Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON DEVELOPMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord comply with the *Residential Tenancy Act,* regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the 1st or 2nd days of the hearing, and continued for a 3rd day. The tenant attended on all scheduled dates with an Advocate. An agent for the landlord also attended with Legal Counsel and an Articled Student, who observed only and did not take part in the hearing. The tenant gave affirmed testimony and each of the parties called 1 witness who also gave affirmed testimony. The parties, or their representatives were permitted to question each other and the witnesses, and to give submissions.

The landlord has not provided any evidentiary material, however agreed that all of the tenant's evidence has been provided to the landlord, with the exception of a summary. All evidence of the tenant, except the summary, has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act,* regulation or tenancy agreement, and more specifically to avoid naming the tenant as a tenant in another rental unit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy

agreement, and more specifically for aggravated damages for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that the current month-to-month tenancy began in rental unit #131 on August 4, 2014 with no written tenancy agreement, and the tenant still resides in the rental unit. Rent is currently $1,950.00 per month, in addition to parking and storage and there are no rental arrears. The tenant estimates that the security deposit was $975.00 but the tenant didn't get a receipt, however no pet damage deposit was collected. The rental unit is a loft apartment.

The tenant and partner moved to Unit #206 on November 1, 2007, then to Unit #431 commencing July 1, 2009. The tenant moved out of Unit #431 and into #131 in 2014, but the tenant's partner remained in Unit #431. Copies of Commercial Leases have been provided for this hearing. The tenant testified that only her name appears on the tenancy agreement for Unit #431 because her partner was out of town at the time. Copies of rental increases have also been provided addressed to the tenant and current partner in Unit #131.

The tenant further testified that building managers had been giving the tenant a hard time about the tenancy in unit #431, including numerous inspections and constant harassment, but the tenant resided in unit #131. The tenant also went to police because the building managers were ruthless. There was a falling out between a previous property manager and the person who lives in #431, who was the tenant's common-law partner for 13 years, however the landlord company kept writing to the tenant about unit #431. Copies of notices of inspection have been provided for this hearing, all addressed to the tenant and advising of an inspection for unit #431. The first is dated August 15, 2019 which specifies August 16, 2019 at 1:30 to 3:30 for a routine inspection. The next is dated August 17, 2019 for a routine inspection on August 22, 2019 between 1:30 and 2:30 p.m.

The tenant also received a letter dated August 28, 2019 referring to "Lease 431 – Unauthorized Occupants / Trespass." It states that the landlord intends to pursue termination of the lease, or the tenant could enter into a Mutual Agreement to End Tenancy effective October 31, 2019, failing which the landlord would pursue termination.

On September 3, 2019 the tenant sent a message to another agent of the landlord alleging that the actions of the property managers are extreme harassment and unacceptable bullying and requests a response. A response was received the same day, wherein the agent suggests that the tenant's acceptance of the offer to mutually agree to end the tenancy works in the tenant's best interest, and the direction of the landlord is to take steps necessary to end the tenancy, expeditiously.

Shortly thereafter, the building manager (TH) gave the tenant a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated September 4, 2019 and contains an effective date of vacancy of October 31, 2019. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
    - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.
- *Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The Details of Cause(s) section states: "Unauthorized sublet. Trespass. Significant hoarding conditions to the degree the Landlord cannot ascertain condition of plumbing and fixtures because they are inaccessible. Smoking. A history of aggressive and threatening behaviour toward tenants and the building managers. Allowing access to unauthorized individuals to common and public areas. Failure to pay pet deposit."

The tenant disputed the Notice and a hearing was held on October 22, 2019, and a copy of the resulting Decision, dated October 25, 2019 has been provided for this hearing. The Notice was cancelled.

The tenant further testified that from February 18, 2021 to present, especially to May 18; the tenant received constant notices of some sort on her door; almost every other day, including routine inspections. The landlord's agents were giving the notices for rental unit #431 but the tenant didn't live there, and the person who lived there was not a sublet. He lived there from the beginning but didn't sign the Commercial Lease because he wasn't in town that day.

After the hearing, the landlord's agents posted another notice to inspect Unit #431 to the door of the tenant's rental unit, #131. It is dated October 23, 2019 and specifies a routine inspection on October 27, 2019 and that photographs will be taken. The tenant told them that she didn't live there, but they would dismiss her. Two of the property

managers were new, but they were at the hearing in October, 2019 and present for 2 other inspections.

The landlord's agents said that the tenant in Unit #431 had let some unauthorized guests into the building; the door was ajar 4 hours later and another trespasser entered and stole packages. That was in January, 2021, however they should have spoken to the tenant in Unit #431 when it happened and let the police know; police weren't called until March. The landlord held the tenant responsible, not the tenant in Unit #431 because the tenant's name was still on that lease even though they knew that the other tenant was the de-facto tenant, as described in the October 25, 2019 Decision.

