



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, PSF, FFT, MNDCT**

Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, DB, and the Applicant, JK, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

At the outset of the hearing, JK advised that she no longer resided in the rental unit. The Landlord and the Applicant confirmed that her last day in the rental unit was April 1, 2022. The Applicant's claims seeking an Order for the Landlord to provide services or facilities required by the tenancy agreement or law, and seeking an Order for the

Landlord to comply with the Act, regulations, and tenancy agreement are dismissed without leave to re-apply.

The Applicant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on February 10, 2022, by Canada Post registered mail (the “NoDRP package”). The Applicant did not provide the Canada Post registered mail receipt with tracking number; however, the Applicant uploaded an April 12, 2022, email she received from the Landlord confirming receipt of the February 7, 2022 NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on February 15, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Applicant testified that she served the Landlord with her evidence by Canada Post registered mail on April 7, 2022. The Applicant provided the Canada Post registered receipt with tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the Applicant’s evidence on April 12, 2022, in accordance with Sections 88(c) and 90(a) of the Act.

The Applicant filed a Tenant Request to Amend a Dispute Resolution Application on April 6, 2022. The Applicant testified that she included this Amendment document with her evidence which was served on the Landlord by Canada Post registered mail on April 7, 2022. As above, I find that the Landlord was deemed served with the Applicant’s Amendment on April 12, 2022, in accordance with Sections 88(c) and 90(a) of the Act.

The Landlord served the Applicant with their evidence via registered mail to the Applicant’s forwarding PO Box on April 14, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. Canada Post confirmed delivery of the registered mail package. The Applicant stated she never received the Landlord’s evidence. I find that the Landlord’s evidence was deemed served on the Applicant on April 19, 2022, pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matters

The Landlord stated he received the Applicant’s April 7, 2022 registered mail package on April 13, 2022. The Landlord emailed the Applicant on April 14, 2022, after receipt of

the Applicant's usb drive stating he could not open and view the contents of the usb drive.

Several RTB Rules of Procedure deal specifically with organization, clarity, and legibility of a party's evidence. Rule 3.7 states:

3.7 Evidence must be organized, clear and legible: *All documents to be relied on as evidence must be clear and legible.*

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

The Applicant had close to 150 audio and video recordings. Rule 3.10.1 discusses how audio and video submissions must be described and labelled. It states:

3.10.1 Description and labelling of digital evidence: *To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.*

A party submitting digital evidence must:

- *include with the digital evidence:*
 - *a description of the evidence;*
 - *identification of photographs, such as a logical number system and description;*
 - *a description of the contents of each digital file;*
 - *a time code for the key point in each audio or video recording; and*

- a statement as to the significance of each digital file;
- submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and
- serve the digital evidence on each respondent in accordance with 3.10.4. (emphasis mine)

...

3.10.3 Digital evidence submitted directly to the Residential Tenancy Branch or through Service BC: Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43). (emphasis mine)

3.10.4 Digital evidence served to other parties: Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.

Finally, a party submitting digital evidence to the other party, according to Rule 3.10.5 Confirmation of access to digital evidence ... must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. (emphasis mine)

The Applicant testified that she asked other people if they could gain access to her evidence contained on the usb stick, but she never canvassed the Landlord if he was able to access her evidence from the usb stick. Photographic evidence was not appropriately named with descriptors that would assist one to review her evidence. An RTB-43 form was not included specifying time codes identifying placement of material evidence on the audio and video files. The Applicant herself was not able to point to relevant files that supported her submissions.

Due to breaches of several Rules of Procedure for submitting and exchanging evidence, accordingly, I decline to consider the Applicant's evidence submitted to the RTB because I find the Landlord did not have an opportunity to review it given the unreadable format of the Applicant's evidence and pursuant to Rule 3.7, I find the

Applicant's evidence is not readily identifiable, organized, clear and legible. The Applicant's verbal testimony in the hearing is evidence before me.

Issues to be Decided

1. Is the Applicant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on October 1, 2021. Monthly rent was \$750.00 payable on the first day of each month. A security deposit of \$375.00, and a pet damage deposit of \$375.00 were collected at the start of the tenancy and have both been returned to the Applicant. The upstairs occupants have assisted the owner of the house since 2008 by managing the rental of the downstairs unit.

