



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On December 8, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, their Representative, their interpreter, and the Tenant and their Representative attended a hearing on March 30, 2021. The parties provided testimony and documentary evidence and the hearing was subsequently adjourned. The hearing was reconvened on August 24, 2021.

The Landlord, their Representative, their interpreter, and the Tenant’s Representative attended the reconvened hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

The Representatives for each of the parties provided testimony on behalf of the Landlords and Tenant. The Representatives have been referred to as Landlord and Tenant respectively, throughout this Decision.

### Preliminary Matter – Admissibility of Evidence

During the March 30, 2021 hearing, the Tenant testified that she sent two evidence packages to the Landlords, one in December 2020 and one on March 24, 2021.

The Landlord stated that they received the Tenant’s evidence package for December and received the Tenant’s second evidence package on March 29, 2021. The Landlord stated that, although there was a Drop Box link included in the March package, the link did not work, and the Landlord was unable to view the evidence.

The Landlord submitted that the Tenant failed to send the second package within the time limits, pursuant to the Act and requested that the evidence be inadmissible.

*Residential Tenancy Branch Rule of Procedure 3.14* states, in regard to evidence not submitted at the time of Application for Dispute Resolution by the Applicant, that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In this case, I find that the Tenant failed to provide the Landlord with the second evidence package pursuant to the *Rules of Procedure*. As such, I find the evidence package that the Tenant submitted to the Residential Tenancy Branch and sent to the Landlord in March 2021 is inadmissible and will not be referred to in any of the hearings related to this Application.

The Tenant acknowledged receiving the Landlords' evidence package.

#### Issues to be Decided

Should the Tenant receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

#### Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the *Rules of Procedure*, I refer only to the relevant and determinative facts, evidence, and issues in this Decision.

Both parties agreed to the following terms of the tenancy:

The two-year, fixed-term tenancy began on October 7, 2014 and was renewed in 2016 and 2018. The rent was \$3,700.00 and due on the first of each month. The Landlord collected a security deposit in the amount of \$1,750.00, which was awarded to the Landlord in a previous dispute resolution decision. The latest Tenancy Agreement indicated an end date of January 31, 2020; however, the Tenant did not move out of the rental unit until February 29, 2020. The Tenant lived in the rental unit with other family members.

The Tenant submitted a Monetary Order Worksheet to document the 8 monetary claims in relation to this Application.

#1 Loss of Quiet Enjoyment – Entry to the unit - \$1,500.00

The Tenant testified that the Landlord entered the rental unit three times during the tenancy without proper notice or with the Tenant's knowledge.

The Tenant submitted a witness statement to support her testimony that the Landlord entered the rental unit sometime between April 7-10, 2018 to pick up a package that had been delivered to the unit in his name. The Tenant stated that the Landlord had been notified that there was a package at the unit for him, but that the Tenant (and his family) were away and to notify the Tenant to arrange a convenient time for both parties. The Tenant said she had a caretaker looking after the rental unit and that the Landlord's package had been in the rental unit on April 7, 2018 and had been removed on April 10, 2018.

The Tenant testified that a second package for the Landlord had been delivered to the rental unit and that the caretaker observed the Landlord leaving the rental unit on April 14, 2018, with the second package, and also observed the Landlord lock the door upon exiting.

The Tenant submitted a copy of a text message from the Landlord, dated March 22, 2018, that acknowledge his entry into the rental unit to pick up the package and that he apologized for the occurrence.

The Tenant submitted that the Landlord entered the rental unit on January 31, 2020. This claim is based on a text message from the Landlord that acknowledged that the Landlord was at the rental unit for a move-out inspection. The text showed, *"You have missed the move-out inspection today. The inspection could not be carried out with your absence and you also failed to move out."* The Tenant believed that the Landlord would have entered the rental unit based on the language in the text. The Tenant stated that no one was at home at the rental unit during this event.

The Landlord acknowledged that he was in correspondence with the Tenant regarding arrangements to pick up a package from the rental unit sometime in April 2018. The Landlord stated that when he attended the unit to pick up the package; he could not contact the Tenant. The Landlord admitted that he entered the rental unit, retrieved the package and left. The Landlord acknowledged that he sent a text and apologized to the Tenant for entering. The Landlord stated that this only happened once.

The Landlord testified that they attended the rental unit on January 31, 2020 as that was supposed to be the day the Tenant and their family moved out. The Landlord stated that they knocked on the door and the Tenant did not reply. The Landlord said that they did not enter the rental unit and that the Tenant had refused to move out as previously agreed. The Landlord stated that he texted the Tenant that day and did not enter the rental unit.