The tenant was then served with another One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is addressed to the tenant regarding Unit #131, dated February 18, 2021 and contains an effective date of vacancy of March 31, 2021 and is signed by the agent of the landlord (PJ). The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
    - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
    - damage the landlord's property;
    - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
    - jeopardize a lawful right or interest of another occupant or the landlord.

The tenant disputed the Notice and a hearing was scheduled for May 18, 2021. In the meantime, the tenant continued to receive notices from the landlord about Unit #431, holding the tenant responsible for complaints related to that rental unit.

On March 11, 2021 the landlord gave notice to conduct an inspection of Unit #131 on March 16, 2021 regarding an ongoing issue within the building. It also states that certified professionals will also attend to inspect and take measurements, and photographs may be taken. The same day, the tenant received a notice to inspect Unit #431 on March 16, 2021 with the same information.

On March 17, 2021 the tenant received a letter from the landlord regarding the inspection of Unit #131 outlining a fire code violation for bicycles hanging from fire

sprinkler line pipes and suggesting that an odor was observed and requests the tenant to stop using candles, incense and diffusers immediately. It also reminds the tenant that smoking is prohibited in-suite, and schedules another inspection for March 18, 2021. The same day, the tenant received another letter from the landlord referring to Unit #431 about the inspection of that unit on March 16, 2021. It refers to fire code violations, such as combustible flammable containers stored inside, and multiple heavy items hanging from fire sprinkler pipes. It also states that the unit smelled strongly of cigarette smoke, and that by the end of the day, the tenant must provide evidence of tenant insurance for the unit, no smoking, all combustible containers are to be disposed of, all stored items on the balcony are to be removed, and to ensure no items are hung on the fire sprinkler line pipes. Another inspection is scheduled for March 18, 2021. The tenant in Unit #431 provided a copy of tenant's insurance to the landlord on March 18, 2021.

Numerous other notices and letters were exchanged between the parties, and copies have been provided for this hearing.

On April 9, 2021 the landlord applied for an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect, and requested an expedited hearing; the hearing date was scheduled for May 10, 2021, prior to the hearing of the tenant's application. It states: "This is an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord, and I want an order of possession." The application refers to the tenant, but also refers to Unit #431. A copy of the resulting Decision, dated May 11, 2021 has also been provided for this hearing, which dismisses the landlord's application.

A copy of the resulting Decision from the May 18, 2021 hearing has also been provided, dated May 20, 2021. It states that the notice to end the tenancy issued on February 18, 2021 is cancelled.

On May 27, 2021 the landlord applied for a Correction and Clarification of the Decision dated May 11, 2021. The resulting Decision dated May 28, 2021 states that the Arbitrator found that the requests were an attempt to reargue the original findings, and found no reason to issue any further clarification or correction.

On June 2, 2021 the tenant's Advocate provided a letter to the landlord referring to the Decisions of the director dated May 20, 2021 and October 25, 2019 wherein the tenant was found not to be a tenant of Unit #431 after the tenant moved to another unit on July 31, 2014, and requests that her name be removed from the original tenancy agreement for Unit #431. Another letter was sent to the landlord company on June 2, 2021 ___

On June 3, 2021 the landlord applied for a clarification of the Decision dated May 20, 2021 which states that, as stated in the original Decision, the tenant is not the tenant of the rental unit on the fourth floor.

The tenant testified that the June 8, 2021 fire inspection found that flammable material stored in the parking area was okay, but the jeep cover stored next to the tenant's vehicle was a fire code violation, but the tenant disputes those findings. Photographs have been provided for this hearing which show other items stored belonging to other residents.

The tenant is a freight conductor for a railway company and has provided time slips for trips that the tenant had to book off of work for hearing and inspections, and explained each, which show the wage amount lost due to missed trips. When the tenant asked the landlord for the hearing package for the May 18, 2021 hearing, the landlord gave the tenant over 200 pages.

After the May 18, 2021 hearing, the tenant applied for monetary compensation, which is when the issues of communication from the landlord to the tenant about Unit #431 came to an end. The tenant also testified that during many, many, many conversations with the landlord's agents the tenant requested that her name be removed from that lease, and that she had not been a tenant of that unit since August, 2014. When the tenant did live in that unit, she had a joint account with that de-facto tenant, and he kept using that account because rent was set up to be paid by automatic withdrawal. The tenant stopped using the account on August 1, 2014.

The tenant claims monetary compensation from the landlord, and has provided an Amended Monetary Order Worksheet setting out the following, which totals $18,242.41:

- $2,295.65 for loss of quiet enjoyment and aggravated damages from August 15, 2019 to October 25, 2019;
- $3,307.92 for loss of quiet enjoyment and aggravated damages February 18, 2021 to May 18, 2021;
- $1,368.11 for loss of quiet enjoyment and aggravated damages May 19, 2021 to August 12, 2021; and
- $11,270.73 for loss of income from October 21, 2019 to May 19, 2021.

