



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 356406 BRITISH COLUMBIA LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, FFT
MNDCT, RR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by 2 tenants, one of which has been amended, for 2 different rental units, as against the same landlord, and have been joined to be heard together. Each of the 2 tenants has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fees from the landlord for the cost of the applications.

The hearing was originally scheduled to be heard on August 9, 2022, which I adjourned to September 6, 2022 at the request of the landlord's then Legal Counsel, and my Interim Decision was provided to the parties.

On September 6, 2022 both tenants attended the hearing with Legal Counsel, and each gave affirmed testimony. The landlord was represented at the hearing by a person identified as the owner, as well as an agent. The landlord's Legal Counsel indicated that the landlords would not give oral testimony, however the person identified as the owner made himself available for questioning by the tenant's Legal Counsel. The landlord's Legal Counsel was given the opportunity to question each of the tenants.

Both Counsel have provided written opening submissions, and each gave oral closing submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to wit: aggravated damages, rent abatement, cost of inspections, and replacement of furniture?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first tenant (DP) testified that the fixed-term tenancy for that tenant's rental unit began on July 1, 2020 and reverted to a month-to-month tenancy after July 1, 2021, which ultimately ended around half way to the later part of April, 2022. Rent in the amount of \$1,600.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 and a pet damage deposit in the amount of \$400.00, all of which has been returned to the tenant. The rental unit is an apartment in a complex containing 4 stories and about 40 apartments as well as the management office on the first floor. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that during the tenancy, the tenant would usually see the landlord's agent in the building, but when issues arose, the tenant would contact the landlord by email.

When the tenant first moved in he mentioned to the landlord's agent that there was a significant humidity issue in the rental unit. The tenant bought 2 dehumidifiers that didn't control the humidity well, and the landlord said to get "damp traps," which have little Styrofoam balls that suck up moisture in the air and an empty part fills up, however that didn't help the mould. Copies of text messages have been provided for this hearing dated from November, 2020 to April, 2021, which the tenant testified were follow-up emails and asking questions of the landlords about why there was so much humidity, and they said they would deal with it, but in winter it got more damp. The landlord said that they were not significant issues after inspecting. They looked at walls to see if there was any indication of damage and assured the tenant that there was not. They put hands on walls, said they were good walls, but the humidity got worse. The tenant followed up with the emails about mould and humidity and asked that the landlord deal with it.

The tenant was living in a very moist environment and started feeling sick so arranged to have a professional inspect the rental unit. The tenant paid for the reports in August, 2021 but did not provide a copy of the report to the landlord because when the tenant brought up the issues, the landlord's agents told the tenant that there were no significant issues. The tenant was advised to go through the Residential Tenancy Branch because in the past the landlord has done "frustrated tenancies;" they could evict for repairs and the tenant wanted to ensure he had safety with his rental unit. The landlord would only assure there were no issues, but the tenant didn't believe that so hired a contractor. The landlord brought in people, but no repairs were completed until the tenant made an Application for Dispute Resolution.

The parties had been before an Arbitrator previously in March, 2022 who ordered that the landlord make repairs to the rental unit, but no repairs were made until after that hearing. Prior to that the landlord tried to evict the tenant; once the tenant submitted evidence, the landlord deemed the rental unit uninhabitable and said that the tenant had to leave.

The tenant also testified that 6 months into the tenancy the tenant's health got worse with an occasional cough, and then 9 months of burning sensations in his lungs, which affected the tenant's ability to exert himself and affected his quality of life. During practical exams the tenant saw a Dr. who said that the tenant should take prescriptions. The tenant went through a number of medical tests including sputum tests for his lungs on February 12, 2022. A physician's note and test results have also been provided for this hearing. The tenant worked as a licensed practical nurse and was not permitted to work due to COVID standards and was advised to get tested. The tenant took a prescription when experiencing symptoms, but has not required it since he moved out of the rental unit.

