Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, LRE, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on June 1, 2021 seeking:

- compensation for monetary loss or other money owed,
- suspension/set conditions on the Landlord's right to enter
- the Landlord's compliance with the legislation and/or the tenancy agreement
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 4, 2021 and March 29, 2022**.** Both parties attended the hearing on March 29, 2022.

Preliminary Matter –hearing reassigned to new Arbitrator

The original Arbitrator assigned to this matter in 2021 was unable to complete the file. At the outset of this reconvened hearing, I informed the parties of this and explained the options of either waiting indefinitely for that same Arbitrator's written decision, or proceeding with the matter anew, requiring testimony and presentation of evidence before the new Arbitrator. Both the Landlord and the Tenant confirmed they wished to proceed in order to have the matter completed. With this confirmation, I proceeded with the hearing as scheduled.

As recorded in the prior Arbitrator's decision of November 5, 2021, both parties confirmed the Tenant served notice of this hearing, as well as their prepared documentary evidence to the Landlord. In response, the Tenant confirmed they received evidence from the Landlord. I thus find both parties confirmed service and reiterate the original Arbitrator's finding that all evidence was sufficiently served as per s. 71 of the *Act*.

Preliminary Matter – tenancy ended

The original Arbitrator recorded in the Interim Decision of November 5, 2021 that the tenancy ended on October 31, 2021. On the original Application, the Tenant sought the Landlord's compliance with the *Act*/tenancy agreement, and suspension/conditions on the Landlord's right to enter. Those are matters that concerned an ongoing active tenancy, as it then was. In the reconvened hearing on March 29, 2021, the parties confirmed that those matters were no longer relevant. Because of both parties' consent, I dismiss these two issues, without leave to reapply.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In their evidence, the Landlord presented a copy of the tenancy agreement. The Tenant signed that agreement with the prior Landlord on September 11, 2020. In their Affidavit of March 9, 2021 ("Affidavit #1"), the Tenant noted they moved into that rental unit in September 2016. The agreement in the evidence shows the tenancy start date of September 1, 2020 for the fixed term ending October 1, 2021. The rent amount was $2,650, with no indication that the amount increased over the course of the tenancy.

Tenant's evidence

The Tenant in Affidavit #1 described the Landlord here as making an offer of $5,000 for them to move out by March 1, 2020. This was in later December 2020 after this Landlord came in as the new property owner. The Landlord re-stated this offer and the Tenant declined. The Tenant noted, as presented in their chronology, they were asked "at least four times" to move out before the end of the tenancy.

The Tenant then presented that the Landlord called them on December 29 and "accused [them] of being a drug dealer and threatened to go to the police if [they] did not agree to move out." The tone and content of this call led to the Tenant having an anxiety attack: "I was

physically shaking, crying and having trouble getting my breath." Upon taking this to the police as a matter of harassment, the Tenant learned from the police that the Landlord had already visited to the police and made the accusation of drug dealing.

The Tenant presents that on this same day, the Landlord attended the rental unit and served a One-Month Notice to End Tenancy for Cause (the "One-Month Notice #1"). On January 9, 2021 the Landlord emailed to the Tenant to confirm the Tenant did not choose to dispute that eviction notice, also giving the date of January 31, 2021 as the move-out inspection meeting date. The Tenant replied to state that they had filed to dispute that notice, and they would not be moving out.

The following day the Landlord notified the Tenant of "renovations that will be happening in the foreseeable future." They listed the items in the rental unit slated to be repaired or replaced and asked the Tenant to specify non-workdays to craft a schedule for the necessary work. This required access to the rental unit. The Landlord also notified the Tenant of their own takeover of the garage space previously designated to the Tenant.

Sometime in March, as set out in their Affidavit of June 30, 2021 ("Affidavit #3"), the Tenant's friend was contacted anonymously by a party who asked if that friend could provide evidence to support the eviction in exchange for cash. This eventually led the Tenant's friend to announce that "[they] no longer wanted to see or speak to [the Tenant]". The Tenant asked their friend to state this for the record with a lawyer the Tenant had spoken to at that time, for evidence in the hearing to dispute the Landlord's eviction notice. Their friend decided to not be involved in the situation, effectively ending all association with the Tenant.

