



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes FFT, MNDCT, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord return the tenant's personal property pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$33,550 pursuant to section 67; and
- an order that the landlord reimburse her the filing fee pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by his daughter ("**KC**") who acted as his agent. His other daughter ("**VC**") acted as his translator.

On March 11, 2022, I issued an interim decision in which I ordered the landlord to provide additional documents to the Residential Tenancy Branch (the "**RTB**") and the tenant by March 25, 2022. The landlord did this and I have reviewed these documents in advance of issuing this final decision. This decision should be read in conjunction with the interim decision.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$33,500;
- 2) an order that the landlord return the tenant's personal property; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2013. Monthly rent was \$1,200 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$600, which the landlord continues to hold in trust for the tenant. The tenancy ended on November 30, 2019.

The tenant made this application on November 12, 2021, less than two years after the tenancy ended.

The tenant seeks a monetary order of \$33,550, which itself is comprised of 20 discrete claims which fit into three broad categories:

- 1) Loss of quiet enjoyment due to landlord or KC's aggressive conduct towards her;
- 2) Loss of quiet enjoyment due to unhealthy living conditions during the tenancy;
and
- 3) Replacement cost of a chair which is damaged due to a flood.

The tenant submitted a monetary order worksheet setting out the particulars of her claim.

She also seeks the return of two antique washboards that she says she inadvertently left in the rental unit after she moved out and which the landlord refuses to return.

1. Landlord's Conduct

The tenant claims \$13,200 (representing the return of 10 month's rent) for "harassment, intimidation, and loss of quiet enjoyment" for the period of time between January 1, 2018 to November 2 2018.

She testified that the landlord threatened her to pay cash for rent or else she would be evicted. She testified that she prepared receipts for the landlord to sign when she paid her rent by cash, but the landlord refused to sign them. She did not submit copies of these unsigned receipts into evidence, nor did she submit any supporting documentary proof (such as text messages or other correspondence relating to the issue) which the court this allegation (although she did submit a handwritten timeline describing the events (and others below) listed on the monetary order worksheet. The landlord denied the allegation.

In addition to the amount claimed above, the tenant seeks \$1,200 (representing the return of one month's rent) for "harassment, bullying, pressure, and loss of quiet enjoyment" she says she experienced on July 26, 2018 as a result of landlord putting hydro in his name and increasing her rent by \$300 per month. She stated that the landlord told her if she did not agree that she would "have to move". The tenant did not agree to this. The landlord denied this allegation. The tenant did not submit any supporting documentary proof (such as text messages or correspondence) which corroborate this allegation.

The tenant seeks \$1,200 for “aggressive behavior towards [her], being threatened, and loss of quiet enjoyment” she says she experienced on October 1, 2018, when the landlord yelled at her that she would have to pay an extra \$100 a month for rent. She testified that she told the landlord she would pay a rent increase, provided that the landlord submitted the proper RTB form, and the rent increase was permitted by the act. She did not receive such a form. The landlord denied this allegation.

The tenant seeks \$1,200 as compensation for aggressive behavior, being threatened, and loss of quiet enjoyment following an incident on October 30, 2018 when the landlord came to the rental unit after a sewer flood and yelled at her. She testified that he demanded that she move and that he wanted to renovate the rental unit.

She seeks a further \$1,200 for “intimidation, bullying, harassment, and loss of quiet enjoyment” following an incident on November 2, 2018, when she says the landlord brought a friend of his (“**RC**”) to the rental unit who told her that he was an “insurance adjuster” and told her that she would have to move out of the rental unit due to the aforementioned flood. She testified that he told her about the flood had caused the foundation to crack.

On November 23, 2018, the landlord served the tenant with a two month notice to end tenancy.

The tenant testified that on November 24, 2018 she received “maybe 10” phone calls from the landlord and RC, she stated that they then showed up at the rental unit asking for her to go out to dinner with them in order to be compensate her for ending the tenancy and for her being a good tenant. She testified that such conduct was harassment and seeks \$1,200 in compensation.

The landlord rescinded this notice in writing on November 30, 2018. The tenant submitted a copy of the letter rescinding the notice, in which the landlord wrote:

[...] Our withdrawal of the notice is in consideration for your promise to move out of the[rental unit] by summer 2019. during the period you remain a tenant residing on the property, you will continue to pass rent as agreed to in the terms of our lease. Despite our withdrawal of the notice we are willing to provide you with one month's rent payable as compensation. You may withhold the last months rent instead of being paid compensation. We hope you will honor your end of the promise.