## **#2 Loss of Facility – Elevator - \$4,600.00**

The Tenant submitted that the residential property only has 2 elevators and, except for 8 weeks, only one elevator serviced the residential property from March 2018 until the end of the tenancy, in February 2020.

The Tenant submitted that there was no elevator working in the property between March 18 – April 2, 2018.

The Tenant testified that they live on the 31<sup>st</sup> floor of the residential property and that her elderly mother was trapped in the rental unit when both of the elevators were not working.

The Tenant has requested 5% compensation for 22 months, in the amount of \$4,400.00, for the loss of one of the elevators.

The Tenant has requested an additional 10% compensation, in the amount of \$200.00, for the 2 weeks without elevator service from March 18-April 2, 2018.

The Landlord acknowledged that the elevators were problematic and regularly under repair; however, always in service except for the 2 weeks as noted by the Tenant. The Landlord agreed that there should be some compensation for the inconvenience of when there was no elevator.

#### #3 Loss of Service – Building Security - \$2,800.00

The Tenant testified that there was no security in the parkade from October 2014 to 2015. The Tenant stated that their car was broken into twice during this time. The Tenant submitted a police report from January 2015 where it was recorded that the windows had been smashed and approximately \$280.00 worth of items stolen.

The Tenant is claiming \$2,800.00 in compensation based on 5% of the rent from October 2014-June 2015.

The Landlord testified that the Tenant had access to secure parking behind two gates. The Landlord stated that the Tenant was issued fobs to gain access to the secure parking and that they also have visitor passes for an area that is not as secure. The Landlord pointed out that the police report noted that the damaged car was parked in the visitor parking.

#### #4 Damage to a Person – Unlawful Dispute File - \$1,875.00

The Tenant stated that the tenancy was supposed to end on January 31, 2020. The Tenant testified that the Landlord unlawfully initiated a dispute resolution process to request an Order of Possession before the Tenant had a chance to move out at the end of the month. The Tenant stated that the dispute resolution process with the Residential Tenancy Branch interfered with the ability to find a new rental unit as the potential new landlord learned about the dispute and chose not to follow through with a tenancy agreement.

The Tenant stated the Landlord had filed a dispute under the wrong category and then ended up withdrawing the dispute. The Tenant is claiming a loss of \$1,875.00 as the Landlord's filing of a dispute delayed the Tenant in finding a new place to live.

The Landlord testified that he had been attempting to contact the Tenant (one of the family members who lived in the unit) in January 2020 to confirm their move-out date and a time for a move-out inspection. The Landlord stated that the Tenant would not reply, and the Landlord was worried that the Tenant would overstay in the rental unit. The Landlord acknowledged that he applied for dispute resolution to request an Order of Possession for the rental unit in case the Tenant failed to move out.

The Landlord stated that the Tenants did not move out on January 31, 2020 as agreed and occupied the rental unit until the end of February 2020. The Landlord stated that he did not withdraw the Application for Dispute Resolution, rather attended the hearing that was set for March 16, 2020.

#### #5 Damage to a Person – Verbal Assault - \$1000.00

The Tenant testified that during the move-out inspection on February 29, 2020, the female (Family Interpreter) who was present with the Landlord, was upset at the condition of the rental unit and began to harass and insult the Tenant (the Tenant and the Tenant's Representative were present). The Tenant submitted that they had to leave the building during the move-out inspection to avoid further complications.

The Landlord stated that when they initially attended the rental unit, the Tenant was not ready for the inspection and the Landlord had to return later that same evening. When they returned, the Tenant did not complete the move-out inspection, left the keys and departed. The Landlord stated the rental unit was a mess and he spent the next hour filling out the condition inspection report.

The Landlord called the Family Interpreter as a witness. Family Interpreter E.H. testified and acknowledged that she was present during the move-out inspection and although the unit was a mess, she hardly said anything to the Tenant. E.H. stated that she was a new immigrant to Canada and would not say anything disrespectful to the Tenant. E.H. stated that the Tenant just told the Landlord to inspect the rental unit himself; they then left the keys and then left the building.

#### #6 Loss of quiet enjoyment – No manager on site - \$500.00

The Tenant submitted an email that supported the Tenant's testimony that there was no manager on site of the residential property in January 2020, and as a result, the Tenant could not book the party room for her family; the garbage room was overflowing; and the gym hadn't been cleaned.