The humidity issue consistently got worse, not better and every 2 weeks or so the tenant would have to clean areas, and it got worse. It felt like the tenant was living in a sauna with constant humidity, almost steam-like coming out of the shower and a foul odor in the walls. Even if it was cold, the tenant had to leave doors and windows open due to the poor air quality, consistently. It affected the tenant's sleep who had episodes where the tenant would wake up and have to open a window and empty dehumidifiers because it was so stuffy. The tenant's dog began sneezing excessively since around the time of moving into the rental unit.

In the previous hearing the landlord said it would take 5 days to complete repairs, however when construction began on the tenant's rental unit, the tenant was informed

that it was going to take up to a month. The landlord had not made any attempt to access the rental unit for repairs before the hearing in March, 2022. Several times the landlord accessed to inspect or take samples, but didn't communicate to the tenant what it was for or that they would act on the samples collected. The landlord would sometimes give notice to inspect, or would ask the tenant for entry. Most of the time the tenant would comply if the entry was within reason. However, on one occasion the tenant denied entry when the landlord's agent attended with a man that the tenant did not know around 8:30 or 9:00 at night. The man harassed the tenant while the tenant was on the phone, pushing paper in the tenant's face wanting the tenant to sign a document and would not leave until the tenant did so.

The landlord commenced repairs a day or 2 after the March, 2022 hearing to address mould in the rental unit, and a significant repair had to be done to the kitchen due to mould behind the cabinets facing the wall of the outside where the front entrance of the building is. Mould was between the floors and ceiling, which was after the landlord had assured the tenant that mould was removed in those areas. The landlord had removed a lot of mould damage, entirely stripped the kitchen and completed some maintenance on the bathroom. A lot of walls were ripped out due to mould and humidity.

The tenant vacated the rental unit and physical symptoms lessened and progressively got better. However, the tenant's couch and beds had mould growth on them and were not restorable. Photographs and receipts for their replacement have also been provided for this hearing. The mattress was less than a year old; the tenant purchased it after the tenancy began. The tenant contacted Mr. Natural Clean, and was advised to get a fogger machine for an ammonia substance that could be used on electronics, but fabric was trickier because mould can grow into it and not affect the interior parts. The tenant didn't want to spread it to a new rental unit; it was not restorable and was advised to dispose of the couch and mattress.

During repairs, the landlord did not ensure the tenant's belongings were protected. There were large open areas where the tenant's items were exposed, not covered properly. The tenant arrived after the contractors finished removing the kitchen and cutting the walls. Living room items were exposed, and some items with mould were put with items that had no mould damage. The tenant was informed that there was asbestos with the mould, so didn't want to take them or risk health and safety.

The tenant had to pay for the inspection reports when the landlord denied any issues. After the March, 2022 hearing the landlord said they would repair and remove mould and asbestos and detain the tenant's belongings, but that didn't happen. Since the

tests were positive for asbestos and toxic moulds, the tenant was advised to not take some items, as per the order of the Arbitrator.

The tenant gave notice to end the tenancy to the current building manager because the tenant wasn't sure that the landlord would comply with the order and the time frame. When the tenant gave the notice, the landlord laughed at the tenant.

The other tenant (TB) resides in the rental unit next door, and a sketch has been provided for this hearing showing the 2 suites and areas that have been affected with mould and humidity damage. When the tenant saw the open walls, the concrete had a lot of cracks and openings, in areas marked in the sketch. The other tenant became the acting manager for a short period, whom was known to the tenant. However, most communication was with the landlord's agent (GD) and the new building manager.

The second tenant (TB) testified that she has resided in the rental unit since December, 2018 and still resides there. Rent in the amount of \$2,009.00 per month is currently payable.

In August 2020 the tenant sent an email to the owner about disrepair with the building and with management of the building, and the manager was let go. The owner asked the tenant to step in as manager, which lasted about 3 months. At that time vanities were falling off walls; the kitchen ceiling in a unit on the 4th floor was falling apart and bent inwards. There were issues with the parking garage fobs, as well as a lot of negligence.