The dispute resolution hearing for the One-Month Notice #1 was on March 29, 2021. As set out in the Tenant's Affidavit of June 23, 2021 ("Affidavit 2") the Landlord served another One-Month Notice to End Tenancy for Cause (the "One-Month Notice #2") on that same date. The Tenant set out that the Landlord did not give written notice of a material breach of agreement terms prior to service of One-Month Notice #2. The Tenant also filed to dispute this separate notice, and in the separate July 16 hearing in that matter the Arbitrator cancelled the One-Month Notice #2 because the Landlord did not attend.

The Tenant also sets out that the Landlord installed a security camera that was situated to record "all those who come and go from [the Tenant's] home." The Landlord later informed the Tenant that the camera records sound. The Tenant was aware that the Landlord made no installation showing the separate entrances to the other adjacent rental units belonging to other residents. The Tenant deposed they felt they were being unjustly surveilled by the Landlord.

On June 17, the Tenant responded to the Landlord's texted request for entrance to the rental unit, granting access on June 19. To discuss the need for the Landlord's entrance, the Tenant visited to the Landlord's own living unit, and this resulted in the Landlord calling the police. An officer attended to visit the Tenant in the rental unit, and this caused a panic attack and the Tenant hyperventilated.

In their October 12, 2021 Affidavit ("Affidavit #4") the Tenant set out the issues brought forth by the Landlord concerning smoking outdoors on the property. The Landlord evidently responded to a query from the Tenant's advocate to say the matter was criminal in nature. According to the Tenant the Landlord then made a personal comment about the Tenant's medical condition they had disclosed in a prior hearing,
as related to smoking.

In their Affidavit #4, the Tenant also set out they had missed days of work on July 16 and July 20, 2021 for hearings that either the Landlord did not attend (for the One-Month Notice #2) or chose to withdraw reasons for ending the tenancy (for the One-Month Notice #1). This forms the basis for the Tenant's claim for $300 lost wages to attend those hearings. As proof of their wages earned at that time, they attached that related paycheque as an exhibit to Affidavit #3.

Tenant's submissions

The Tenant submits the entire tenancy as it existed with this Landlord has been a situation of conflict, entirely of the Landlord's own doing since they wanted to obtain possession of the unit before the end of the fixed-term tenancy. This was "a campaign of bad faith conduct" in response to which, understandably, the Tenant is upset, with a grave impact on their physical and mental health. The Landlord undertook two types of conduct, with the combination of actions constituting a breach of the Tenant's right to quiet enjoyment:

i. breach of the Tenant's privacy

First, the Tenant submits the Landlord breached their privacy with the installation of a security camera designed specifically to monitor the Tenant as they entered or exited the rental unit. There were no similar cameras focused on the doors of other residents in the same manner, where ostensibly the reason the Landlord installed the camera was for security. There was no evidence of security risks ever enunciated by the Landlord to warrant the camera's installation, and the Landlord even subsequently advised an arbitrator that they saw no evidence of illegal activity.

Secondly, the Landlord sought out the Tenant's friend in order to procure evidence from that friend as against the Tenant in their desire to end the tenancy. It is not known how the Landlord obtained that friend's telephone number. The Tenant submits their own reasonable expectation of privacy extends to their guests.

ii. unreasonable disturbances

The Landlord made frivolous attempts at eviction, referred to as "retaliatory piecemeal evictions". This took the form of withdrawing the Tenant's garage access and announcing prolonged renovations that would impinge on the Tenant's exclusive possession and quiet enjoyment.