A calculation break-down of the claims has also been provided for this hearing.

The tenant's witness (CA) testified that he moved into the apartment building on October 1, 2004 and into Unit #431 on July 1, 2009 with the tenant. His name does not

appear on the tenancy agreement because he was out of town working at that time. The witness was expected to be on the tenancy agreement, however no one ever approached him to sign it. Prior to July 1, 2009 his name was on 2 tenancy agreements of apartments he lived in at the same rental complex. The tenant does not live with the witness, having moved out of his rental unit on August 1, 2014, and the witness is currently the only occupant of Unit #431. The witness pays rent from a joint account with the tenant, the same as always.

The witness also testified that he received a notice to end the tenancy which went to Arbitration in 2019, but the Notice was addressed to the tenant, not to the witness because the tenant's name was the only one on the tenancy agreement. The witness talked to an agent of the landlord asking why it was not addressed to the witness, and confirming that it was his apartment. The landlord's agent responded that the witness was an illegal sublet, not mentioned on the tenancy agreement, so is illegally living there. The tenant said that he's been there since the beginning of the tenancy.

The witness was at the hearing in October, 2019 and the Arbitrator ruled that the witness was a de-facto tenant and that his name should be added to the lease.

The witness received another notice to end the tenancy on February 18, 2021, again addressed to the tenant, not the witness. The Arbitrator ruled that the landlord should not be trying to evict the tenant.

In April, 2021 the landlord issued another notice to end the tenancy again issued to the tenant for the rental Unit #431, rather than addressing it to the witness. A hearing was held on May 18, 2021, and immediately after the hearing the landlord served another notice to end the tenancy for Unit #431 addressed to the witness. A hearing has not yet been held.

The witness also testified that several notices about Unit #431 were issued with the tenant's name on them about people trying to get into the building, insurance, fire inspection notices and suite inspections. The witness was told that the tenant's name had to be on the tenant insurance, and the correspondence from the landlord referred to the witness as an illegal sublet or trespasser. One of the letters from the landlord says that no matter how it's framed, the witness is a subletter, and the landlord referred to the witness as an unauthorized occupant. Managers still refer to the witness as an illegal sublet verbally.

The entry phone to the witness' rental unit was disconnected by the landlord on February 18, 2021, the same day as the notice to end the tenancy for Unit #431 was

issued. The tenant asked the landlord to reconnect it, but they didn't respond and it didn't get reconnected.

The landlord's witness (PJ) testified that he is a resident manager of the apartment complex and as such deals with day-to-day workings of the building, deals with tenant issues and tenant relations, and has done so since the end of September, 2019.

The witness is not aware of why only the tenant's name is on the tenancy agreement for Unit #431, but should have been within 30 days; all tenants should have a tenancy agreement. The witness lives at Unit #133, which is on the same floor as the tenants in Unit #131, but has no knowledge of the relationship between the tenants in Units #131 and #431. When a couple moves into an apartment, they sign the documents and if they split up, one is removed from the tenancy agreement. If head office asks the witness to verify who has or needs a tenancy agreement or upgrades, the witness would do so.

The witness also testified that the documents provided by the tenant for this hearing, specifically notices to inspect Unit #431 dated August 15, 2019 and August 17, 2019, as well as another letter dated August 28, 2019 all pre-date the dates that the witness worked there. However the witness has seen the August 28, 2019 letter which contains a Mutual Agreement to End Tenancy. Records show that the tenant was served with a One Month Notice to End Tenancy for Cause concerning Unit #431 and was addressed to the tenant residing in Unit #131, dated September 4, 2019.

The witness was present for a hearing on October 22, 2019, but did not testify; the witness was still in transition taking over for the previous manager and attended the hearing to understand the process of arbitration, which was early in the witness' tenure with the landlord. The witness understood that the basis for issuing the Notice was due to a series of incidents, multiple infractions of the person in Unit #431, and the hearing was to assess the situation and determine if the Notice was valid. The Arbitrator ordered that the occupant was allowed to stay in the rental unit, and there was not enough evidence, so nothing else could be done about anything else. The landlord had to allow the tenant in Unit #431 reside in that rental unit. The witness did not have any discussions about the Decision with either of the tenants. The written Decision was kept at head office of the landlord however the witness has read it.

The witness further testified that he provided the tenant with a notice to inspect Unit #431, and his signature appears on the document. In the hearing, the Arbitrator said that the landlord's agents should conduct an inspection and document any issues, and the notice to inspect was given 2 days before the date of the resulting written Decision.