Outside the employment relationship, the tenant almost always communicated with the owner in person, and the parties had conversations regularly.

The other tenant was a neighbour, and both units require on-going repairs due to mould and moisture issues and leaking from the patio. The tenant had discussed it with the landlord's agent (GD) before the neighbour moved in. It originally started in the other unit, which joins the kitchen of the tenant's unit to the bathroom of the neighbouring suite, and it started to affect the tenant's suite. In early 2021 the tenant saw mould, and raised it multiple times with the landlord. In August, September or October, 2020 the landlords did a walk-through of the building and the tenant notified the landlord about issues with 2 units, including her own, about leaking from the patio and humidity issues, but not as serious as next door.

On or about January 30, 2021 the tenant met with the landlord's agent and told her about the problems in the neighbour's suite and was told that it wasn't an issue. The tenant also paid half of the rent for the other unit due to the humidity, and told the landlord that it needed to be dealt with. The tenant also mentioned that the neighbour's bathroom was causing issues in the tenant's kitchen, with mould coming through the walls, which are directly joined, as well as in the bottom cupboards. The next day, the tenant received a letter from the landlord's lawyer saying that criminal charges would come, and that it was punishable under Canadian law and accusing the tenant of slander. The tenant was threatened with legal action for telling another tenant to go to the Residential Tenancy Branch. A copy has been provided for this hearing. The tenant has a camera for her 19 year old dog so she can watch him and talk to hi over it. The letter was threatening criminal action for recording the landlord without permission, and asks that the tenant leave temporarily, which was not the only time. The tenant was horrified and reached out to the Privacy Commissioner. On multiple occasions over the last few months the landlord has asked the tenant to leave permanently or for a long period of time.

The tenant made an application with the Residential Tenancy Branch, but rescinded it because the landlord threatened the tenant. The tenant didn't want to lose her home and was afraid of a "frustrated tenancy," and they did that with another tenant.

The tenant attended the hearing in March, 2022. Prior to that the landlord asked for access to the tenant's rental unit many times, but didn't complete anything. They would look around and assess and the tenant wouldn't hear anything after. The tenant received notices constantly to enter. They put calking in a crack in the ceiling, but even when mould was visible in the kitchen, it was just wiped down and no one looked. They said it was because the neighbouring tenant showered too hot, and sent him an email stating that it was his fault and he'd be held responsible. The Arbitrator's Decision ordered the landlord to get the patios done and mould remediation completed.

The tenant also testified that when walking into the rental unit, the tenant is hit with a wave of heat and humidity. The tenant is currently living in the living room and there is an industrial fan in the bedroom. Six litres of water needs to be emptied twice a day. The tenant's clothes and sheets are damp, her nose is dry because of 2 humidifiers, and there is no privacy. The tenant has a male roommate, but the tenancy agreement says not to erect any walls or face eviction. The tenant has suffered a lot for a very long time, has lost work, and has to keep windows and doors open or it gets too hot, and it got much worse over time. The musty smell is so bad, it's even evident in the lobby overwhelmingly.

Right after the March 2022 hearing they started doing patio work and in the bedroom. The bedroom has been sealed off for a couple of months, to remove damaged areas. The tenant is not permitted to use the bedroom. In July, 2022 the tenant came home from work and found that the landlord's contractors placed a sign saying "under 24 hour surveillance." The tenant's roommate peeked in and saw a video recording device. The tenant called police who said that the tenant could unplug it, and the roommate recorded himself taking it out. After looking at her own camera footage, they posted the sign first thing in the morning, so they had that in mind. The work started at 8:00 a.m., and the tenant didn't see the camera being installed but saw both workers and the landlord's agent and another agent of the landlord go in without PPE and threatened the tenant. All 5 of them entered leaving the door open without protection. A cell phone was also tucked away and charging in a wall. The tenant asked whose it was but management wasn't being clear saying it was the company's and the tenant returned it to the landlord's agent. The landlord's lawyer agreed in a letter that the landlord had installed a camera in the tenant's bedroom, but the landlord's agent also told a neighbour to not worry about cameras because they were only in the tenant's suite.

