



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, RR, RP, MNDCT, LRE, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The agent AD testified he was the agent and property

manager for the landlord who did not attend (“the landlord”). No issues of service were raised. The hearing process was explained. Neither party called witnesses.

1. *Preliminary matter – service of Decision*

The parties provided the email addresses to which this Decision shall be sent.

2. *Preliminary matter – recording*

The parties confirmed they were not recording the hearing.

3. *Preliminary matter - withdrawal of claims*

The parties acknowledged the tenant vacated the unit on May 2, 2022.

The landlord withdrew the Two Month Notice and the tenant withdrew the application to cancel the Notice. The tenant also withdrew the applications for repairs, a rent reduction and an Order limiting the landlord’s right to enter.

These claims are accordingly dismissed without leave to reapply.

The parties agreed the remaining claims were the tenant’s application for a Monetary Order and reimbursement of the filing fee.

4. *Preliminary Issue – Settlement*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

I informed both parties that I could not provide legal advice to them. I notified them that they could hire lawyers to obtain legal advice. I informed them that they could consult the Act, Regulation, Policy Guidelines and Rules of Procedures on the RTB public website. I notified them that they could settle their tenancy issues privately or at an RTB hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or Order(s).

Before the conclusion of this 94-minute hearing, the parties discussed the issues between them and attempted resolve the tenant's claims.

The parties were unable to reach an agreement and the hearing proceeded to completion.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

This is an application by a tenant for a monetary order and reimbursement of the filing fee. The tenant claimed loss of quiet enjoyment for a non-functioning furnace and unusable patio, each for different lengths of time. The landlord requested that the claims be dismissed without leave to reapply.

The parties submitted substantial testimony and documentary evidence in a 94-minute hearing. Not all this evidence is referenced in my decision. Only key, admissible and relevant evidence is referenced.

The tenant testified the rental unit was a 4-bedroom townhouse with patio. At the beginning of the tenancy, the tenant lived there with his partner and newborn baby.

A copy of the tenancy agreement was submitted. The parties agreed as follows concerning the details of the tenancy agreement:

| INFORMATION | DETAILS |
|--------------------------------|-------------------|
| Type of Tenancy | Fixed term |
| Beginning Date | February 15, 2021 |
| Vacancy Date | May 2, 2022 |
| Rent payable on first of month | \$4,850.00 |
| Security deposit | \$2,425.00 |

The parties confirmed there are no issues with respect to the return of the security deposit.

Each of the tenant's claims are addressed.

The agent attending the hearing for the landlord, EL, is the third agent during the tenancy. The first agent was BF. The second agent was TB. Names of the various agents appeared in different correspondence between the parties.

1. Inadequately functioning furnace

The tenant testified as follows. Their first claim for damages related to an inadequately functioning furnace. They discovered the furnace did not work on August 11, 2021. That day, they verbally notified the landlord's agent, then BF, that the furnace was not working.

The tenant contacted the agent, then TB, who replied on September 17, 2021, denying the tenant had reported the furnace as not working the previous month.

As the weather cooled and became fall became winter, the house became increasingly cold. Eventually, it became unlivable. The tenant, who worked from home, moved his work activities to his employer's office. The tenant's family had separated, and the tenant was unable to have his young son to the house as it was so cold. The tenant

spent many nights sleeping elsewhere because the house was too cold to sleep in, Because the residence was so large, the tenant could not heat it with space heaters.

An attempt at repairs did not work. In correspondence dated November 2, 2021, a copy of which was submitted, the landlord's agent states as follows:

The tenant sent the below. Can you return to see if this was not installed correctly. If you can go today that great as they have no heat [heat].

The thermostat fell off the wall a day or two after the AC guy came in to look at it. I don't think they screwed it on just clipped it onto the electric prongs. It hasn't worked since It fell off and shattered.

The furnace was fixed on December 7, 2021. In their evidence package, the landlord submitted a copy of the invoice in the amount of \$567.00.

The tenant testified he paid rent during the tenancy without a furnace as follows:

| ITEM | AMOUNT |
|---|--------------------|
| Rent from August 11, 2022 to August 31, 2022 | \$3,129.00 |
| Rent for September, October, November 2021 (3 x \$4,850.00) | \$14,550.00 |
| Rent December 1-7, 2021 | \$1,095.16 |
| TOTAL | \$18,774.16 |

The tenant requested reimbursement of all rent paid during the period without a furnace.