The witness served the tenant named in this Application with a One Month Notice to End Tenancy for Cause on February 18, 2021, and the witness confirmed that the one provided as evidence for this hearing contains his signature. The witness testified that the tenant residing in Unit #431 allowed people into the building, and wedged the door open allowing another person into the building who stole parcels and left the building unsecured. The Notice was delivered to the tenant in Unit #131 because she was the tenant. A copy was not served to the resident in Unit #431. Records show that rent is paid by a pre-authorized debit from an account in the name of the tenant residing in Unit #131, not the tenant in Unit #431. A VOID cheque is on file with her name on it only. Rent for both units are paid from that account by pre-authorized debits. The tenant did not contact the witness, and did not ask that the witness serve it to the tenant in Unit #431.

The tenant disputed the Notice and the witness attended a hearing on May 18, 2021. Prior to the hearing the tenant in Unit #131 never mentioned that the Notice should be given to the tenant in Unit #431.

The witness further testified that he received several letters dated February 28, 2021 from concerned residents about someone lingering and trying to gain access to the building. The witness checked the security footage and recognized the person to be the same as the person referred to in the One Month Notice to End Tenancy issued on February 18, 2021. The witness' obligation is to deal with such issues as promptly as possible and come up with solutions to accommodate everyone. In this case, the witness determined that the occupant of Unit #431 was the person noted on the security footage, and the witness decided to remove his entry phone.

The witness authored an unsigned letter dated February 28, 2021 which has been provided as evidence by the tenant. The witness testified that refers to the February 27, 2021 incident about a person loitering and wedging the front door open. The letter was delivered to the tenant in Unit #131 as the primary tenant of Unit #431 and is therefore responsible for the sub-tenant and should take responsibility for his actions. The witness believes he posted a copy of the letter to both rental units to ensure the tenant received it.

The witness received an email dated March 2, 2021 from the tenant's current partner who also occupies Unit #131. The email refers to Unit #431 and states that emails respecting that unit should be sent to the occupant of that unit, and states that the buzzer is still not working in Unit #431. The witness replied on March 3, 2021 stating that the landlord is looking into the buzzer. The following day the landlord provided

another letter to the tenant referring to Unit #431 about an incident of someone shouting at the entry-phone to be let in and then loitering. It also suggests that the entry-phone for Unit #431 be removed or reappropriated to the tenant's phone, and if no reply is received by March 9, 2021 the entry phone for Unit #431 will be disconnected. A reply was received on March 5, 2021 asking that the buzzer and name be disconnected immediately, and the landlord did so.

The witness also provided a letter dated March 11, 2021 to the tenant in Unit #131 stating that an inspection on that Unit will take place on March 16, 2021 with a certified professional to take measurements and take photographs. A similar letter was delivered to the same tenant about an inspection to Unit #431.

The witness identified a letter to the landlord from the City dated March 15, 2021 regarding a noise Bylaw, people entering due to Provincial restrictions, and Unit #431. There are 200 units, and the letter asks that the landlord comply with the By-law and future violations may result in possible charges against the owner of the premises, and a minimum fine is $250.00.

On March 17, 2021 the witness wrote a letter to the tenant and co-occupant of Unit #131 about an inspection in that unit on the previous day about fire code violations and odour. The landlord had been receiving complaints about bicycles hanging from the sprinkler pipes and an odour surrounding suites. The witness also gave a letter to the tenant in Unit #131 about an inspection that had occurred in Unit #431. The letter states that multiple fire code violations had been found in the Unit, and the witness thought that the tenant in Unit #131 was the primary tenant in Unit #431. It was an effort to get things sorted out. The witness' obligation is to inform parties and the tenant to get issues resolved, and if no results, the landlord would contact the fire marshal or Senior management to ascertain how they want it dealt with. The witness also conducts inspections of other units and writes letters, but only if there are health violations or something has been identified.

The witness also signed a letter about insurance, which was delivered to the tenant but was actually with respect to Unit #431. It was delivered to the tenant in Unit #131 with another person to witness it. A copy was not delivered to the tenant in Unit #431, and the tenant who received it did not contact the witness or request that the letter be delivered to someone else. There were concerns that the tenant insurance was not in the correct name or had correct information about who the occupants were. However, the occupant in Unit #431 provided the required documents.

The witness also testified that he wrote a letter dated March 23, 2021 addressed to the tenant residing in Unit #131 stating that a fire inspector would be inspecting Unit #431 on March 16, 2021. The witness believes that copies were posted to both units.

The witness received the tenant's application and amendment dated March 26, 2021 and testified that it sets out reasons for the dispute, but nowhere does the application indicate that the landlord should be dealing with the tenant in Unit #431.

The witness identified a letter dated March 30, 2021 to the tenant stating that the fire safety inspection was completed on March 25, 2021 and sets out observations and actions required by the tenant, to ensure the items were dealt with; safety of the residents is the witness' obligation. The witness testified that 4 fire marshals attended, and the letter was a follow-up about the items that needed to be addressed.