The Tenant pointed out that the manager that responded to the email acknowledged that there had been some issues with the concierge and a change of property managers.

The Tenant stated they had been attempting to book a party room for their family and were forced to pay for another room outside of the building. When questioned whether

she responded to the manager when he offered to book the party room for the upcoming event, the Tenant stated that she did not as her family had cancelled their plans by then.

The Landlord testified that the management had left a contact number for the tenants of the building and that the Tenant could have called the Landlord to intervene if necessary.

#### #7 Damage to Person – Slander - \$3,500.00

The Tenant testified that the Landlord had provided false information during the previous dispute hearings and “twisted” the facts that were presented to the previous arbitrators.

The Tenant stated that an example of the slander was when she said hello to some previous neighbours, who were friends of the Landlord’s, and they responded by saying, “You’re not good people” and left. The Tenant acknowledged that she did not have any supporting documentation for this occurrence.

When asked, the Tenant acknowledged that she did not apply for Review Considerations after receiving the previous Residential Tenancy Branch decisions.

The Landlord stated that slander is a heavy accusation and that the Tenant is “making a lot of things up.”

#### #8 Damages to a Person – Acting in bad faith - \$1000.00

The Tenant withdrew this issue.

### Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/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 that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, pursuant to the *Rules of Procedure* 6.6., it is the Tenant, as Applicant, who has the onus to prove the claim. The standard of proof is on a balance of probabilities, meaning it is more likely than not that the facts occurred as claimed.

**#1 Loss of Quiet Enjoyment – Entry to the unit - \$1,500.00**

The Tenant has claimed damages in the amount of \$1,500.00. The Tenant testified that the Landlord entered the rental unit without authority on three different occasions. Upon review of the Tenant's evidence and acknowledging the Landlord's own admission, I find that the Landlord likely entered the rental unit, contrary to section 29 of the Act, two times in April of 2018.

When considering the damage that the Tenant incurred as a result of the Landlord's breach, I find that it was fairly minor. The Tenant acknowledged that no one was home, and that the Landlord was retrieving a package of his that had been delivered to the rental unit, of which was previously discussed with the Tenant. Regardless, I do not condone the behaviour of the Landlord and as such, award the Tenant \$250.00 in damages for each occurrence for a total monetary award of \$500.00.

I find that the Tenant's claim for damages and allegation that the Landlord entered the rental unit on January 31, 2020 is based on assumption. I find the Tenant has failed to provide sufficient evidence that the Landlord breached section 29 of the Act on this date. As such, I dismiss this part of the Tenant's claim.

**#2 Loss of Facility – Elevator - \$4,600.00**

The Tenant submitted undisputed evidence that the residential property was left with the use of only one elevator for much of the time between March 2018 until the end of the tenancy, in February 2020. Furthermore, the Tenant also provided undisputed evidence that there was a 2-week period when the building was without any working elevator from March 18 – April 2, 2018.

I accept and agree with the Landlord's acknowledgement that there should be some compensation for the inconvenience of not having an elevator for two weeks. I find that this kind of inconvenience can seriously impact a tenant with mobility issues and accept that the Tenant's mother is challenged with such issues.

When considering whether compensation is due in accordance with section 67 of the Act, I reviewed section 27 of the Act that speaks to the providing or restricting of a

service of facility. Although I don't find that the Landlord is directly responsible for the ongoing challenges of the elevator repair, I do agree that the Tenant suffered a restriction of a service, that being access to the elevator, during the tenancy. I accept that this would be all the more challenging for the Tenant's family who lived on the 31<sup>st</sup> floor of the residential property.

I find that the Tenant suffered an inconvenience, rather than a significant loss of service, when there was only one elevator working when there should have been two. As a result, I award the Tenant \$100.00 in nominal damages for their claimed 22 months of inconvenience, for a total amount of \$2,200.00.

The Tenant has claimed damages in the amount of \$200.00, for the 2 weeks without elevator service from March 18-April 2, 2018 and I find that this is a reasonable amount of compensation.

I award the Tenant a total of \$2,400.00 in compensation for the loss of use of the elevators as noted above, pursuant to section 67 of the Act.

#### #3 Loss of Service – Building Security - \$2,800.00

The Tenant claimed losses due to a lack of building security in the parkade of the residential property. The Tenant provided evidence that their car was broken into in 2015.