Additionally, the One-Month Notice #2 was issued on the pretext of a breach of a material term of the tenancy agreement, with no notification of those breaches prior to issuance of that One-Month Notice #2. Also, the Landlord issued this notice on the same day the One-Month Notice #1 was cancelled in a hearing. The Landlord further did not attend the hearing for this One-Month Notice #2, without withdrawing or advising of their non-attendance.

Further, the Landlord made accusations of criminal conduct against the Tenant. They later admitted to the Arbitrator in a hearing that they had no issue with criminal activities, thereby cancelling the One-Month Notice #1 that was issued for that reason. The Landlord also called the police for the incident on June 17 yet did not attend to speak with the officer about it. Also, there was the Landlord labelling the Tenant's smoking outside of the rental unit as a criminal offence. These are all attempts by the Landlord, in the Tenant's submission, to increase the Tenant's discomfort, essentially making the situation unlivable.

Tenant's Compensation Claim

The Tenant claims as follows:

- $5,000, being $500 per month for each of the ten months they endured the breach of quiet enjoyment from this Landlord
- $3,500 for the breaches of privacy, relying on the BC Supreme Court decision of *Heckert* for this amount
- $3,500 aggravated damages, for "aggravation of injury caused by the wrongdoer's wilful, reckless or indifferent behaviour" as summarized in a prior Residential Tenancy Branch decision provided by the Tenant. This amount, including $500 for the August 2 incident, encompasses:

  - the physical inconveniences and pain (as stated in the doctor's note they provided and Affidavit #3)
  - mental distress and humiliation – being accused of a crime, multiple interactions with police, a medical condition induced by the situation forcing their leave from work and the mention of it by the Landlord directly in front of the Tenant's guest
  - intangible losses: loss of friendship with the friend the Landlord contacted directly; comfort and privacy in their own private abode
  - aggravation, in particular the suggestions of criminal behaviour and serving of end-of-tenancy notices.
- $300 for wages lost when attending two hearings on June 16 and July 20, 2021. The Landlord did not attend for the first hearing; at the second hearing the Landlord stated they withdrew the 10-Day Notice #1. This was "approximately $300 by missing two days of work", and the Tenant showed the wage loss to them with reference to payslips from May 21 and June 4.
- $253.05 for their medication needed because of the medical condition that arose from stress and anxiety induced by the Landlord here. The Tenant provided receipts for medication from February and early May 2021, for $42.87 and $44.18. In their Affidavit #3 the Tenant describes the medication costing "roughly $43 each time", for which they filled the prescription twice. Additionally, they describe a hormone therapy they take on a daily basis. A doctor's note from May confirms the Tenant was experiencing this abnormal and painful condition for almost three months at that time.

Landlord's Response

The Landlord referred to the Tenant's Affidavit #1 wherein they described the prior difficult year of 2020. This included unemployment with resulting "financial strain". The Landlord described, from their perspective, the stress that the sale of the home could bring when the Tenant learned of a possible end to the tenancy from a real estate agent. The Landlord posits these stressors are not because of them individually.

The Landlord described their offer of $5,000 to the Tenant to end the tenancy early. They also offered their own then-current accommodation to the Tenant, at a rent amount below what they were paying, in the same neighbourhood. Their message setting this out on December 23 was with the intention to be helpful, and not intended to harass the Tenant as they so alleged. The Landlord pointed out it was the Tenant who opened a police harassment file, only 9 days after their initial contact.

The Landlord provided a transcript of a conversation they had with the Tenant regarding their personal consumption and casual sales of cannabis and mushrooms. The Landlord deemed

this illegal conduct and notified the Tenant of that on that call. The Landlord discovered this information when they established contact with someone listed on the tenancy agreement they reviewed for the rental unit upon their acquisition. The Landlord also acquired a text message between the Tenant and some unidentified buyer that makes clear reference to the purchase of mushrooms. This is what led the Landlord to issue the One-Month Notice #1.

The Landlord described keeping minimal contact after receiving a “cease-and-desist letter” from the Tenant demanding no contact from the Landlord. They had initiated messaging with the Tenant regarding renovations and repairs to the rental unit; however, after receiving messaging via dispute resolution disclosure that the Tenant wished for no more repairs or maintenance, the Landlord abandoned that plan.

