this blueberry farm. One of the properties was recently vacated and re- rented on December 31, 2020. Any of those properties owned by the landlord would be suitable for the landlord's son. When he first moved in, the rental unit house was uninhabitable with no bathroom or kitchen cupboards. The tenant has spent $4,000.00 of his own money fixing it up. The state of the house is still bad, suffering from mold in the basement, garage and ceiling. The tenant questions why this house would be more suitable for the landlord's son to live in than the one owned by the landlord directly across the street.

The Arbitrator found the landlord had not issued the first Two Month Notice in good faith and accordingly cancelled the Notice.

Relevant parts of the previous Decision are reproduced here:

I find the timing of the landlord's notice to end tenancy within days of being served with the tenant's Application for Dispute Resolution appears on its surface to be noteworthy.

…

… the letter given on December 27, 2020 [from the landlord] appears to be the first indication in writing that the landlord wants the house for his son. This letter was drafted after the date the tenant testified the Application for Dispute Resolution was served upon the landlord. The last question of "good faith" questions the landlord's choice to evict the tenant rather than move his son into another house owned by the landlord across the street. The landlord gave various reasons as to why

this "other" house was unsuitable, however I do not find any of those reasons to be reasonable. I have heard testimony from both parties that the rental property is located on a rural farm which is most likely free of traffic. I do not find the landlord's reasoning that traffic could harm the landlord's grandchildren while playing to be a likely scenario.

I find it equally compelling that the landlord chose to rent the other house out at exactly the same time he served this tenant with a notice to end tenancy. This was a vacant house, right across the street from the landlord's, suitable enough to be tenanted.

Though I have not seen pictures of the "other" house, it must have been deemed in good enough condition for another tenant to agree to rent out. Conversely, the rental property currently occupied by the tenant appears to suffer from widespread mold damage. How the tenant's rental unit is more suitable for the landlord's son and his family instead of the one across the street is rightfully questionable.

Lastly, in order for the landlord to satisfy me his son truly intends to move into the rental unit with his family, the landlord must provide some verifiable proof. Again, the onus falls to the landlord to prove it, not for the tenant to disprove it. The landlord has not provided any evidence of booking movers to facilitate the move; changing of utility bills from one location to another; or even a sworn affidavit or written statement from his son whom he says is going to move in. Most importantly, the son was never called as a witness to give affirmed testimony.

Following the previous Decision of February 25, 2021, the tenant submitted his second application to the RTB for repairs on March 8, 2021.

After being served with the Notice of Hearing and evidence package, the landlord then issued a second Two Month Notice which the tenant testified he received on April 1, 2021 when it was posted to his door (thereby effecting service 3 days later, that is, on April 4, 2021). The tenant again amended his claim to include an application to cancel

the Two Month Notice. The Amendment was filed April 4, 2021 with materials and served upon the landlord.

With the amendment, the tenant submitted a written submission attaching correspondence from the landlord and copies of receipts. He submitted a Monetary Order Worksheet as well as copies of the receipts.

A copy of the Two Month Notice was submitted which is in the standard RTB form. The Notice is dated March 30, 2021 and states that the rental unit will be occupied by the landlord's child, namely his 36-year-old son and the son's family. The landlord confirmed this is the same son referenced in the first Two Month Notice. The landlord stated that his son and the son's family have lived in the landlord's home during the tenancy.

The landlord did not submit any documents signed by his son stating that the son intended to move in. His son was not called as a witness.

The tenant submitted copies of letters received from the landlord, which the landlord did not submit himself for the hearing. One is a letter from the landlord denying responsibility for vermin extermination and stating he would do the requested repairs when the tenant moved out. The landlord repeated that his son and family would be moving into the house and for the tenant to get out.

Another document submitted by the tenant which he testified he received from the landlord is a typed, brief, unsigned, undated written document which is purportedly from the landlord's son. The document states that the son and family intend to move into the unit. The tenant said he doubted the letter came from the son himself and observed that the tone and style are indistinguishable from the landlord's letters.

In his testimony, the landlord stated that the facts cited by the Arbitrator in the previous Decision were correct and continue to be true. He stated that the only change between the first Two Month Notice and the second Two Month Notice is that his son's children are older, and his son needs his own house more than ever.