I find that the police report submitted by the Tenant indicated that the vehicle was damaged while parking in the visitor parking area and do not find the Landlord was responsible for this incident.

Based on the Tenant's testimony and evidence, I find that the Tenant has failed to provide sufficient evidence that she suffered a loss due to the Landlord's violation of the Tenancy Agreement or contravention of the Act. Furthermore, I find that the Tenant failed to provide evidence to verify the actual monetary amount of the loss or damage; specifically, how the Tenant came to justify \$2,800.00 in damages. As such, I dismiss this part of the Tenant's claim.

#### #4 Damage to a Person – Unlawful Dispute File - \$1,875.00

The Tenant claimed that they suffered damages as a result of the Landlord unlawfully filing a dispute resolution process.



I reviewed the referenced decision; in relation to the Landlord's Application for Dispute Resolution from January 2020. I found that the dispute was not withdrawn, that the Landlord did attend the hearing and that it was in relation to a request for an Order of Possession for the rental unit in case the Tenant failed to move out of the rental unit on January 31, 2020.

By the Tenant's own admission, the Tenant had communicated with the Landlord that they were going to move out of the rental unit on January 31, 2020 and subsequently did not do so. Based on the evidence before me, I find that the Landlord had a right to apply for dispute resolution.

As such, I find that the Tenant has failed to provide sufficient evidence to prove that the Landlord contravened the Act or caused the Tenant to suffer any damages or losses by applying for dispute resolution. As a result, I dismiss this part of the Tenant's claim.

#### #5 Damage to a Person – Verbal Assault - \$1000.00

The Tenant claimed to have been verbally harassed and insulted during the move-out inspection.

The Landlord claimed that there was no such harassment, provided a witness to testify as such, and claimed the Tenant chose not to participate in the move-out inspection.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find that the Tenant and the Landlord both provided equally probable versions of the event. I find the Tenant has failed to provide further evidence to convince me that it was more likely than not that they suffered harassment by the Landlord. As such, I dismiss this part of the Tenant's claim.

#### #6 Loss of quiet enjoyment – No manager on site - \$500.00

The Tenant claimed that they suffered a loss of quiet enjoyment during the second to last month of their tenancy. One of the examples provided by the Tenant was that they couldn't book a party room in the residential property as the management was not responding efficiently.

Upon review of the Tenant's submitted email, I find that the building management was responsive and offered the Tenant services which she did not accept. Based on the Tenant's testimony, I find that they may have suffered temporary inconveniences, such as having to deal with an overflowing garbage room during the transition of the building management; however, did not suffer a loss of quiet enjoyment, pursuant to section 28 of the Act. Further, I find the Tenant failed to provide sufficient evidence of the actual monetary amount of the loss or damage, pursuant to section 67 of the Act. As a result, I dismiss this part of the Tenant's claim.

#### #7 Damage to Person – Slander - \$3,500.00

During the Tenant's claim that the Landlord slandered the Tenant, they provided examples of previous dispute resolution decisions that they were unhappy about, and testimony about an interaction with a neighbour who was rude to the Tenant.

I accept the Tenant's acknowledgement that she did not apply for a Review Consideration of the decision(s), which is a potential option and remedy for a party who believes that another party has provided fraudulent evidence during a hearing. I find that the Tenant failed to provide sufficient evidence that the Landlord provided any false statements purporting to be fact during this hearing or any previous hearings.

Regarding the example of the Tenant's negative interaction with a previous neighbour, I find the Tenant provided only her assumption that the Landlord had some sort of communication with the neighbour that was harmful to the Tenant's reputation. When I consider that the Tenant must at least provide sufficient evidence that, based on a balance of probabilities, the incident occurred, I find that the Tenant failed in this regard.

I find that the Tenant failed to provide sufficient evidence that she suffered libel or slander by the Landlord and as such, dismiss this part of the Tenant's claim.

Although many of the Tenant's claims were dismissed, I find that other claims within the Tenant's Application had merit. Therefore, I find that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

The Tenant has established a monetary claim in the amount of \$3,000.00, which includes \$2,900.00 in compensation for the loss of a facility (elevator service) and loss of quiet enjoyment (Landlord entry into the rental unit), and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Based on

these determinations, I grant the Tenant a Monetary Order for \$3,000.00, in accordance with Section 67 of the Act.

Conclusion

I grant the Tenant a Monetary Order for the amount of \$3,000.00, in accordance with section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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 *Residential Tenancy Act*.

Dated: August 26, 2021

---

Residential Tenancy Branch