The landlord submitted documents in an evidence package. In response to the tenant's testimony, the landlord testified as follows.

In correspondence submitted as evidence, the landlord's agent TB denied the tenant made the complaint on August 11, 2021. TB acknowledged the furnace issue in correspondence between the parties on September 17, 2021, and continuing to the day of the repairs, December 7, 2021.

Therefore, the landlord, now represented at the hearing by agent EL, submitted that any damages should only be awarded from September 17, 2021, to December 7, 2021. The landlord testified the tenant paid rent as follows:

| ITEM | AMOUNT |
|--|--------------------|
| Rent from September 17 to September 31, 2021 | \$2,190.32 |
| Rent for October, November 2021 (2 x \$4,850.00) | \$9,700.00 |
| Rent December 1-7, 2021 | \$1,095.16 |
| TOTAL | \$12,985.48 |

The landlord denied the unit was sufficiently cold for the tenant to claim damages while the furnace was not working. The landlord submitted the tenant exaggerated the inconvenience and how cold it was. They also testified they did everything possible to obtain an inspection and carry out the repairs. As they made best efforts to fix the furnace, they are not responsible for any damages.

The tenant requested damages of \$18,774.16 under this heading being the full amount of rent paid during the period without a furnace.

The landlord requested the claim be dismissed or, alternatively, calculated on the sum of \$12,985.48.

2. Deck

The townhouse included a deck with wooden floorboards.

The tenant testified as follows. On August 11, 2021, an occupied chair broke through the decayed and old floorboards, injuring the occupant. The tenant submitted many photographs of the deck and rotten floorboards. The deck was unusable. They provided the landlord with copies when he requested that the deck be fixed.

The landlord testified as follows. They acknowledged that the deck required repairs from August 11, 2021, to May 2, 2022, when the tenant moved out. The pictures accurately depicted the condition of the deck.

They acknowledged a repair crew came one time but did not complete the repair. However, the landlord submitted that a part of the patio was still usable, and the tenant was exaggerating in saying they lost full use of the patio.

The landlord asserted they did everything they could to carry out timely and effective

repairs. Therefore, the landlord is not responsible for any inconvenience or loss of enjoyment claimed by the tenant.

The parties agreed the tenant paid rent from August 11, 2021, to May 2, 2022, in the following amounts:

| ITEM | AMOUNT |
|---|--------------------|
| Rent from August 11, 2022, to August 31, 2022 | \$3,129.00 |
| Rent from September to December 2021 (4 x \$4,850.00) | \$19,400.00 |
| Rent from January to April 2022 (4 x \$4,850.00) | \$19,400.00 |
| Rent prorated for May 2022 (tenant vacated May 2, 2022) | \$312.90 |
| TOTAL | \$42,241.90 |

The tenant requested damages in the amount of 20% of rent from August 11, 2022, to May 2, 2022.

The landlord requested the claim be dismissed without leave to reapply.

3. Disturbance from complaints and inspections

The tenant claimed as follows under this heading.

The landlord made an excessive number of baseless noise complaints during the tenancy such as sound they made while taking out the garbage. Also, the landlord unduly and unreasonably inspected the unit an unwarranted number of times, not with the bona fide purpose of observing the condition of the unit, but with the ulterior motive of appraising it while planning to evict the tenant.

The landlord denied the tenant's claims. They stated they simply passed on the complaints from the strata without comment and the tenant was not fined. The landlord acknowledged two inspections which they submitted were reasonable in the circumstances.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Burden 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.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Policy Guideline 1 - Landlord and Tenant – Responsibility for Residential Premises states in part as follows:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

Sections 7, 65 and 67 address compensation as follows:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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:

- (a)...
- (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
- (c) that any money paid by a tenant to a landlord must be
 - (i) repaid to the tenant,
 - (ii) deducted from rent, or
 - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;
- ...

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Quiet Enjoyment

The tenant's claim for damages is akin to a claim for compensation for loss of quiet enjoyment.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

22. 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.

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows (emphasis added):

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 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.

[emphasis added]

Credibility

I have considered evidence submitted by both parties. I find the tenant's testimony to be the more credible. As he lived in the unit, I find his description of the conditions to be direct, accurate and believable. His testimony was well supported by photographs and documentary evidence. I do not accept the landlord's evidence that the tenant's evidence was overstated or exaggerated. I find the tenant's version of events to be reliable.

I find the landlord's account to be less dependable. The landlord's denial of all responsibility is not credible in the circumstances as I understand them.