The tenant claimed that the landlord issued the second Two Month Notice in retaliation for the tenant's second application for repairs. He said the landlord's son does not intend to move into the unit and the landlord issued the notice in bad faith.

In summary, the tenant requested the following:

- Cancellation of the second Two Month Notice
- Order directing the landlord to repair the garage and eaves troughing
- Order directing the landlord to reconnect the unit to municipal water system
- Reimbursement of $535.50 for vermin extermination expenses
- $200.00 a month rent reduction from January 2020 (18 months x $200.00 = $3,600.00)
- Reimbursement of the filing fee of $100.00

The landlord acknowledged that the second Two Month Notice is based on the same facts as the first Two Month Notice. The landlord insisted that he is entitled to take possession of the unit and the tenant must move out.

The landlord requested an Order of Possession and dismissal of the tenant's claims without leave to reapply.

Analysis

The parties submitted many documents and photographs as well as considerable disputed testimony in a 96-minute hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Credibility

In assessing the credibility and weight of the evidence, I found the tenant believable and sincere. I found his claims were well supported by documentary evidence. I determined that his arguments were persuasive, calm, and forthright.

In assessing the landlord's testimony, I found the landlord less direct and convincing. As stated earlier, he was disruptive during the hearing and refused to listen to the tenant or the Arbitrator while continually interrupting. Also, as stated earlier, the landlord expressed a right to occupancy of the unit with expressed indifference to the law and tenancy procedure.

The landlord did not submit any documents as evidence. His testimony and demeanor have led me to doubt the validity of his assertion about his intentions for the unit. I find that the landlord's primary objective is to take possession of the unit for his own purposes and he will not stop until this goal is achieved.

I note the brief message purportedly from the son was not submitted by the landlord. I also observed that the style of the landlord's correspondence and the purported message to be disconcertingly similar. I find that it is more likely than not that the unsigned message was written by the landlord himself.

The previous Arbitrator clearly provided guidelines for the landlord regarding the type of evidence likely to be found compelling and believable. The landlord ignored these suggestions. Without the son being called as a witness, I find I do not place much weight on the landlord's assertion that the son and family intend to move into the unit.

As I result, I find that I am not convinced that the message regarding the occupancy of the unit was written by the son. I find the only evidence of the landlord's intentions regarding the unit are his testimony which I find to be dubious and of little weight.

Therefore, where the parties' evidence conflicts, I prefer the tenant's testimony as the more plausible as it is supported by documentary evidence.

Cancellation of Two Month Notice

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than two months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier that the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant sought a cancellation of the landlord's Two Month Notice. The landlord acknowledged that this Notice is supported by the same facts key to the first Notice, the only exception being that the landlord's grandchildren are older by a few months.

The tenant questioned the good faith of the Notice. The tenant stated that the parties had a conflict over repairs, and this was the reason for the eviction. The tenant claimed that the Notice was issued because of the conflict and not because the landlord's son intended to move into the unit.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord's use of property. It notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

> *If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*
>
> *If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

Since the good faith intent of the landlord is called into question in this case, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to

End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find that the issuance of the Notice during the conflict and so soon after the tenant issued a second Application for Dispute Resolution indicates the landlord may have another purpose in ending the tenancy. I find the tenant's assertion credible that the landlord wanted to get rid of a troublesome tenant asking for repairs and that this is the real reason for the Notice. I have reached this conclusion after hearing the testimony and finding that the tenant's version of events is the more believable and supported by documentary evidence.

I therefore find that the landlord has not met the burden of proof on a balance of probabilities that their intention in issuing the Notice is to have the landlord's son live in the unit. I find they have another reason, that is the eviction of a problematic tenant with whom they have a dispute.

I find the circumstances are substantially the same as the situation which led to the dismissal of the landlord's first Two Month Notice. I will now address the issue of *res judicata*.

Res Judicata

For the reasons provided, I find that the previous Decision dealt with substantially the same causes contained in the second Two Month Notice that is the subject of this hearing.

I find the evidence from the landlord is not markedly different from the evidence submitted to the Arbitrator in the previous Decision. I find this Notice is an effort by the landlord to reopen a case that has already been decided and to make another attempt to assert his claim that he has a right to occupy the unit. I find that the background circumstances of the first and second Two Month Notices are essentially the same.