The Landlord also initiated an offer for the reduced garage space they needed for their upcoming parental duties while then living in a much smaller space than they were used to. This was a reduction in rent by $150, and with plenty of street parking available. The Tenant did not remove items from the garage, and instead the Landlord opted for their own storage unit rental on the property for 8 more months.

The Landlord provided a document that sets out the number of communications within the 6-month period after February 2021. By their count, and with a list of dates for reference, they initiated contact 7 times for more generic property issues (such as maintenance) as opposed to the 9 times they made contact because of matters initiated by the Tenant (such as smoking, yelling profanities, and loud music). Throughout, the Landlord restated their concern about second-hand smoke affecting their newborn.

The Landlord provided a witness account of the June 17 incident, where the Tenant in response to the Landlord’s request for entry on a repair issue interrupted the Landlord’s own family gathering. According to the witness account, the Tenant was “shouting using inflammatory language”.

The Landlord pointed to their video evidence, where the Tenant’s regular gestures and talking directly toward the installed security camera exemplifies the hostility. The Landlord provided evidence to show the other two cameras, making it untrue that they installed a camera only at the Tenant’s entrance. This includes their other tenant’s rental unit, as shown in the provided photo. When announcing installation of the cameras on February 1 to all property occupants, the Landlord specifically noted in that message: “The cameras will not be in or directed at anyone’s private space or dwelling.” They also added: “If you have any questions, please feel free to contact us.”

The Landlord also set out their position that at all times they tried to minimize contact with the Tenant, while it was actually the Tenant who was the cause of disturbances. The Tenant self-disclosed their use of shouting and profanity in Affidavit #3 para. 31, and images from the security camera show the Tenant gesturing and verbally cussing at the Landlord via that camera.

According to the Landlord, the Tenant continued to smoke on the property in an area not suitable for the Landlord with their newborn child. They provided a health authority document to the advocate who was assisting the Tenant in this matter, repeating their request for the Tenant to move off the property when smoking. These requests, according to the Landlord, were ignored by the Tenant. On August 2, this smoking issue led to a confrontation between the Landlord and the Tenant, and after the Landlord admittedly used unkind words toward the Tenant – alluding to their disclosed medical condition – the Landlord afterwards that same day apologized via text message.

At the conclusion of the hearing, the Landlord took the position that, with respect to a claim for aggravated damages, the Tenant never expressed they were undergoing stress or anxiety to the Landlord.

Regarding each point of the Tenant's claim for compensation, the Landlord responded as follows:

- $5,000, being $500 for each month for the breach of quiet enjoyment is not supported by evidence. The one incident in the evidence is that of August 2 for which the Landlord apologized, and it is the Tenant who has been the source of conflict throughout. Additionally, each of the One-Month Notices are within a Landlord's right to pursue an end to the tenancy. The Landlord also noted this claim was originally made in June 2021, presumably covering the rest of the tenancy, a timeframe that had not even transpired yet in the scope of this 10-month timespan.
- For $3,500 for breaches of privacy, the Landlord were concerned for safety and security, and this was the legitimate and legal need for cameras. They respected the Tenant's right to quiet enjoyment within their own private living space.
- For $3,500 aggravated damages, the Landlord took the position that the Tenant never expressed they were undergoing stress or anxiety to the Landlord. The Tenant amended their claim for this to include $500 for the single August 2 incident; however, this amount is far out of scope for that incident in which the Landlord apologized.
- The Landlord had a legitimate reason for not attending the June 16 hearing, with life events involving travel taking precedence. On the Tenant's own Application, the

Landlord's email address was incorrect; therefore, they received no confirmation message from the Residential Tenancy Branch.

