



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

On March 10, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting the return of the security deposit, 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 and the Tenants attended the 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 parties testified that they exchanged the documentary evidence that I have before me. As a result, I find that the evidence before me is admissible.

### Preliminary Matters – Removal of Issue

Towards the beginning of the hearing, the Tenants acknowledged that the return of the security deposit had been decided upon during a previous dispute resolution hearing. The Tenants were granted the ability to withdraw their request for the return of the security deposit. Related file number added to face page of this Decision.

### Issue to be Decided

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

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

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on February 1, 2017 and continued as a month-to-month tenancy. The rent was \$1,600.00 and due on the first of each month. The Landlord collected a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$400.00.

The Tenants submitted their Application and presented the following claims:

1. Loss of quiet enjoyment – seeking \$5,500 in compensation

The Tenants testified and presented photos to demonstrate the state of their rental unit after pipes burst on two occasions. The first pipe burst in the “spare room” on February 8, 2018 and the second pipe burst in the main bathroom on March 24, 2018. The Landlord responded to the leaks in a timely manner; however, the repair of the ceilings, walls, flooring, light fixtures and the running of a fan caused disruption for the Tenants from March to July 11, 2018.

The Tenants stated that they moved out of the rental unit for 9 days in June 2018 to allow for repairs to move ahead; however, the repairs still had not been completed upon their return and the unit had been further “ripped apart”.

The Tenants claimed \$1,000.00 in compensation for each month. During the hearing, the Tenants clarified that they could only enjoy 40% of their living space for the months of March, April and May. They could only enjoy 30% of their living space for the months of June and July.

The Tenant submitted a list of rent payments and acknowledged that the Landlord did provide some compensation to them during the repairs, in the amount of \$1,600.00.

2. 5 days without water in January 2019 – seeking \$600.00 in compensation

The Tenants submitted text and Messenger messages that indicated there was a third leak on January 21, 2019 which damaged the main bathroom. The rental unit was without water for 5 days and the Tenants had to move out of the unit during that time.

The Tenants did not stay in a hotel or submit receipts for losses; however, felt that \$600.00 in compensation seemed reasonable.

3. Loss of quiet enjoyment in February 2019 – seeking \$800.00 in compensation

The Tenants submitted that they did not have use of their main bathroom throughout the month of February 2019 as repairs were ongoing.

4. Loss of quiet enjoyment in March 2019 – seeking \$400.00 in compensation  
The Tenants submitted that they did not have use of their main bathroom throughout the first two weeks of March 2019 and up until the day they moved out, on March 15, 2019.

The Tenants chose not to present several other claims that they had noted in their Application.

The Landlord initially testified that they compensated the Tenants for the loss of quiet enjoyment on many occasions throughout the tenancy. The Landlord did not dispute the amount of previously compensated rent, as submitted by the Tenants for \$1,600.00.

The Landlord submitted copies of texts with the Tenants to show that she discounted the rent for July 2018 by \$300.00 and that the Tenants thought that was fair.

Another text was submitted where the Tenants acknowledged that they went from 6 rooms down to 4 rooms because of the repairs and suggested that a rent discount of \$500.00 would be fair.

The Landlord submitted that she responded to the repairs appropriately and provided the Tenants compensation throughout the time where the quiet enjoyment of the unit was compromised by repairs.

### Analysis

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, the Tenants have the burden to prove that they suffered a loss as a result of the Landlord violating the Act or the Tenancy Agreement; demonstrate the amount or value of the loss and prove that they acted reasonably to minimize that loss.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. *Residential*

*Tenancy Policy Guideline #6* further discusses the right to quiet enjoyment and provides that:

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.*

The Tenants alleged the Landlord disturbed their quiet enjoyment of the rental unit as a result of 3 separate incidents where the pipes burst and damaged various rooms in the rental unit. Specifically, they argued; the delayed and ongoing repairs limited their ability to use and enjoy the spare room and the main bathroom at various times during the tenancy. Furthermore, the fan that ran in the rooms for several months and the repairs that spilled out into the other rooms of the rental unit caused long term discomfort and inconvenience for the Tenants.

Having considered the oral testimony and evidence of the parties, I find that the Tenants have demonstrated that the repairs were *frequent and ongoing* during their tenancy. As a result, I find that the Tenants have established that there was a breach to their entitlement to quiet enjoyment.

The Tenants have acknowledged that the Landlord did provide some compensation for their inconvenience, however, the Tenants have claimed that the loss was more substantial than the \$1,600.00 in reduced rent that the Landlord provided during the tenancy.

I find that the Tenants failed to provide consistent formulas to calculate the requested compensation for their losses. I accept that the leak that occurred in February 2018 was fixed in a timely manner and find that the temporary discomfort of the subsequent repairs were compounded by the second leak on March 24, 2018. The repairs to the two rooms continued until July 11, 2018. As such, I find that there was a breach of the Tenants' quiet enjoyment from March 24, 2018 to July 11, 2018.

The Tenants provided undisputed testimony and evidence that their entitlement to quiet enjoyment was breached again because of a third leak and subsequent repairs that began on January 21, 2019. As such, I find that there was a breach of the Tenants' quiet enjoyment from January 21, 2019 to March 15, 2019, when the Tenant's vacated the rental unit.

I find that the Tenants lost the use of at least two of the six rooms in their unit and had to live with ongoing repairs that affected other parts of their residence during the period of March 24, 2018 to July 11, 2018. I find that it is reasonable for the Tenant's to

receive 50% of their rent in compensation for this period. As rent is \$1,600.00 a month, I will use the average daily rent of \$53.33 ( $\$1,600.00 / 30 \text{ days} = \$53.33 \text{ per day}$ ) in my calculations.

The days of March 24, 2018 to July 11, 2018 add up to 110 days. As such, for their loss of quiet enjoyment for these days, I award the Tenants compensation in the amount of \$2,933.15. ( $110 \text{ days} \times \$53.33 \times 50\% = \$2,933.15$ ).

I accept the Tenants' undisputed testimony that they had to move out of their apartment in January 2019 when there was no water for five days. As a result, I award the Tenant's \$266.65 (5 full days of rent).

For the Tenants' loss of quiet enjoyment in February and March 2019, I find that it is reasonable to award the Tenants 20% of their rent as I heard through testimony that only the main bathroom was affected. As such, I award the Tenants compensation in the amount of \$458.64 ( $43 \text{ days} \times \$53.33 \times 20\% = \$458.64$ ).

I find that the Tenants' Application has merit and that the Tenants are 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.

I issue a Monetary Order in the Tenants' favour under the following terms, which allows the Tenants compensation for the loss of quiet enjoyment and to recover the cost of the filing fee for this Application.

Item	Amount
Loss of quiet enjoyment from March 24, 2018 to July 11, 2018	\$2,933.15
Move out in January 2019 for 5 days	266.65
Loss of quiet enjoyment from February 1, 2019 to March 15, 2019	458.64
Less Landlord's previous compensation through reduced rent	-1,600.00
Recovery of filing fee for this Application	100.00

<b>Total Monetary Order</b>	<b>\$2,158.44</b>
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Conclusion

I grant the Tenants a Monetary Order for the amount of \$2,158.44, 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 18, 2021

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Residential Tenancy Branch