I therefore find that this matter is *res judicata*, meaning the issues have already been conclusively decided and cannot be decided again. I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*.

Therefore, the landlords' second Two Month Notice is dismissed without leave to reapply.

Tenant's Application for Repairs, Rent Reduction, and Order that the Landlord Comply

Section 32 of the Act sets out the landlord's duty to repair and maintain, stating as follows:

> ***Landlord and tenant obligations to repair and maintain***
> ***32****(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
> *(a) complies with the health, safety and housing standards required by law, and*
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 62(3) of the *Act* states:

> *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

Section 26 of the Act authorises the Director to make an order that the tenant deduct rent, stating as follows:

> ***26*** *(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent*.

I accept the tenant's testimony that the unit requires repairs as he described and that he has spent the amount claimed for vermin extermination.

As stated earlier, the tenancy agreement states that the tenant will conduct "cosmetic" repairs. Considering the testimony of the parties and the common sense meaning of the word, I find the parties agreed that the tenant would improve the appearance of the unit without changing its basic structure. I find the repairs requested relate to the structure of the unit. Therefore, I find that it is the landlord's obligations to effect the repairs as they are not "cosmetic" but structural.

I therefore order as follows:

1. Within 10 days of the date of this Decision, the landlord shall reconnect the unit to the municipal water system and shall provide the tenant with a confirming letter from the municipality; the landlord shall take all necessary steps to assure water is supplied to the unit from the municipal system.
2. If the landlord fails to reconnect the unit to the municipal water system as set out in #1 above, the tenant may retain a qualified service provider to carry out the work and the tenant is entitled to reimbursement of the cost thereof to be deducted from rent until the tenant is compensated in full.
3. Within 10 days of the date of this Decision, the landlord shall have the garage and basement inspected by a qualified repair and service provider(s) at the landlord's expense.
4. Within 5 days of the inspection, the repair and service provider(s) shall provide to each of the parties a written report of the details of the inspection including the following:
    1. current condition of each of the garage and basement including presence of mold supported by photographs in digital format
    2. recommended plan for repair and mold removal for each
    3. estimated cost
5. Within 30 days of the date of the report in # 4 above, the landlord shall carry out the recommended repairs by a qualified repair and service provider(s) in a timely manner at the landlord's expense.

6. Upon completion, the service provider(s) shall immediately provide a written report to both the landlord and the tenant confirming that all repairs and mold remediation were carried out; the report shall be accompanied by supporting digital photographs.
7. If the landlord fails to carry out the terms of this Order or any aspect thereof, the tenant may:
    a) Carry out the work and deduct the costs from rent until compensated; and
    b) In addition to compensation for expenses in (a), the tenant may deduct $400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

For greater certainty, cost for inspection, estimates, reports and work related to connection to the municipal water system, inspections, reports, repairs, and mold remediation are to be borne by the landlord.

I note that the landlord is still required to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the *Act*. This obligation is not suspended or set aside because of this Order. The obligations of the landlord under section 32 of the *Act* continue uninterrupted. For clarity, I make the following additional Order pursuant to section 62 of the *Act* (numbering continued from above)

8. The landlord shall do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the *Act*.

I accept that the tenant incurred the expense of $535.50 for vermin extermination as supported by receipts, copies of which were provided to the landlord. I accept that it is the landlord's obligation to exterminate vermin, and not the tenant's. I find the landlord refused the tenant's reasonable requests to exterminate the vermin and when the landlord refused, the tenant sensibly looked after the matter himself thereby incurring these expenses. I find the tenant has met the burden of proof with respect to all aspects of this claim. I therefore award the tenant $535.50 for compensation of this expense.

Quiet Enjoyment

The balance of the tenant's claims is 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.

Relevant details of the tenant's claims have been recounted in more detail earlier in the Decision in which the tenant testified to termination of municipal water services (January 2021), the presence of vermin, poor condition of the garage, and broken eavestroughs requiring repairs. The tenant testified he requested repairs in writing in June 2020 and a copy of the lengthy, detailed letter was submitted.

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 written 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 inconvenience when the water supply

was cut off, vermin were present, and the condition of the garage and basement progressed to such a point that they were unusable.