- The Landlord rebuts the Tenant's submission that the need for medication is because of their conduct. They pointed to the Tenant's own stress/anxiety that began prior to the Landlord acquiring ownership.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

breach of quiet enjoyment

The Tenant's right to quiet enjoyment is set out in s. 28 of the *Act*:

> 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 . . .
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Tenant submits the Landlord breached their right to quiet enjoyment in two ways: breach of their right to reasonable privacy; and unreasonable disturbances.

Regarding privacy, I balance the Landlord's own stated need for security against the degree of infringement on the Tenant's quiet enjoyment of the rental unit. There is no question the camera installed is exterior to the Tenant's unit; I find the fact that there are 2 other cameras installed on the property to be relevant to the Landlord's purpose in doing so. I find the Landlord made the installation strategically, in order to prevent, or, should the need arise, retroactively investigate, security issues. In all likelihood this is based on the Landlord's knowledge of transactions on the property, centred on the Tenant's own rental unit. The Landlord provided proof of their need for security where they proffered communication between the Tenant and a party admittedly unknown to them, concerning the purchase of a regulated substance, namely mushrooms. Additionally, the Tenant made it known to the Landlord the nature of these transactions as they existed in the past, and in response, the Landlord made known their understanding of the situation as illegal to the Tenant early on in the tenancy.

Given the nature of the message disclosed to the Landlord – even though their means of obtaining said message to/from the Tenant and a past potential customer (concerning "trying to get some stuff before New Years") is not known – I find it reasonable that the Landlord had legitimate security interests. Also, given their dialogue with a previous listed Tenant for that rental unit, as well as direct disclosure from the Tenant, I find it reasonable that their concerns focused on the Tenant's rental unit. I find this informed the Landlord on their strategy of installing a camera focused on that area of the property. To be clear, this is neither *within* the Tenant's own rental unit, nor even focusing the camera so the interior is visible.

I find as fact the Landlord had installed other cameras on the property for that same purpose. This is not the case of a sole camera focused on the Tenant's doorway only; rather, I find this is a case of the Landlord measuring security interests based on what was known to them based on substantial and easy-to-interpret dialogue, and knowledge of what went on in the past. I find the overarching purpose of the cameras was for security to the property, the Landlord and even the Tenant; I accept this is a legitimate concern over and above any desire monitor the Tenant's own entry and exit to their rental unit.

The Landlord disclosed installation of the cameras to their tenants on February 1, 2021. This was early on in the Landlord-Tenant relationship, before incidents that the Tenant presented as being other forms of harassment, yet with the spectre of illegal activity being present on the property. Notable in that message is the Landlord's statement: "If you have any questions, please feel free to contact us." There is no evidence to show the Tenant made their privacy concerns known to the Landlord at that time even though the Landlord provided the full opportunity for them to do so. This would extend to the Tenant's own anxiety or stress focused on the perceived invasion of their privacy.

I find the Landlord's stated need for security in their living area is not diminished by the Landlord's later abandonment of the One-Month Notice #1 based on no actual illegal activity. It is plausible that the Landlord dropped that intention to evict on that cause with no record of police interaction or investigation on that issue and hence no actual proven illegal activity.

The Tenant here presented the case of *Heckert* as rationale for an award of $3,500 for the breach of quiet enjoyment *via* the breach of privacy. I distinguish that matter as dealing with a matter of a breach of privacy such as that definition existed in a separate statute, namely the *Privacy Act*. The award from the BC Supreme Court was made from that court's consideration of the tenets of the *Privacy Act*, and not based on the principle of quiet enjoyment (determined as not properly before the Court) as set out in the *Residential Tenancy Act*.

With respect to that principle, I find the Tenant's enjoyment of the rental unit was not diminished through the perceived invasion of privacy. The Tenant alluded to staying elsewhere occasionally; however, there was no account of their anxiety- or stress-related need to avoid the entrance altogether, or otherwise make life adjustments because of the presence of that camera. As above, there is no record they made that known to the Landlord at any time.

