



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDCT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on September 03, 2021 the Dispute Resolution Package and one page of evidence submitted to the Residential Tenancy Branch on August 13, 2021 was sent to the building manager, via registered mail. He stated that the documents were sent to the building manager's residence, which is unit 7 in the residential complex. The Tenant submitted Canada Post documentation that corroborates his testimony that registered mail was sent on that date.

In the absence of evidence to the contrary, I find that these documents were served to the Landlord in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. In the absence of evidence to the contrary, I find it reasonable to conclude that sending hearing documents to a resident manager's residence can be construed as serving them to an address where the Landlord conducts business. As the documents were properly served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Landlord.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence:

The Tenant stated that:

- This tenancy began in 2010;
- The tenancy ended on January 01, 2020;
- When the tenancy ended his rent was either \$357.00 per month or \$365.00 per month;
- In May of 2017 the Landlord informed him the toilet and bathroom sinking in the rental unit were leaking and could not be used;
- In May of 2017 the Landlord told him he could use the bathroom in a vacant suite across the hall from his rental unit;
- After approximately 3 months the Landlord told him he could use the bathroom in a vacant suite elsewhere on his floor;
- After approximately 4 months the Landlord told him he could use the bathroom in a different vacant suite elsewhere on his floor;
- After approximately 3 months the bathroom in his unit was repaired;
- He was able to use the bathtub in his rental unit throughout his tenancy;
- Using the toilet and sink in another unit for a portion of 2017 and 2018 was particularly difficult for him as he had a hip replacement in June of 2017;
- In the winter of 2012 water entered his unit through a light fixture as a result of the roof leaking;
- With the consent of the Landlord, he used a tarp to funnel the water outside via a window;
- Water leaked into his unit for approximately one week in 2012 and
- He is seeking compensation of \$4,284.00 as a result of these deficiencies.

Analysis:

Section 28 of the *Residential Tenancy Act (Act)* grants tenants the right to quiet enjoyment of the rental unit, including, but not limited to, the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the

Act, and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

*In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

*A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.*

.....

*A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*

In many respects the covenant of quiet enjoyment is similar to the landlord's obligations to keep rental units suitable for occupation and in good repair. For example, a failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment if it impacts a tenants ability to comfortably use the rental unit.

On the basis of the undisputed testimony, I find that the Tenant could not use the toilet and bathroom sink in his unit for approximately ten months in 2017 and 2018, although he was given access to a bathroom elsewhere in the residential complex during that time. I find the Landlord's failure to repair the bathroom sink and toilet in a timely manner had a significant impact on the Tenant's quiet enjoyment of the rental unit, given that he had to leave his home every time he needed to use the toilet.

I grant the Tenant \$900.00 in compensation for this loss of quiet enjoyment for a period of ten months (\$90.00 per month), which is approximately 25% of the monthly rent. In determining that the amount of compensation due to the Tenant, I was influenced by the fact the Tenant was able to use the rest of his rental unit, including the bathtub, which obviously has significant value. I was also influenced by the fact he was provided with a nearby alternative, which mitigated some of the inconvenience. I also considered the evidence that the Tenant had hip replacement surgery during that time, which would make the use of an alternative toilet more difficult.

On the basis of the undisputed evidence, I find that in 2012 water leaked into the rental unit through a light fixture for a period of approximately one week and that the Tenant used a tarp to funnel water out of the unit for that period of time. As this deficiency was corrected relatively quickly, I find that the inconvenience experienced by the Tenant was not particularly significant and I find that compensation is not warranted.

Conclusion:

The Tenant has established a monetary claim of \$900.00 and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily 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 *Act*.

Dated: March 01, 2022

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Residential Tenancy Branch