The witness received a letter dated April 1, 2021 from the tenant about the in-suite inspection and about fire violations. It also states that the tenant in Unit #431 is not a sublet, which is the first time the tenant had raised it. The witness replied, inviting the tenant to let the witness know of others in violation of the fire codes, and speaks of emergency repairs, health and safety of the building, and specifically about bicycles hanging on pipes in Unit #131, and reiterates concerns that needed to be rectified. The letter also mentions sublets in an effort to explain that even though the tenant doesn't think it's a sublet, she is responsible for the actions that the tenant in Unit #431 brings.

The landlord applied for an expedited hearing with respect to the notice to end tenancy issued in February, 2021, due to the issues in Unit #431. The hearing proceeded, but was adjourned to another hearing already scheduled for a week later.

The witness attended the hearing on May 18, 2021 and a copy of the resulting Decision, dated May 20, 2021 was referred to. The witness testified that he doesn't recall the reasons, but as a result of the Decision the landlord directed communication to the tenant in Unit #431 and $100.00 was taken off the rent for Unit #131. Any infractions or problems were now directed to the tenant in Unit #431, not the tenant in Unit #131. The Decision clarified the landlord's obligations, and since then, nothing has been provided to the tenant in Unit #131 that refers to Unit #431.

A letter was provided to the tenants in Unit #131 about an odour issue affecting neighbouring units. It was not about Unit #431, but Unit #131. Since June 2, 2021 the witness has not sent anything to the tenant in Unit #131 about Unit #431. The witness received a letter dated June 2, 2021 from the tenant's Advocate requesting that the

tenant's name be removed from the tenancy agreement for Unit #431, but he got it much later.

SUBMISSIONS OF THE TENANT'S ADVOCATE:
The tenant moved into the building in October, 2004 into Unit #234, and then moved to Unit #206 on November 1, 2007. Less than 2 years later, they moved into Unit #431 on July 1, 2009, and when they broke up the tenant moved to Unit #131 on August 1, 2014.

The occupant remaining in Unit #431 was employed by the building managers at that time, and on August 10, 2019 he had a falling out with previous managers, and the tenant who had moved out was served with routine inspection notices and a mutual agreement to end the tenancy to sign or she would face eviction. All were addressed to the tenant whose name appeared on the tenancy agreement. In 2019 the tenant asked that her name be removed from the tenancy agreement for Unit #431, but the landlord refused and referred to the tenant remaining in Unit #431 as a subletter or unauthorized occupant.

The tenant was then served with a notice to end the tenancy on September 4, 2019 pertaining to Unit #431, and the resulting Decision explained that by accepting rent, the occupant of that rental unit is a tenant. One day after the October 22, 2019 hearing, and before receiving the Decision, the tenant received another notice to inspect.

Another notice to end the tenancy was served to the tenant regarding Unit #431 on February 18, 2021 and a hearing was held on May 18, 2021, and the Decision dated May 20, 2021 referenced the previous hearing. The landlord was prevented from re-issuing something that had already been adjudicated upon. The landlord sought clarification but it was found that the request for clarification was an effort to re-argue the case. While compiling evidence, the tenant was served with another notice of an expedited hearing scheduled to be heard 10 days prior to the May 18, 2021 hearing. The hearing on May 10, 2021 resulted in a Decision wherein the Arbitrator found that the landlord's application was not serious enough to warrant ending the tenancy, and the same day, the entry phone was disconnected. A clarification was sought by the landlord and the Arbitrator ruled that the request was not an avenue of appeal and an attempt to re-argue the case.

The tenant filed this application on May 18, 2021, and was then bogged down with numerous inspections, fire inspections, incident reports, noise complaint letters and letters about insurance for Unit #431, most of which should have been served to the tenant who resided in Unit #431. When the tenant asked if others had been given notices to inspect, they had not, and this tenant was singled out.

Despite the tenant moving out of Unit #431, the landlord continued to rely on the tenancy agreement that had her name on it to harass both tenants, holding her unreasonably liable for the occupant in Unit #431, which included inspections, notices to end the tenancy and general complaints. The landlord has not made any effort to change the tenancy agreement since the October 25, 2019 Decision about the occupant in Unit #431 being a "de-facto tenant." The tenant sent an email to the landlord on April 1, 2021, and on April 6, 2021 the landlord's witness responded that the occupant in Unit #431 is an unauthorized subletter, suggesting that he was not a tenant, but this was the third tenancy agreement.

Due to the notices to end the tenancy, the landlord provided the tenant with 200 pages of evidence to consider, which was further complicated by scheduling an expedited hearing 8 days earlier than the hearing for the tenant's application to cancel a notice to end the tenancy. The urgent application of the landlord said that it was due to increased incidents, but at the hearing, the landlord's agent said that negative behaviour had decreased. The urgent application was not served properly, but tucked inside the binder in a pocket in an envelope with the evidence of the landlord for the May 18, 2021 hearing. The landlord tried to hide those documents hoping the tenant would miss the hearing; an abuse of process.