Regarding the Landlord's alleged contact with a friend of the Tenant, and an apparent attempt to procure information on the Tenant's activity for an eviction, the Tenant has not provided ample proof thereof. The messages do not reveal the Landlord positively breached the Tenant's privacy – or by extension, that of their acquaintance – by making a phone call. In any event, that is a separate charge from the Tenant, one that is not the subject of the quiet enjoyment of the rental unit. Though it certainly tainted the Tenant's trust and further soured communication between the parties at that stage, I find it does not constitute a deprivation of the right to quiet enjoyment of the rental unit.

Given this separate finding on the Tenant's right to quiet enjoyment based on their privacy, I make no award for those perceived breaches involving privacy. The Tenant in their Application designated this amount specifically as a matter of privacy. I dismiss this portion (*i.e.*, $3,500) for this separate category regarding privacy. The impact, as proving an interruption to the Tenant's lawful enjoyment of the premises, is not shown sufficiently through the Tenant's own evidence.

The Tenant also claimed an amount of $500 for each of the months of the tenancy, to the end of October 2021 which is 10 months in total. The Tenant made this claim in June 2021 which is approximately 5 months in advance of the completion of that timeline. I interpret this to be a

plea for reduced rent, with a portion of that being paid retroactively at that time, and authorization for reduced rent going forward.

I find the interference so alleged with respect to all other pieces of the Tenant's claim was not substantial. For each point raised by the Tenant, I make that finding as follows:

- The Landlord did not pursue the accusations of criminal conduct going forward. There was no investigation that ensued, and the Landlord withdrew or did not fully pursue their attempt to end the tenancy for that particular reason. Other than the Tenant's interpretation of that as a campaign to evict them, I find there was no impact on the Tenant's own enjoyment of the rental unit. There was no explanation of an alteration to their lifestyle or other aspects of their daily life at the rental unit that showed a substantial alteration because of the Landlord raising the matter of illegal activity as a matter for ending the tenancy. The Tenant pursued the legal avenue afforded to them – the dispute resolution process – to challenge that notion and I find there was no repercussion stemming from the hearing process itself.

  I find the Landlord in an offhand fashion used the label "criminal" to describe the second-hand smoke issue with respect to their strong feeling about the impact that can have on their newborn. There is no evidence the Landlord pursued this with legal authorities, and as such, it exists as their candid opinion stated only to the Tenant's assistant in this matter. The Landlord's own concern for their child was paramount in that situation, and they used a term they felt was appropriate to the situation.

- The Landlord offered a rent reduction to recoup some of the garage space; therefore, I find they did not make the decision lightly or approach that particular issue with the intention of wilfully taking something away from the Tenant. I find as fact the Landlord dropped that request and made do with a storage unit they paid for separately and kept on their property for approximately 8 months. I find this was not a sustained issue by the Landlord; as such, it was not a substantial impact other than an inconvenience to the Tenant in its mention to them.

- Similarly, the Landlord did not pursue plans to make renovations within the rental unit. This was based on the reaction from the Tenant. I find this was an idea that had passing mention from the Landlord, and they did not apply undue pressure on the Tenant to comply with that request and did not force a demand of any kind for that.

- I find the communication between the parties had devolved to the point where the Landlord did not feel comfortable making requests or notifying the Tenant on issues

concerning the rental unit. I accept the Landlord's version of events that the Tenant was, at the very least, the co-contributor to the conflict on at least two separate occasions. There is no evidence of the Tenant communicating their stress or anxiety or informing the Landlord that their quiet enjoyment was being impacted by the communication coming from them. According to the Landlord the Tenant provided a cease-and-desist letter preventing the Landlord from communicating with them. From my review of the record, I see the Landlord for the most part abiding with that request, the specific date of which was unknown.

From my review of the communication in the evidence, I find there was no unreasonable disturbance under that broader category.