The tenant's sleep is also affected hugely, waking up in a sweat, constantly washing bedding, and dampness. The humidity was over 70%. That has been a problem for about 3 months, but when the landlord's agents opened the wall and found the mould, it was worse.

The tenant has been playing by the rules with no complaints, pays her rent and to know that she can't walk around her house without being recorded is unbelievable. It has caused serious anxiety to the point of missing work. The tenant has heard things that the landlords tell the neighbours, that the tenant is making a big deal about nothing and is outrageous, but is feeling very tortured and cornered.

When the landlord wants access they usually do not give written notice, and don't include information; the tenant has to ask. At one point they said it was a general inspection, but when they came in they knew what they were looking for. They insisted on arriving to do repairs that were unnecessary and made it more difficult than it needed to be. The tenant still doesn't have access to the bedroom which contains fans and humidifiers. After a request to leave, the tenant almost did, but reached out to get other inspections done. Three contractors said that the tenant wouldn't have to vacate, and one said that the person who told the tenant that she had to leave must be drunk or needs to go to school. The landlord has told the tenant to leave 3 times in the last couple of months, and recently

to leave with the tenant's pets with 2 hours notice, and threatened to have the tenant pay for inspections if access was refused.

Prior to the March 2022 hearing the landlord served a notice to end the tenancy. The tenant was beside herself and had to go home from work.

The tenant also testified that the inspection report by the contractors, a copy of which has been provided for this hearing, was requested by the tenants which identifies building envelope issues and states that localized repairs will not be adequate; water damage is through the exterior and rotten wood remains on balconies, and water proofing has reached its life. The landlords didn't share reports; the tenant had to hound them, and after getting them learned that the landlords knew about a 2 X 3 foot mould spot, and knew months previously and didn't tell the tenant. They already knew about the ongoing issue. When they saw the bedroom closet with a giant patch of mould, the tenant was told it was from patching concrete that morning.

In the last few months the landlords usually ask for consent to enter rather than serving notice, with a couple of days lead time. Last week they sent an email asking the tenant to be out for the day of this hearing and offered 2 other dates; someone would come and there would be 4 more weeks of work. The tenant thought it was inappropriate considering that today is the date scheduled for this hearing. Such requests have happened repeatedly, and the tenant has been asked to adjourn this hearing and leave her home. That doesn't make sense and seems like things are supposed to be extra hard now with no willingness to work with the tenant and to push the tenant into a tighter spot. The tenant gets very short notice and the landlord tries to be as inconvenient as possible. The tenant feels like a prisoner and doesn't feel safe or comfortable. The bedroom repairs have been put on hold since the camera was located. It's been hurtful mentally and physically.

The landlord testified that he makes the final decisions but doesn't look at every day functioning, and has been sick for the last 3 weeks. Every day functioning is done by the management team, but decisions respecting anything such as buying, selling or contractors are made by the landlord who makes the final decision.

The landlord's agent (GD) mentioned a contractor's report recently and so far the landlord is waiting for an engineer. It's up to the contractor to go through the tender process which has not yet been done. They still have to submit the engineering report, sketching, drawing and fixing, and what is required by the engineer. Some lumber

might have to be replaced and after removing the exterior they will determine which is rotten and the landlord will have it fixed or replace the lumber and new doors and windows. It's a big project.

SUBMISSIONS OF THE TENANTS' LEGAL COUNSEL:

The tenants' monetary claims are for gross loss of quiet enjoyment and the landlord's breach by failing to ensure health and safety standard, which is a significant amount because it's been going on for a long time; since July, 2020 till the tenant (DP) vacated and it wasn't addressed, and since May, 2021 for the other tenant (TB). The tenant (TB) reported it prior and seeks 50% rent recovery from May, 2021 to today and half rent moving forward until the recommendations of the engineer are completed, as well as general and aggravated damages for breach of quiet enjoyment. The tenant (DP) claims specific damages.