On March 17, the tenant was instructed to stop using candles and diffuser but no one else was asked to do that and nothing appears in the rules of the complex.

On June 8, 2021, just 18 minutes after the landlord received the Decision on the request for clarification, the landlord removed the tenant's jeep cover by dragging it across to her spot saying it was due to the fire marshal, but when asked, the landlord could not provide any evidence of that. The tenant received another letter on June 12, 201 about candles. The landlord had just received the tenant's application regarding compensation for loss of quiet enjoyment a few days earlier.

The landlord ignored rules for some tenants, but not the tenant in Unit #131, who was told she couldn't suspend her bicycle, but fire inspectors were there twice a year and never said anything about it, and others still do it and have not been asked to remove them. The tenant has had to miss work to deal with an abundance of tenancy issues, including filing disputes and contending to multiple notices from the landlord. The tenant has suffered stress and pressure to deal with Unit #431; frequent ongoing disturbances to her work and life. The landlord did not protect the tenant's right to quiet enjoyment, but failed to take reasonable steps to correct the tenancy agreement, which was retaliatory only to harass the tenant.

The tenant seeks monetary compensation of $6,562.83 for loss of quiet enjoyment and aggravated damages as well as $11,270.73 for work missed. The landlord made it her responsibility about the entry phone, multiple reports, inspection notices, and notices to end the tenancy which were not issued in good faith. The landlord then retaliated by dragging her jeep cover, falsely claiming that her diffuser jeopardizes health of other occupants and rendered the apartment above her uninhabitable, bullying her to move out, intimidation, all of which required the tenant to take significant time off work to prepare for hearings. The landlord has breached the tenant's right to quiet enjoyment by deliberately harassing the tenant, ignoring the October 25, 2019 Decision pertaining to Unit #431 and refusing to change the tenancy agreement, insisting that the tenant insurance for that unit was in her name and asked if the insurance company knew the tenant was subletting. Eventually, the tenant in Unit #431 put the insurance in his name.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:
A landlord is required to provide a safe and healthy rental unit complying with housing standards, which sometimes butts against a tenant's perception of their right to quiet enjoyment. It has also been held that a notice to end a tenancy is not tantamount to quiet enjoyment of the tenancy.

The findings from the previous hearings are in evidence, and there is no disagreement about timelines. A notice to end the tenancy resulted in a hearing in October, 2019, and the Decision states that the landlord is estopped.

The May 20, 2021 Decision clarifies the meaning of that finding determining that the tenant in Unit #431 is a "de-facto tenant." This is the first time any one remarks that he is not a sub-tenant, and that the lease ought to be reissued. Evidence today is that there were 482 days between the 2 notices to end the tenancy, and no discussions or dialogue took place with either of the tenants. The February 18, 2021 Notice to end the tenancy makes reference to an incident of January 29, 2021 wherein the person in the who accessed the building without right was a friend of the "de-facto" tenant. It happened again in February, 2021. The landlord's witness has the obligation to ensure that all tenants are safe and that the law is being abided by, and he took steps as reasonably as he could.

The landlord's witness testified that communications have been directed exclusively to the tenant in Unit #431, and prior to the May, 2021 Decision, the landlord's witness testified that it was a sublet.

Subsequent to the 2019 Decision, the landlord continued to interact with the tenant as though the occupant of #431 was a sublet, but the tenant never requested that the lease be changed and didn't decline to receive notices, but continued to respond. The parties acted in such a way that it was reasonable to consider it a sublet until the Decision was clarified.

Section 28 of the *Act* protects the quiet enjoyment of a tenant, including privacy. Several guidelines give assistance to parties about quiet enjoyment, and a Decision of the Supreme Court of British Columbia contains a discussion about Residential Tenancy Policy Guideline 6 stating that a breach means substantial interference, which includes cause by the landlord or the landlord's failure to correct the breach. If the landlord's witness had not raised issues about complaints received about a person being in the building in February, that would have been a breach. However, the landlord's witness brought them to the attention of whom he thought was responsible.

The Court has also found that temporary discomfort is not a breach of quiet enjoyment, but frequent discomfort does. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right to maintain the premises. Having letters taped to a door is not a breach.

Legal Counsel also submits that the claim for damages for loss of quiet enjoyment contains no evidence of how it is calculated, and seems to be an arbitrary number. There are issues of compliances, and notices were possibly sent to the wrong unit due to a misunderstanding, but once it was clarified, it stopped and only occurred between February and May, 2021.

The landlord was in possession of various complaints from 2 units, and the landlord's obligation is to deal with them where safety is an issue and did so. This claim for loss of quiet enjoyment is about receiving mail and notices, but the tenant took time off work to deal with them. The loss is not substantial in nature, and that's the test. Interference must be substantial, grave and permanent, and the burden of proof rests with the tenant.