The tenant sent the landlord a letter on November 4, 2018 in which she complained the harassment that she alleged to have experienced at the hands of the landlord, KC, or RC starting in January 2018. In this letter, she included the allegation that the landlord brought RC over and told her that he was from an insurance company. The tenant also submitted a letter she wrote to RC’s employer in which she repeated the allegation that

he represented himself as an insurance adjuster, and add he told her that the foundations the house had cracked amount she would have to move “as soon as possible”.

The tenant submitted a statement from her mother dated October 21, 2021 in which she wrote that the tenant had advised her that an insurance adjuster would be attending the rental unit with the landlord in 2019. She wrote that prior to this meeting the tenant called her and left the call on speakerphone during the time when RC and the landlord attended the rental unit. She stated that the landlord introduced RC as the insurance adjuster and that RC said there was a large crack in the foundation and that it would take about six months to repair and that the tenant should find somewhere else to move right away.

The landlord testified, and the tenant did not disagree, that the tenant made a civil claim against RC in BC Provincial Court, which was dismissed following a full trial for “lack of evidence”. A copy of a “Trial record/order” from this proceeding was submitted into evidence, which indicates that the matter was dismissed. However, it does not set out the reason for the dismissal.

The tenant submitted a transcript of a discussion between her and RC in which she repeatedly asserts that RC identified himself as an insurance adjuster and in which RC denied ever having done so.

The tenant seeks further monetary compensation for incidents occurring on:

- April 22, 2019 (\$1,200 because the landlord yelled at her)
- April 28, 2019 (\$600, because the KC called and told her to move out);
- July 30, 2019 (\$600, because KC called her and asked her when she will be out of the property);
- August 2, 2019 (\$1,200, because the landlord and KC showed up and harassed her, and refused to accept rent cheques);
- August 18, 2019 (\$600, because KC called her and told her to move);
- August 20, 2019 (\$1,200, because the landlord yelled at her because of another sewer flood, and accused her putting paper towels in the sewer);
- August 31, 2019 (\$1,200, because of the landlord served her with a 10-day notice to end tenancy, which the tenant testified she attempted to pay on August 2, 2019 but was refused, and a two-month notice to end tenancy);
- September 10, 2019 (\$1,200, because the landlord yelled at her due to another sewer flood, and told her to move); and
- November 30, 2019 (\$1,200, because the landlord and his daughter showed up at the rental unit when she was moving out with approximately six other people, filmed her, because she had not vacated the rental unit by the time she was required to).

In total, the tenant seeks \$28,200 in compensation stemming from the way she alleges the landlord treated her during the tenancy.

The tenant submitted copies of the aforementioned 10-day notice and two-month notice to end tenancies into evidence.

The landlord and KC did not deny speaking to the tenant on some of the dates said above, but denied they acted inappropriately when speaking with the tenant or in such a way that would have constituted bullying, harassment, or serve to deprive the tenant of her quiet enjoyment.

They denied that the landlord or RC called the tenant 10 times on November 24, 2018 to invite her out to dinner, but did admit to calling her at least once for this purpose. They denied that they refused to accept rent from the tenant. They agreed they served the notices to end tenancy but stated that the grounds for doing so were valid.

KC testified that she assisted the landlord with managing the rental unit and testified that her frequent interactions with the tenant caused her a great deal of stress and negatively affected her mental health. She claimed that it was the tenant, and not her or her father, that acted inappropriately during the course of the tenancy.

2. Condition of Rental Unit

The parties agreed that in 2017, there was a flood in the rental unit's shower and that there were three sewer floods and one flood caused by overflowing eaves troughs in 2018 and 2019. The tenant seeks \$1,200 in compensation in connection with the 2017 flood as she alleged it caused the ceiling of the room below the flooded bathroom to grow mould. She seeks compensation for what she describes as "unhealthy living conditions" caused by the 2018 and 2019 floods. She seeks \$1,200 in compensation as the landlord refused to clean or remediate following the flood in April 2019.

Additionally, she seeks \$2,400 in compensation because the landlord refused to provide her with the results from mould and asbestos testing conducted in the rental unit in 2019. The results of these tests were the subject of the reports I ordered the landlord to provide in my interim decision and referenced in the introduction of this decision.