I accept the tenant's description in his testimony of the unsatisfactory and unusable condition of the garage and basement as illustrated in photographs and described in writing. 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 when the tenant moved in and the parties agreed the tenant would do cosmetic repairs. As stated earlier, I find that it was not the intention of the parties that the tenant would look after major repairs, such as the roof of the garage or the presence of mold. I find the landlord repeatedly dismissed the tenant's complaints and issued two Two Month Notices to get the tenant to move out without the landlord having to do any repairs. I find the landlord retaliated against the tenant's requests for repairs and his two Applications for Dispute Resolution by issuing the Two Month Notices. I find the landlord is using RTB proceedings to pressure and threaten 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 since before June of 2020 when the letter of complaint was sent. I accept their testimony that the extensive repairs were needed, adequate water supply was needed, and vermin eradicated.

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 find that the tenant was significantly and increasingly unable to use the garage and basement as expected. I find that the landlord could reasonably be expected to conduct repairs and failed to do so. As I result, I find that the tenant is entitled to damages for loss of quiet enjoyment for a period which I find is 10 months to the date of the hearing.

In summary, I find the loss of quiet enjoyment extended for a period of 10 months and is ongoing.

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

I find the landlord's actions in their totality to be a serious dereliction of their duty tp provide a habitable place for the tenant to live and amount to an egregious violation of the Act.

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. 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 10 months.

I accept the tenant's claim that they paid rent in the total amount of $9,737.50 (10 x $973.75) in the previous 10-month period ending in July 2021 (although the loss of quiet enjoyment is ongoing until repairs take place as directed).

I find it is reasonable that the tenant receive compensation in the amount of 20% of the rent paid which I find is $1,947.50. I grant the tenant an award in this amount and I direct that the tenant may deduct this amount from rent until paid in full.

Filing fee

As the tenant has been successful in this application, I direct that the landlord shall compensate the tenant for the filing fee of $100.00.

Summary

In summary, I grant the tenant a Monetary Order as follows:

ITEM	AMOUNT
Loss of Quiet Enjoyment Award	$1,947.50
Reimbursement extermination expenses	$535.50
Reimbursement filing fee	$100.00
TOTAL MONETARY ORDER	**$2,583.00**

I also grant an Order that the landlord conduct repairs on the following terms:

1. Within 10 days of the date of this Decision, the landlord shall reconnect the unit to the municipal water system and shall provide the tenant with a confirming letter from the municipality; the landlord shall take all necessary steps to assure water is supplied to the unit from the municipal system.
2. If the landlord fails to reconnect the unit to the municipal water system as set out in #1 above, the tenant may retain a qualified service provider to carry out the work and the tenant is entitled to reimbursement of the cost thereof to be deducted from rent until the tenant is compensated in full.
3. Within 10 days of the date of this Decision, the landlord shall have the garage and basement inspected by a qualified repair and service provider(s) at the landlord’s expense.
4. Within 5 days of the inspection, the repair and service provider(s) shall provide to each of the parties a written report of the details of the inspection including the

following:

1. current condition of each of the garage and basement including presence of mold supported by photographs in digital format
2. recommended plan for repair and mold removal for each
3. estimated cost

5. Within 30 days of the date of the report in # 4 above, the landlord shall carry out the recommended repairs by a qualified repair and service provider(s) in a timely manner at the landlord's expense.
6. Upon completion, the service provider(s) shall immediately provide a written report to both the landlord and the tenant confirming that all repairs and mold remediation were carried out; the report shall be accompanied by supporting digital photographs.
7. If the landlord fails to carry out the terms of this Order or any aspect thereof, the tenant may:
    c) Carry out the work and deduct the costs from rent until compensated; and
    d) In addition to compensation for expenses in (a), the tenant may deduct $400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.
8. The landlord shall do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the *Act*.

The landlord's Two Month Notice to End Tenancy for Cause is dismissed without leave to reapply.

Conclusion

The landlord's Two Month Notice to End Tenancy for Caused is dismissed without leave to reapply.

The tenant is granted a Monetary Order of **$2,583.00.** The tenant may deduct this amount from upcoming rent until the Order is paid in full.

The tenant is granted an Order for Repairs as set out in the above Summary section.

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: July 08, 2021

Residential Tenancy Branch