The loss has directly impacted the rental units, and it's not minor or temporary, but very significant due to ongoing building envelope failure and ongoing mould and humidity, which is not disputed. Less than 50% might be for loss of facilities but both tenants testified how it has affected their ability to live there. The tenant (DP) had a physician monitor symptoms, and is not claiming damages for health, but neither tenant has received what they bargained for.

The landlord's Legal Counsel has provided cases of loss of quiet enjoyment in evidence which indicate that such loss has to be significant. The tenant (TB) doesn't have a bedroom and the landlord installed a camera in it. Not only does the landlord not deny that the camera was installed, but instead of just acknowledging that, they tried to gaslight saying that the tenants shouldn't have been in there in the first place, but it's their home. The landlords put their heads in the sand and ignored the problems, then told the tenants to move. The landlord doesn't know how to deal with the issue, has no permits and there is no evidence that the owner intends to do what the engineers recommend, but have contractors doing minor repairs which is what they were told not to do.

The evidence shows the landlord giving short notice, particularly in June, and the landlord's lawyer telling the tenant (TB) that she would have to leave or pay cancellation fees and on 3 occasions the landlord engaged in that behaviour through Legal Counsel and says the tenant (TB) has to leave but doesn't know for how long with only half a month's rent for moving expenses. That happened 3 times to the tenant (TB) and once to the other tenant (DP). Perhaps tenants leave when they are told the unit is not safe, but the tenants in this matter have been asserting their rights.

The second issue is the recording equipment and threat of criminal charges. The evidence shows that the landlord is not competent to deal with repairs and in frustration lashes out on tenants. The letter came from a lawyer; the landlord is saying, "leave on short notice and accept the compensation, but you breached the criminal code." There was no justifiable basis to set up recording equipment in the rental unit. Some personal things could be picked up that should not be recorded. They should never have been installed. Repeated access requests have been made without notice, recording equipment installed, tenants were told to leave because it's not safe, and nothing happens, and the landlord makes threats through lawyers to pay cancellation fees that they had no obligation to agree to. After the tenant (TB) found out about recording, she applied for an order limiting access. This is completely inappropriate and has impacted the tenant (TB), giving rise to the level of aggravated damages.

The landlord has to complete the tendering process, obtain permits and get the work done. If vacant possession is required there is a process but they are not going that route. Because they don't know how to get the work done, they have instead engaged in this back and forth with the tenant (TB) demanding access without knowing what's being done. While the work and process are ongoing, the tenant (TB) shouldn't pay full rent because she's not receiving what she bargained for. There is no dispute that the damages are significant.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenants' claims are based on the dates that they gave in testimony; July, 2020 was when the tenant (DP) moved in, and May, 2021 that the other tenant's (TB) claim starts. There is no evidence on what that's based on, no testimony of that date and her evidence was inconsistent with respect to dates, notices or any to documentation to the landlord relating to it other than a notice of dispute in late 2021. The dates, as set out in the opening submissions provided for this hearing are November, 2021 indicating the issue of humidity when the landlord gave damp traps. Further communication in early 2021 is in evidence, and another inspection was done, the ceiling fan was replaced, and there was no further correspondence with the tenant (DP) despite the landlord following up with him. There was no response, and the landlord didn't receive the report from the inspection that the tenants had done or know that the issues continued. There is no notice that the other tenant (TB) was having issues until late 2021 other than verbal communication. An inspection was also done in that unit and minimal issues were noticed except for a high level of dust which would give rise to potential allergies and that sort of thing.

No notice was given to the landlord that patio repairs were required until the tenant made an Application for Dispute Resolution, and the repairs were completed right after the

hearing. The landlord and contractors did another inspection and that's when mould was discovered in the bedroom closet, in May, 2022. The landlord immediately undertook repairs and the area is now in containment zone, or 2 zones. The day the tenant (TB) found the video camera, she knew repairs would be undertaken in July, and the camera was in place for less than a day. The contractor empathizes in the evidence that the tenant entered after they left the worksite, and the mould remediators placed the camera because they left the equipment on site and were concerned that it could be stolen.