The tenant testified that following the 2017 flood in the upstairs bathroom shower, the landlord put a piece of hard plastic sheet over the cracked tiles in the shower. She testified that this caused the room below to start to mold and that the whole ceiling became moldy. She testified that she asked the landlord to remove the mold but he did not. She stated that he did take out the carpet (which had become moldy) but did not replace it. Not long after, she noticed that the walls in the room beneath the shower had become moldy. She reported this to the landlord, and she testified that this was the first time that the landlord suggested that she move. She requested that professionals undertake the remediation but stated that the landlord refused and undertook the remediation himself.

She submitted photographs of damage to a room in the rental unit which she testified were of the damage caused by the 2017 shower flood. However, the dates of these photos on the digital evidence details form (#RTB-43) suggest that these photos were taken in October 2019. This suggests that they are photographs of the damage caused by the subsequent sewer floods, and not by the 2017 flood. Additionally, later in her testimony, she testified that the black smears seen on the floor are from sewage waste. This again suggests that the photos are of the results of one of the 2019 floods.

The landlord's daughter testified that the landlord fully remediated the bathroom and any damage caused by the mold following the 2017 flood.

The tenant stated that the eavestroughs overflowed in 2018. However, as the tenant is not seeking damages in connection with this incident, I will refrain from discussing it further.

The landlord testified that the sewer backed up multiple times in 2018 and 2019. He testified that he dispatched a plumber to the rental unit who advised him that he discovered paper towels in the sewage line which he attributed to be the cause of the flood. The landlord place is to blame for these floods on the tenant for improperly disposing of paper towels. The tenant vehemently denied that she flushed paper towels down the toilet or was in any way responsible for the sewage floods.

In any event, the landlord testified that following each of these floods, he cleaned up the sewage, inspected the walls and determined that there was no water damage to them. The landlord testified that he used an air purifier, dehumidifier as well as cleaning supplies when doing the remediation work himself. One occasion he did replace some of the drywall in the affected room. He also testified that following the August 2019 flood he removed the carpet in the affected room and did not replace it. He denied removing the carpet in 2017 as suggested by the tenant. He testified that the black smears seen on the cement floor in the photographs (referred to above) were not raw sewage but were rather glue that had been used to affix the carpet to the floor. He admitted that he did not replace the carpet after he pulled it out as another hearing before the RTB was pending.

The tenant testified that the flooding in the rental unit (both from the shower and the sewage) caused mold to grow in the rental unit, which adversely affected her health. She testified that she had breathing problems from the mold starting in September 2018 and continuing until May 2019. The tenant testified that she needed to take medication as the result of being exposed to mold. She submitted photographs of two of the medications she alleges she had to take to deal with the mold-related issue. She did not submit any other documentary evidence (such as medical records or doctors' notes) which set out the reason why she was required to take these prescriptions.

The tenant testified that the landlord arranged for a mold and asbestos inspection to occur in the rental unit in October 2019. She submitted an email from one such

inspector seeking to arrange a time to conduct this inspection. An asbestos inspection was completed, and a copy of the ensuing report (dated October 31, 2019) was entered into evidence. The report stated:

Based on the analytical sample results, the following ACMs [asbestos containing materials] were identified within the Subject Building:

- The drywall joint compound throughout the Attic Room of the Subject Building. The asbestos-containing drywall joint compound amount to approximately 450 ft². At the time of the site assessment, the drywall joint compound was observed to be in DAMAGED condition, presenting a MODERATE RISK of exposure to persons accessing the Subject Building. The vinyl floor tiles identified in other areas should be treated as asbestos-containing until proven otherwise by sampling and laboratory analysis; and,
- The plaster (skim coat) on the Front Entry Walls and Living Room South Wall in the Main Floor of the Subject Building. The asbestos-containing plaster amounts to approximately 120 ft². At the time of the site assessment, the plaster was observed to be in DAMAGED condition, presenting a MODERATE RISK of exposure to persons accessing the Main Floor Front Entry area of the Subject Building.

Based on the site assessment, the following building materials are presumed as asbestos-containing until proven otherwise by sampling and laboratory analysis:

- o Roofing mastic, shingle and felt;
- o Thermal mechanical insulation on pipes;
- o Ducting tape on the HVAC system;
- o Ceiling plaster in the Main Floor;
- o Exterior window sealant; and,
- o Exterior wall siding.

