



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on May 10, 2021, wherein the Tenant sought an Order for monetary compensation from the Landlord, return of their security deposit and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on November 8, 2021. Both parties called into hearing. The Tenant called in on his own behalf. The Landlord was represented by the Rental Property Managers, W.M. and W.L. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Security Deposit

The parties attended a hearing before Arbitrator Senay on May 27, 2021. Pursuant to the Decision of Arbitrator Senay, the Landlord was entitled to retain the Tenant's security deposit of \$1,100.00 in addition to being awarded the sum of \$1,335.00. The Tenant confirmed that he paid the \$1,335.00 awarded.

As the Landlord has been authorized to retain the Tenant's security deposit I dismiss the Tenant's request for return of his deposit.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Application concluded on November 8, 2021. This Decision was rendered on December 20, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover his filing fee?

Background and Evidence

The parties attended a hearing before the residential tenancy branch on May 27, 2021. The presiding Arbitrator, Arbitrator Senay, recorded the following agreed upon facts:

- this tenancy began on February 9, 2017;
- the Tenant paid a security deposit of \$1,100.00;
- at the end of the tenancy rent of \$2,335.00 was due by the first day of each month;
- in late September of 2020 the Tenant was given written notice that the plumbing in the residential complex would be replaced and that work would commence at the end of October 2020;

- work on the plumbing in the residential complex commenced at the end of October 2020;
- on December 16, 202 the Tenant sent the Landlord an email, in which he declared he was moving due to concerns about on-going construction in the unit/building;
- the notice given on December 16, 220 declared that the Tenant would vacate by December 31, 2020;
- the rental unit was vacated by December 31, 2020;
- no rent was paid for January of 2020

At the hearing before me the parties confirmed the above facts.

The Tenant further confirmed that the construction occurred for three months of his tenancy, November and December 2020 in addition to January 2021. While he vacated the rental unit at the end of December 2020, Arbitrator Senay found the effective date of his notice to end tenancy was January 31, 2021 such that the Tenant also requested a rent reduction for January 2021. The Tenant confirmed he was seeking return of ½ months rent for each month paid for November, December and January for a total of \$3,502.50.

The Tenant testified that the tenancy was devalued due to a major re-piping project at the rental building. He claimed the rental unit was uninhabitable for some instances during the tenancy, including: several days in the middle of December 2020, when the bathroom renovation occurred. The Tenant stated that had there not been construction he would have stayed in the unit, but felt he had no choice but to leave. In support of the claim the Tenant provided detailed written submissions, photos of the rental unit, as well as the relevant Notice(s) of Entry for the construction and notices relating to the water disruption at the rental building.

In reply to the Tenant's claim, W.M., testified as follows. W.M. confirmed the Landlord was not prepared to compensate the Tenant as the Tenant could have ended his tenancy early or made an insurance claim for the time period in question.

W.M. stated that it was the Landlord's position that the rental unit was habitable during construction, although there was some discomfort. He further stated that the Tenant did not have water for three days, and on this basis, the Landlord was prepared to refund the Tenant five days during the tenancy; as such the Landlord was agreeable to

refunding the Tenant the sum of \$383.84 equivalent to five days rent, ( $\$2,335.00 \times 12 = \$28,020.00 / 365 = \$76.77$  per day  $\times 5 = \$383.84$ ).

In reply the Tenant stated that while it was the case that only five days that they were without water, the impact of the construction occurred over three months and was so disruptive that they had no choice but to end the tenancy.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Tenant seeks compensation from the Landlord alleging his right to quiet enjoyment of the rental unit was breached. A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

#### **Protection of tenant's right to quiet enjoyment**

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

- (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.

*Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

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

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

As noted, the parties attended a prior hearing before the branch. Arbitrator Senay found as follows:

“On the basis of the undisputed evidence, I find that the plumbing was being updated in the residential complex between late October of 2020 and the middle of January of 2021. The evidence shows that the plumbing project was quite disruptive, as the Tenant was without water on several occasions, tradespeople were accessing the rental unit; repairs were being made within their rental unit; and there was noise/mess typically associated to a project of this nature. I find that these repairs were a breach to the Tenant’s right to quiet enjoyment of the rental unit.”

I have reviewed the Tenant's documentary evidence, including the photos of the rental unit and his written submissions. I concur with Arbitrator Senay that this was a disruptive project which resulted in a breach to the Tenant's right to quiet enjoyment. Based on the evidence before me I find that the rental unit was frequently entered by tradespeople and that the Tenant was without water on numerous occasions. The photos of the unit show the extensive nature of the work as walls in various rooms were opened to allow access to the plumbing pipes.

The Tenant seeks compensation equivalent to return of 50% of the rent paid for November, December and January. While I agree the tenancy was devalued, I find 25% to be a more appropriate reduction based on the evidence before me. I therefore award the Tenant the sum of **\$1,751.25** calculated as follows:

$$\text{Rent: } \$2,335.00 \times 3 = \$7,005.00 \times .25 = \$1,751.25$$

As the Tenant has been substantially successful, I also award the Tenant recovery of the \$100.00 filing fee for a total award of **\$1,851.25**.

### Conclusion

The Tenant's claim for monetary compensation for breach of his right to quiet enjoyment and recovery of the filing fee is granted. The Tenant is awarded the sum of **\$1,851.25**. In furtherance of this I grant the Tenant a Monetary Order in the amount of \$1,851.25. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: December 20, 2021

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Residential Tenancy Branch