To assist the Applicant, the claims on her monetary worksheet were read to both parties. The Applicant is seeking a monetary award of:

Gasoline:	\$1,037.84
Storage Unit:	\$220.41
Mail Forward/PO Box:	\$141.49
Cameras:	\$244.91
Internet:	\$343.48
Door Lock:	\$22.96
Rent:	\$5,278.05
Hotel:	\$2,840.00
Emotional Distress:	<u>\$24,770.86</u>
TOTAL:	\$35,000.00

The Applicant testified after the first of October, she noticed a lot of noise coming from the upstairs unit. She stated when she sent her November rent, she asked the upstairs occupants "*for mindfulness*". The Applicant said her requests were ignored and the

noise got worse. On December 12, 2021, the Applicant called the police because, she said, the upstairs occupants had a party, and they were being very loud. Their kitchen is directly above her bedroom, and she could not get to sleep.

The Applicant testified that the upstairs occupants held her mail, blocked her mail getting to her, or returned her mail back to her parents.

The Applicant stated she had an in-person meeting with the people upstairs at a local coffeeshop, but after that meeting, the stomping on the floor got worse. She said she installed a doorbell security camera and when the upstairs occupants saw it, she stated, they installed a camera above it. Again, after this the noise got worse. The Applicant testified that the cameras the upstairs occupants installed recorded videos that went to the homeowner's spam email folder.

After five months of the activities with the upstairs occupants, the Applicant told her employer, and she stated her employer put her up in a hotel. After this she arranged to get her belongings out of the rental unit.

The Landlord, who is the upstairs occupant, stated with the homeowner's consent, he has been helping the owner to find tenants for the downstairs unit. He testified that he is a full time, straight A, university student. He has acted as an Agent for the homeowner since 2019. From 2019 to 2021, they had another person in the downstairs unit. She moved out and the Applicant replied to a Craigslist advertisement and signed the tenancy agreement to begin occupying the rental unit at the beginning of October 2021.

The Landlord said that the Applicant's constant discussion with him interfered with his studies. He testified that he told the Applicant, that this was a non-smoking residence as his younger brother has severe allergies. The Landlord stated that the Applicant did not tell them she required cannabis to maintain her mental health situation. The Landlord explained about his younger brother's allergies, and he requested that the Applicant refrain from smoking inside the rental unit. The Landlord said the Applicant said she would stop, but she did not. Each time he asked her to stop, the more aggressive she became.

On the December 10-12 weekend, the Landlord testified that he had been studying that whole weekend as he had two final online university exams on December 12, the last one from 7 p.m. to 10 p.m. The Landlord testified that at 10:20 p.m. on December 12, 2021, the police knocked on his door explaining that the downstairs occupant

complained about the noise in the upstairs unit. The Landlord said that him and his father were quiet that day as the Landlord was completing two online final exams.

Analysis

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 Applicant's remaining claim in this matter is a compensation claim for a monetary loss. RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 Applicant seemed to be pointing to her quiet enjoyment being breached; however, both parties testified to interferences by each that were experienced in this tenancy. The Applicant stated she called the police on December 12, 2021, because of noise coming from the upstairs occupants but the Landlord also spoke of his discussion with the police officer and how it could not be possible that they were being excessively noisy as he was writing a final exam for university. The Landlord provided the police file number in his testimony.

I find the Applicant has failed to demonstrate her entitlement to a monetary award due to a breach of the Act, *Residential Tenancy Regulation* or the tenancy agreement. I find that the Applicant has failed to show that her right to quiet enjoyment was breached as

the disturbances testified to were less than sporadic and were only generally spoken of as getting worse and worse.

While a tenant is entitled to quiet enjoyment under the Act, Policy Guideline #6 notes, “*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.*” The Guideline goes on to note the disturbances must be “frequent and ongoing.” The Applicant did not provide specifics or sufficient detail of frequent and ongoing interference or unreasonable disturbances in her claim. I find the Applicant has not proven this part of her claim and accordingly, I find that the Applicant is not entitled to an award of monetary compensation.

As the Applicant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

The Applicant’s application is dismissed without leave to re-apply.

The Applicant is not entitled to recovery of her application filing fee.

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

Dated: May 16, 2022

Residential Tenancy Branch