In sum, I make no award to the Tenant for this $5,000 claim. I find no evidence of substantial interference from the Landlord that equated to a loss of quiet enjoyment. I dismiss this portion of the Tenant's claim.

aggravated damages

The *Residential Tenancy Branch Policy Guidelines*, which give statements of the policy intent on specific points of the legislation, outlines the concept of aggravated damages in #16, titled "Compensation for Damage or Loss." This states that aggravated damages are for intangible damage or loss. These types of damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. They may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in an application.

The Landlord and the Tenant provided different versions of events through the duration of the tenancy, culminating with specific incidents. The Tenant submits for their claim on this type of damages that the aggravation or injury was caused by "wilful, reckless or indifferent behaviour."

I have reviewed all communication in this matter, and I find the Landlord's communication to be most attuned to the situation. That is to say they preface their communication with in-depth explanations on the background to any situation, ask for any imposition on the Tenant's time or convenience in respectful terms, and acknowledge difficulties any request or issue they present may have. This was the pattern of communication from the start of this tenancy when they first introduced themself to the Tenant.

They offered another accommodation to the Tenant with consideration to the Tenant's financial means for a suitable rent amount, and the location for which the Tenant expressed their fondness. They dropped plans they presented to the Tenant and made alternate arrangements where it was seen to be imposing on the Tenant unduly. Of particular note is the Landlord's written apology to the Tenant for harsh words spoke on August 2nd. Also of note is the dialogue the Landlord had with the Tenant's legal representative from June 17 through to July 5. This was communication via a third party, and on June 18 the evidence shows that party, acting as the Tenant's legal agent, stated to the Landlord: "I'm sensitive to your concerns." and conveyed to the Landlord that they would recommend that the Tenant comply with their requests. This was primarily focused on the issue of second-hand smoke, which I find at most amounts to an inconvenience to the Tenant and does not contribute a sustained pattern of interference or disturbance.

I find this is exemplary of the Landlord's awareness of the extreme sensitivity of communication in this matter. There is no evidence of communication or other activity, in my review, of wilful, reckless or indifferent behaviour. In sum, the Landlord's initial concern over possible illegal activity, and pursuing that avenue to end the tenancy, turned into close management of the situation, taking care to not deliberately exacerbate the situation. I find that the Landlord acted reasonably and that the Tenant is therefore not entitled to aggravated damages. For these reasons, I make no award for aggravated damages, and dismiss this piece of the Tenant's Application, without leave to reapply.

other compensation

I find it more likely than not that the Tenant was informed of the hearing process and had knowledge of the logistics thereof prior to the hearing on June 16, 2021, the hearing that the Landlord did not attend. They had attended a prior hearing in March 2021; therefore, it is not known why they needed an entire day off from work for each of the hearings they are claiming as lost wages. It is not explained why a full day off from work was the only option open to them instead of a short-term appointment away from work to attend the hearing. There is no communication to their employer on this.

Additionally, the material they provided is not clear on their claimed amount of $300 for this piece of compensation. There is no clear outline of the monetary loss, nor is the need for two clear days away from work clear in their evidence. Additionally, claiming an entire day from work for each of the hearing processes typically taking one hour is not an effort at minimizing their claim. For these reasons I dismiss this piece of the Tenant's claim for compensation.

The Tenant presented the amount of $253.05 for the medication they state was necessitated by the extreme situation present in this tenancy. I find the evidence presented does not depict that amount, and it is unknown where the balance comes from, even though the Tenant did mention two separate medications. There was no record of refills or the costs thereof, and the two receipts presented do not add up to the claimed amount.

As well, I find there is no established link between the medical issue identified by the doctor as set out in their note with the need for that particular medication. There is no evidence to establish that the Tenant presented their ongoing stress and anxiety to the doctor who them made the positive diagnosis that the ongoing condition they did identify was linked to stress or anxiety. For these reasons, I dismiss this piece of the Tenant's claim for compensation.

Because the Tenant was not successful in this Application, I make no award for reimbursement of the Application filing fee.

Conclusion

For the reasons above, I dismiss all pieces of the Tenant's claim for compensation, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: April 28, 2022

Residential Tenancy Branch