Therefore, I prefer the tenant's version of events. Where their evidence differs, I give greater weight to the tenant's testimony.

Findings

Considering the testimony and evidence, in consideration of the Act, and pursuant to *Policy Guideline 6*, I find as follows.

1. Inadequately functioning furnace

I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment as the landlord breached section 28 (b) of the Act by failing to

act reasonably and expediently to assure the tenant had a functioning primary heating system.

The first documentary evidence in which the landlord acknowledged the furnace was not working was dated September 17, 2021. I accept the landlord was provided with notice that day and that the furnace was fixed on December 7, 2021.

I find the tenant paid rent of \$12,985.48 for this period during which the furnace was not working.

I do not accept as reasonable that the tenant went without any heat for three months. I find the landlord failed to take reasonable steps to fix the furnace. I accept the tenant's testimony describing their subjective experience of being increasing cold and uncomfortable. I find it reasonable the tenant would often stay elsewhere because the residence was too cold to live or work in. I accept the tenant's description as factual of all aspects of the conditions of the unit while the furnace was not working. I accept the tenant's evidence that this period followed a separation, and he was unable to have his young child to visit because the unit was so cold.

I find the landlord was aware of the tenant's complaints but failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord's response to the situation to be slow, ineffective and indifferent to the tenant's discomfort. I find the landlord did not meet their obligations under the Act to assure that the unit was heated.

I find the loss of quiet enjoyment extended for the period claimed by the tenant, although the level of discomfort varied from time to time depending on the outside temperature. The tenant did not move out, so I find the tenant was able to live in the unit some of the time, although I am not able to ascertain the number of days with certainty. The tenant explained they expected the landlord to quickly fix the problem.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

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.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for a period during which the tenant paid rent of \$12,985.48. I find it is reasonable that the tenant receive compensation in the amount of 50% of the rent paid in this period which I find is \$6,492.74.

I grant a monetary award to the tenant in this amount.

2. Deck

I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment as the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently to assure the tenant had a functioning deck which was included in the tenancy agreement.

I find as follows. A deck was part of the unit which was rented to the tenant. The parties agreed the tenant discovered the deck was damaged on August 11, 2021, notified the landlord, and the landlord did not repair the deck during the time the tenant lived in the unit.

Having viewed the photographs of the deck submitted by the tenant, I accept the tenant's testimony that the deck was not usable during this time. I do not accept the landlord's interpretation that the deck was only partially unusable. I reject the landlord's assertion that the tenant is exaggerating the unsafe and broken condition of the deck.

I find the landlord was aware of the tenant's complaints and request for repairs but failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord did not meet their obligations under the Act.

The loss of a usable deck, while inconvenient, is not as substantial an interference with the ordinary and lawful enjoyment of the premises as the loss of a functioning furnace. Nevertheless, I accept the tenant's testimony that they found the loss of use of the deck for about ten months and the failure of the landlord to carry out repairs, to be inconvenient, annoying and frustrating.

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I find this is an appropriate situation for the award of a nominal amount.

Considering the Act and Guideline, the testimony, the evidence, and my finding the deck was unusable for ten months, I therefore award the tenant a nominal award for the loss of the deck of \$1,000.00.

3. Disturbance from complaints and inspections

I find the tenant has failed to meet the burden of proof with respect to this aspect of the claim. I find the landlord merely conveyed the noise complaints to the tenant of other strata occupants. I find the tenant has failed to establish that the landlord carried out an unreasonable number of inspections or failed to comply with the Act while doing so.

I therefore dismiss this aspect of the tenant’s claim without leave to reapply.

Filing fee

As the tenant has been successful with respect to their claim, I grant the tenant an award for reimbursement of the filing fee of \$100.00.

Summary of Award

| ITEM | AMOUNT |
|-----------------------------|--------------------|
| Damages for furnace | \$12,985.48 |
| Damages for patio | \$1,000.00 |
| Reimbursement of filing fee | \$100.00 |
| TOTAL | \$14,085.48 |

Accordingly, I award the tenant a Monetary Order in the amount of **\$14,085.48**.

Conclusion

I dismiss without leave to reapply the tenant's application to cancel the Two Month Notice and for Orders for repairs, a rent reduction and limitation of landlord's right to enter.

I award the tenant a Monetary Order in the amount of **\$14,085.48**. This Monetary Order must be served on the landlord. This Order may be filed and enforced in the courts of the Province of BC.

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 05, 2022

Residential Tenancy Branch