



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, RR, OLC, FFT**

Introduction

This hearing dealt with an 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 to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 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’s Property Manager, VN, the Landlord’s Director of Management Services, RM, (collectively referred to as the “Landlord”) and the Applicant, VT, 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.

The Applicant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence on February 10, 2022 by Canada Post registered mail (the “NoDRP package”). The Applicant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as

proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Applicant's NoDRP package. I find that the Landlord was served in accordance with Sections 88 and 89 of the Act.

The Landlord served their evidence on the Applicant on April 14, 2022 via Canada Post registered mail. The Landlord uploaded 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. 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.

Issues to be Decided

1. Is the Applicant entitled to an Order for compensation for a monetary loss or other money owed?
2. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 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. 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 tenancy began as a fixed term tenancy on December 15, 2021. The fixed term was to end on November 30, 2022, then the tenancy would have continued on a month-to-month basis. Monthly rent was \$1,875.00 payable on the first day of each month. A security deposit of \$937.50 and a pet damage deposit of \$937.50 were collected at the start of the tenancy. The Applicant moved out of the rental unit on February 28, 2022.

The Landlord is going through renovations in the building. Some of the renovations involve plumbing repairs, their December 2, 2021 notice says: "**Plumbing** - repairs required on the vertical domestic main pipes and on some horizontal lines located at all floors. Work to 9-12 floor was completed in November. Other floors will be done in January or February 2022. Separate notice will be given to residents."

The Applicant stated she moved into the rental unit building while it was under renovations. She noted there was scaffolding placed around the building but testified that the Landlord's employee substantially downplayed the level of noise she could expect. When the realization of the noise level from the renovation work turned out to be more than the Applicant could put up with, she testified that she returned to her abusive partner's apartment to work. Floor by floor renovations were completed. The noises from the renovations were day long, constant, and excruciatingly loud. The Applicant had three separate issues, aside from the noise, in this rental unit: 1) December 15, 2021 – no heat in the suite; 2) December 26, 2021 - leak in heating pipes in bedroom; and 3) February 9, 2022 - leak in heating pipes in living room.

On December 16, 2021, the Applicant notified the Landlord that she had no heat in her rental unit, the Landlord contacted a plumbing company. The plumbing and heating service company determined that the zone valve motor was broken, and a replacement was installed. The heating was restored by December 17, 2021. On that same invoice, the plumbing and heating service company also dealt with leaks on heating lines in two other units.

On December 25, 2021, the Applicant noticed bubbles that appeared on her bedroom wall. She called the Landlord and was told someone would come by on December 27, 2021. On December 26, 2021, the Applicant received an urgent call asking if the plumber could come by later that day. The plumber arrived late afternoon, he opened the bedroom wall and hot water came bursting out of a pipe. The Applicant ended up with lots of flooding/water entering her rental unit. The Applicant's sister wrote that it was a two-hour ordeal of moving all the bedroom furniture out of the bedroom and into the living room, and assisting the plumber in managing the leak using bowls and containers. After assisting the plumber for some time, the Applicant and her sister left the rental unit that night.

The Applicant submitted a monetary worksheet dated January 25, 2022, outlining the claims for compensation she is seeking. They follow:

AirBnB-accommodations	\$928.40
Moving Expenses incurred, December 15, 2021	\$926.00
Uber Eats expenses, December 27-31, 2021	\$431.90
Other expenses, December 31, 2021-January 1, 2022	\$193.29
Food expenses when Applicant was not able to reside in rental unit	
Other expenses, January 6-8, 2022	\$253.38
Food expenses when Applicant was not able to reside in rental unit	
Liquidated damages clause, added after signing the lease	\$650.00

The Applicant said the Landlord subsequently did not charge her for the liquidated damages clause. While all these substantial disruptions were happening in the Applicant's home, especially during the Christmas holiday season, her life was disrupted for 13 days.

The Landlord testified that the Applicant could visually see that renovations were underway when her tenancy began as "Notice To All Residents" signs were posted around the building and there was outdoor fencing and scaffolding around the building. The Landlord uploaded a letter written by one of their employees that stated:

Previous tenant that lived in unit [address] from Dec 15 2021 to February 28 2022, [Applicant], was advised verbally about the occasional noise caused by the exterior walls project and unit renovations happening at the building at that time during apartment showing as well as prior to signing the tenancy agreement for unit [###]. Tenant said she can make it work by going to her office for work during the noisy days.

The Landlord testified that the repairs on-going in the building are for maintenance and for the structure of the building. The Landlord states they are required to do these essential repairs.

On January 19, 2022, the Landlord wrote the Applicant in regard to compensation offered to the Applicant for reimbursement for hydro used to dry the rental unit and for emergency repairs needed to be done by the Landlord's contractor. The repairs were completed on January 7, 2022, and the Landlord's contractor offered a total of \$266.90 for the time the Applicant had limited access to her living room and no access to her bedroom. The Landlord, as a kind gesture, added an extra \$100.00. A second

compensation letter was sent by the Landlord's contractor for the second water leak in the living room; however, that letter had not been received by the Applicant prior to the hearing date.

The Applicant seeks a rent reduction or monetary compensation from the Landlord for the time during which she was unable to live in her apartment from December 26, 2021 to January 8, 2022. She said she had access to the rental unit, but she could not sleep in the shower – the suite was not liveable.

The Landlord states that their contractor has compensated the Applicant based on the square footage that the Applicant was unable to use or that was impacted due to the water leak in the rental unit.

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.

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.

Section 32(1)(a) of the Act states, "*A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and*

housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. ... (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement."

(emphasis mine) The Landlord has a duty to provide and maintain the residential property in a suitable state for occupation by a tenant. I find the Landlord was aware of its compromised heating and plumbing lines from other affected units in the building, and breached Section 32(1)(a) of the Act when the Applicant's rental unit was impacted from significant water ingress caused from punctured water pipes in the heating lines that served her bedroom and living room.

I find the Applicant's living conditions during the Christmas holiday season were significantly impacted from the water leak into her rental unit – the Applicant has proven she suffered a loss of use of space in the rental unit due to the Landlord's breach of the Act. The Applicant's accounting of damage or loss she suffered, I find, is high. Part of the damages she seeks compensation for is an AirBnB for a three night stay for three guests. I understand the Applicant took this time to get away from the city with guests over the Christmas season; however, those accommodation and food bills cannot be solely attributed to the Applicant's loss and does not reasonably reflect a minimization of the damage or loss she experienced pursuant to Section 7(2) of the Act. I find a reasonable compensation amount for being out of her home because of the unusable space for the 13 days is \$600.00.

I do not grant reimbursement of the move-in costs to the rental unit, as I find it is reasonable to expect a certain level of noise to occur during on-going renovation work. The Applicant had a change of mind once in it, but I do not find that is the Landlord's responsibility. The Landlord regularly posted notices of the on-going renovation work, it was understood that the residents were not happy about the work projects, but the Landlord found the work was necessary to preserve the integrity of the building.

The Applicant no longer lives in the rental unit, so I dismiss the Applicant's claims for an Order for a rent reduction or for the Landlord to comply with the Act, regulation, or tenancy agreement. As the Applicant is successful in her monetary claim, she is entitled to recovery of the \$100.00 application filing fee.

I grant a Monetary Order to the Applicant for \$600.00 compensation for loss of use of her bedroom and living room space and \$100.00 for recovery of the application filing fee, for a total Monetary Order of \$700.00.

Conclusion

I grant a Monetary Order to the Applicant in the amount of \$700.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

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

Dated: May 25, 2022

Residential Tenancy Branch