Analysis

The *Residential Tenancy Act* specifies that a tenancy agreement exists even if it is not in writing, and puts the onus on the landlord to ensure that tenancy agreements are in writing. In this case, the landlord's witness presumes that a written tenancy agreement exists for the tenant in Unit #131, which is disputed by the tenant who testified that there is no such written agreement. The parties agree that the tenant has been residing in

Unit #131 since August 1, 2014, and notices of rent increase for that unit are proof of that tenancy. The tenant also testified that she signed the tenancy agreement in June, 2009 for Unit #431 when moving into that apartment with her common-law partner, and the only reason the common-law partner's name isn't on the tenancy agreement is because he was out of town at the time. The tenant's witness testified that he fully expected to have his name added, but the landlord never approached him about that. Evidence also shows that the two had resided in other units within the complex since October 1, 2004.

It is not uncommon for one tenant, especially a spouse to sign a tenancy agreement for all occupants. I also find that it is not uncommon for a landlord or landlord company to employ more than one property manager during the course of 17 years that the tenant has resided in the building. I accept that the landlord's witness, who is the landlord as described in Section 1 of the *Act,* was new to the job and only had a tenancy agreement with the tenant's name on it for Unit #431, and believed that the person on the tenancy agreement was responsible for the actions of the occupant who, therefore must have been a sublet. It was not a sublet. The landlord had the obligation of making a new tenancy agreement with the remaining tenant in that unit and a new tenancy agreement for the tenant in Unit #131 at the commencement of that tenancy in 2014. The landlord's witness testified that the tenant didn't do that, but the onus is on the landlord who did neither.

I also accept that the landlord acted by serving notices to the tenant in Unit #131 because there was no one else named to legally serve due to the lack of up-to-date tenancy agreements. The witness testified that once a Decision was received from the Residential Tenancy Branch referring to the occupant in Unit #431 as a "de-facto" tenant, notices to Unit #131 stopped.

I have read the Decisions from the previous hearings that have been provided as evidence for this hearing. The first is dated October 25, 2019 following a hearing on October 22, 2019 and refers to Unit #431. The landlord had applied for an Order of Possession and the tenant had applied for an order cancelling a notice to end the tenancy for cause; and to recover the filing fee from the landlord. The Decision states that the landlord acknowledged in that hearing that the landlord was aware for the full period of 6 years that the tenant didn't live there and that the landlord accepted rent from the occupant. However, the landlord served the tenant with the One Month Notice to End Tenancy for Cause on September 4, 2019, and although she didn't live there, the tenant acknowledged service and disputed it. The Arbitrator found that the landlord had established a pattern of accepting rent and acknowledging that the occupant was the

“de-facto” tenant of that rental unit. The Arbitrator also found that the landlord is estopped from now claiming that the tenant sublet to the occupant.

On February 18, 2021 the landlord issued another notice to end the tenancy for cause regarding an incident on January 29, 2021 stating that the tenant and the occupant of Unit #431 are responsible for their guests actions. Having already been provided with a Decision of the Residential Tenancy Branch, I find that the landlord ought to have known that the occupant of Unit #431 was the only tenant responsible for the guest(s). The tenant disputed the Notice and a hearing was scheduled for May 18, 2021, however the landlord applied for an expedited hearing and for an order ending the tenancy earlier than the Notice would take effect and a hearing was held on May 8, 2021. In that hearing, the landlord testified that he still considered the tenant to be the main tenant for the rental unit, and that incidents had decreased. The Arbitrator found that the landlord had failed to establish that it would be unreasonable or unfair for the landlord to wait for the Notice to take effect, and the landlord’s application was dismissed.

The hearing scheduled for May 18, 2021 also convened, concerning the tenant’s application for an order cancelling that Notice to end the tenancy. In that hearing, the landlord again testified that the landlord has never recognized the occupant in Unit #431 as a tenant. The Arbitrator referred to the previous Decision, stating that it was a final, binding decision establishing the fact that the landlord is estopped from claiming that the tenant sublet to the occupant in Unit #431. The Arbitrator found that the notice to end the tenancy is of no force and effect, and was cancelled.

On May 27, 2021 the landlord made a request for correction and clarification of the May 10, 2021 hearing and a Decision was provided on May 28, 2021. The Arbitrator found that the requests were an attempt to reargue the findings made in the previous Decision. The Arbitrator also found that an obvious error or inadvertent omission does not include different interpretations of facts or law, and found no reason to issue any further clarification or correction.

On June 3, 2021 the landlord again sought clarification of the resulting Decision from the hearing held on May 18, 2021. On June 6, 2021 a Decision was provided, which states, in part: “As explicitly stated in the original decision, LR is not the tenant of the subject rental unit on the fourth floor.”

The landlord continued after the October 22, 2019 hearing to post numerous notices to the door of the rental Unit #131 knowing that it had already been determined that the person residing in Unit #431 was a tenant, and that’s who the complaints were about.