6.1. Asbestos-Containing Materials (ACMs)

Based on the results noted in Section 5.1 of this document, DST concludes that asbestos was identified in the Drywall Joint Compound throughout the Attic Room and the Plaster (Skim Coat) throughout the Main Floor and Stairwell areas of the Subject Building.

The asbestos-containing Drywall Joint Compound and Plaster in the Subject Building was in DAMAGED condition and poses a MODERATE RISK of exposure to persons assessing the Main Floor Front Entry, and Attic Room within the Subject Building. DST recommends remediation and cleanup, and subsequent encapsulation of the damaged area (i.e., Main Floor Front Entry, and Attic Room) following moderate-risk work procedures as detailed in WorkSafeBC publication “Safe Work Practices for Handling Asbestos”, latest edition.

The landlord also received and submitted laboratory results from air sample testing for mold. These results did not commentary from the laboratory who conducted the testing. The results showed that the air sample collected from the basement living room contained 154,231 spore per cubic meter of air, whereas the sample collected from the main floor living room contained 29,142 spores per cubic meter, and the outdoor air sample contained 9,363 spores per cubic meter.

3. Armchair

The tenant testified that an armchair belonging to her was damaged in one of the sewage floods. She testified that the replacement cost of this armchair was \$550. She did not provide any documentation supporting this valuation.

4. Return of personal property

The tenant also seeks the return of two antique washboards. She testified that after she vacated the rental unit, she realized that she had forgotten the washboards. She contacted KC and asked for their return, but she testified that KC said that the items were not at the rental unit. On December 10, 2019, the tenant wrote the landlord and stated:

This is a request asking for the return of two antique washboards. I forgot them when I moved. They were left downstairs on a high shelf by the laundry room.

[KC] said there was nothing left but that is not true. I also left an air conditioner for the house that I did not need.

Could you email me if you can return them.

At the hearing, KC reiterated that neither she nor the landlord could locate any washboards in the rental unit.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As this is the tenant's application, she bears the evidentiary burden to prove that the facts which would support her claims are true, on a balance of probabilities. If she is unable to prove this, then her claims will be dismissed.

1. Return of Personal Property

Section 65(1)(e) of the Act states

Director's orders: breach of Act, regulations or tenancy agreement

65(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

The tenant must prove that her antique washboards were seized or received by the landlord. The tenant has not established that these washboards exist, or that if they do, they were left at the rental unit. She has not provided any documentary evidence to support either of these positions. Instead, she relies only on her testimony. I accept KC's testimony that the landlord has searched the rental unit and has been unable to locate these items. As such, I find that in the absence of any evidence which would corroborate the tenant's claims, the tenant has failed to discharge her evidentiary burden.

I dismiss this portion of her application without leave to reapply.

2. Compensation

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the “**Four-Part Test**”)

So, the tenant must prove it is more likely than not that the landlord’s actions breached the Act, that these breaches caused her a quantifiable monetary loss, add that she acted reasonably to minimize her loss.

a. Landlord’s Conduct

Section 28(b) of the Act states:

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:

[...]

(b) freedom from unreasonable disturbance;

Bullying, harassment, and verbal abuse may fall under the category of “unreasonable disturbance”.

The tenant has levied a large number of allegations against the landlord and KC regarding their conduct. However, she has provided little in the way of corroborating evidence. Aside from the bare allegation, there is nothing in evidence which would suggest that the landlord or KC yelled and screamed at her or bullied her.

There is some supporting evidence for the tenant’s allegation that RC represented himself as an insurance adjuster: the tenant’s mother’s statement. However, this statement was written roughly two years after the incidents it describes occurred. The tenant’s mother was not called as a witness in this hearing, so she could not be cross-examined by the landlord and I was unable to ask her regarding the reliability of her memory or how it was she was able to recall precise details of a conversation that occurred two years prior.

Additionally, the transcript of the conversation between the tenant and RC shows that RC repeatedly and unequivocally denied that he held himself out as an insurance adjuster. RC was not called as a witness by either side to address these allegations.

I should note that even if I accept that RC misrepresented himself as an insurance adjuster, I am unsure what section of the Act this would have caused the *landlord* to breach. Furthermore, if it did amount to the landlord’s breach of the Act, I cannot say what damage the tenant suffered as a result of such a breach. This would cause her to fail to satisfy the third part of the Four-Part Test.

As such, I find that the tenant has not proved it is more likely than not that the landlord acted in the way she alleged. Accordingly, I find that she has failed to satisfy the first part of the Four-Part Test.

I dismissed the entirety of the tenant's application for a monetary order due to the landlord's or KC's conduct, without leave to reapply.

b. Condition of Rental Unit

The tenant's monetary claim related to the condition of the rental unit can be broken down as follows:

- 1) \$1200 for failure to remediate 2017 flood damage and damage suffered as a result of mold caused by flood and lack of adequate remediation;
- 2) \$1200 for failure to remediate April 2019 flood damage; and
- 3) \$2400 for failure to provide her with copies of the asbestos and mold reports.

There is nothing in the Act which requires the landlord to provide a tenant with copies of any expert reports or commissions. Rather, section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

As such, I dismiss the tenant's claim for \$2,400 in compensation for landlord's failure to provide her with copies of the requested reports. She has failed to establish that in doing so, the landlord breached the Act.

The evidence provided by the tenant regarding the condition of the rental unit following the 2017 flood was inconsistent. The evidence she gave regarding the photographs is contradictory. She testified that they represented the condition of the rental unit following the 2017 flood, but then she indicated that they were taken in 2019. These photographs show that the carpet has been removed. The landlord testified that he removed the carpet in 2019, but not in 2017. This would be consistent with the photograph being taken in 2019.

The landlord testified that he remediated the rental unit following the 2017 flood. I do not find that the tenant has provided adequate evidence to discharge her evidentiary burden to show that he did otherwise. As such I decline to award tenant any amount in compensation related to a failure to remediate the 2017 flood.

However, the landlord admitted to not replacing the carpet following the April 2019 flood. He cited the reason for this as that he had a hearing before the Residential Tenancy Branch pending, and wanted to wait to see what the outcome was prior to undertaking the repairs. This is not an appropriate reason to withhold making repairs to the rental unit.

Until the tenancy has ended, a tenant is entitled to have repairs made as needed to the rental unit. The landlord's obligation to repair the rental unit is not halted due to a pending hearing before the Residential Tenancy Branch. As such, I find that the landlord's failure to replace the carpet in the rental unit after the April 2019 flood was a breach of the Act. The tenancy continued for seven months after the April 2019 flood, during this time the tenant was without carpet in one of the rooms of the rental unit. Accordingly, I find that the tenant was deprived of full use of this room during that time. I find that a retroactive rent reduction of 5% (\$420, \$60 per month multiplied by 7 months) is adequate compensation for this loss.

Based on the mold and asbestos reports submitted into evidence, I accept that both substances have been detected in the rental unit. However, I do not have sufficient evidence to determine the cause of the mold (if it was caused by the 2017 flood or by any of the later flooding) or the reason for the elevated risk in the presence of asbestos.

Additionally, even if the presence of these items could be attributed to the landlord's breach of the Act, the tenant has failed to provide sufficient evidence to demonstrate the presence of these items caused her any loss or damage. The only evidence provided to corroborate her allegations that she suffered harm as the result of the presence of mold in the air, were photographs of two prescriptions which she claims to have taken to treat mold-related ailments. This is not sufficient evidence to show that she suffered any loss as a result of any breach of the Act by the landlord or to prove that the presence of mold caused her harm. If the tenant had suffered medically from the presence of mold or asbestos in the rental unit, I would have expected her to provide copies of medical reports, medical records, or doctor's notes confirming this.

In the absence of such documents, I find that the tenant has failed to discharge her evidentiary burden to prove that she has suffered a loss as a result of any breach of the Act by the landlord.

c. Armchair

The tenant has not provided any documentary evidence to support her claim that an armchair she owned was damaged as a result of the floods or that this armchair cost \$550. As such, I find that she has failed to establish that she suffered a quantifiable loss as a result of any breach of the act by the landlord.

As such, I dismiss this portion of the tenants claimed without leave to reapply.

3. Filing fee

As the landlord has been overwhelmingly successful in the application, I declined to order that he must reimburse the tenant the cost of the filing fee.

Conclusion

Pursuant to sections 67 of the Act, I order that the landlord pay the tenant \$420 as compensation for failure to make sufficient repairs following the April 2019 flood.

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: May 3, 2022

Residential Tenancy Branch