Those letters are all addressed to the tenant, but specify her address as Unit #431. The tenant clearly resides in Unit #131. I also find that the landlord tried to circumvent the tenant's application to cancel another notice to end the tenancy by applying for an expedited hearing to obtain an Order of Possession. There is no doubt in my mind that had the landlord been successful with any of the applications, the landlord wanted the tenant in Unit #131 evicted even though it had already been found that she was not responsible for the actions of the tenant in Unit #431.

The landlord also gave numerous notices to inspect both rental units, both addressed to the tenant but one at Unit #431 and another at Unit #131. The tenant gave a letter to the landlord dated March 16, 2021 asking for copies of the photographs taken during the inspection. The landlord responded in letters, both addressed to the tenant, but referencing her address in one letter as Unit #431 and the other referencing Unit #131. On March 17, 2021 the landlord sent a letter to the tenant addressed to Unit #431 regarding the March 16, 2021 inspection indicating that numerous serious violations were observed that seriously jeopardize the health and safety of occupants and put the landlord's property at significant risk, setting out fire code violations. On March 22, 2021 the landlord sent another letter to the tenant, addressed to Unit #431 about valid proof of insurance for that unit.

On March 23, 2021 the landlord sent another letter to the tenant, but addressed to Unit #431 about the inspection held on March 16, 2021, and scheduling another with the Fire Inspector for March 25, 2021; and another on March 30, 2021 regarding the fire safety inspection, also to the tenant but addressed to her at Unit #431. The landlord's witness testified that the tenant requested a copy of the fire marshal's report but the witness didn't have one. He also testified that he followed up, but no report was provided. He also testified that the fire marshal and another agent of the landlord dragged the tenant's jeep cover, and that any item unaccounted for can be removed from the parking area without notice.

I have reviewed all of the evidentiary material, with the exception of the Summary provided by the tenant that was not provided to the landlord.

There is no doubt in my mind that the landlord has unreasonably breached the tenant's right to quiet enjoyment. Legal Counsel for the landlord suggests that the tenant did nothing to mitigate by not asking the landlord to stop bothering her about the tenant in Unit #431, however she testified that she did so "…many, many, many times verbally," and I accept that. Further, the landlord knew better in October, 2019, but continued to write the tenant letters threatening eviction and routine notices to inspect in an attempt

to have the tenant vacate the rental unit. However, that would not have solved anything; it would only serve to have the tenant move out of Unit #131, yet the landlord's problem was with Unit #431.

The landlord's witness testified that in March, 2021 he thought that the tenant in Unit #131 was the primary tenant in Unit #431. He also testified that he received a letter dated April 1, 2021 from the tenant about the in-suite inspection and about fire violations. It also states that the tenant in Unit #431 is not a sublet, which is the first time the tenant had raised it. I don't accept that; the landlord's witness was at the October 22, 2019 hearing and read the resulting Decision. He also testified that rent for both units are paid from that account by pre-authorized debits, also disputed by the tenant.

The tenant has applied for monetary compensation for aggravated damages due to loss of quiet enjoyment and wage losses to deal with the landlord's notices. In order to be successful, the tenant must establish that:

1. that the tenant has suffered damages;
2. that the damages suffered were a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. mitigation.

I find that the tenant has established that the tenant has suffered aggravated damages as a result of the landlord's failure to comply with the *Act* or the tenancy agreement, and was largely retaliatory and on-going.

With respect to quantum, Legal Counsel for the landlord submits that the amount requested by the tenant appears to be arbitrary. The tenant testified that it is based on the amount of rent payable for each of the series of losses and provided a calculation sheet indicating a per diem amount based on the number of days in the month, multiplied by 50% of the $1,950.00 per month rent, and for some months 25%. Although I find that the landlord has breached the *Act,* I am not satisfied that half of the rent for those periods should be returned to the tenant. Further, I am not satisfied that the tenant is entitled to any compensation for loss of quiet enjoyment prior to the October 22, 2019 hearing, but is entitled for any loss after the Decision was rendered on October 25, 2019. In the circumstances, I find that the tenant has established 25% for each of the periods set out in the calculations after October 25, 2019, being February 18, 2021 to May 18, 2021, for a total of **$1,653.96.**

With respect to the tenant's claim for loss of income, I find that if the tenant hadn't attended the hearings, and hadn't spent the time to prepare for the hearings, the landlord would have taken the opportunity to move the tenant out for infractions that were not the responsibility of the tenant. I find that the tenant has established wage losses from February 19, 2021 as claimed to May 20, 2021 totaling **$10,126.85.**

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the **$100.00** filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **$11,780.81.**

I further order the landlord to comply with the *Act* by refraining from sending notices to the tenant about any infractions in Unit #431.

This order is final and binding and may be enforced.

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: September 26, 2021

Residential Tenancy Branch