With respect to the claim by tenant (DP), there is no indication of the time frame. The leak in a unit above caused damage near the hearing date in March, 2022. The tenant claims damages regarding health, furniture and junk removal, but there is no indication that that was recommended for his belongings in particular or that they could not be remediated as was done for other tenants. His items were not exposed to asbestos; the openings were made after and the tenant was allowed access to his unit.

The previous contractor, after mould was discovered in May or June this year, was not able to continue because of issues that arose and not being able to access equipment. The landlord has retained new contractors and several options were provided to the tenant (TB). The landlord intends to move forward and permits will be applied for once the design phase is done which is expected within a month. It will not be indefinitely, but the landlord does not know when the repairs will be done. Repairs are being done and have been done over time, such as a new roof, balcony membranes, windows and hot water tanks, but the landlord understands that longer term repairs are required; the building envelope is involved.

The landlord's repair and maintenance to the building and envelope complies with Section 32 of the *Residential Tenancy Act*. The landlord has made efforts to remediate both units, which required multiple access requests, and does not constitute a breach of quiet enjoyment. The tenants did not try to work with the landlord but instead retained Legal Counsel to pursue a monetary claim while delaying access and hindering the landlord's ability to pursue repairs.

Both tenants have received compensation from the landlord. The tenant (DP) received \$3,625.00, \$1,500.00 of which was a rent abatement for March, 2022 as well as the full \$1,600.00 for April, which includes laundry and moving expenses.

REBUTTAL:

There are complaints in evidence from the tenant (DP) since 2021, and none of the testimony was shaken in cross examination. The tenant (TB) testified that there were many inspections. The landlord's failure to testify speaks to the lack of contradictory

evidence, and the landlord makes it seem like there was no knowledge until applications before the Residential Tenancy Branch were filed.

The tenant (DP) submits that: before the hearing in March, 2022 the landlord refunded \$1,500.00 for March rent, and the tenant didn't pay rent in April because he wasn't living there. The tenant received \$500.00 for moving costs, so \$2,000.00 in total.

The tenant (TB) submits that: the landlord refunded \$40.00 for every day that the tenant didn't have access to the yard, for a total of \$390.00, as well as half a month's rent for another month and \$100.00 for no laundry facilities.

Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

This has been a very complicated hearing, with copious amounts of evidence from both parties, including opening submissions and supplemental submissions, all of which has been reviewed.

Firstly, with respect to the tenant (DP), the claim is rent abatement of 50%, \$800.00 per month since July, 2020 and ongoing until the end of the tenancy in April, 2022 due to loss of quiet enjoyment and aggravated damages; \$5,151.82 special damages for loss of furniture and electronics; \$1,785.00 for inspection costs; and recovery of the \$100.00 filing fee.

In this case, it starts with mitigation. Legal Counsel for the landlord submitted that there is little evidence of the dates in question, and that the landlord was not provided with the inspection report made by the tenants' contractors, so didn't know that issues continued. However, I accept the undisputed testimony of the tenant that he mentioned the humidity issues with the landlord's agent at the beginning of the tenancy and then started to put his concerns in writing. The tenancy began on July 1, 2020 and the tenant testified that he mentioned to the landlord's agent when he moved in that there was a significant humidity issue and he bought 2 dehumidifiers; the landlord suggested getting "Damp Traps."

Therefore, I am satisfied that the landlord was aware of the issues at the beginning of the tenancy in July, 2020.

He also testified that mould was between the floors and ceiling, which was after the landlord had assured the tenant that mould was removed in those areas. Not only did the tenant (DP) advise the landlord's agent, the other tenant (TB) advised the landlord of the humidity issues in the unit that (DP) occupied. I also accept the undisputed testimony of the tenant (TB) that after receiving the report provided by the landlord, it became clear that the landlord was aware of the building envelope issues, humidity, moisture and mould all along.

The landlord has not disputed any of the tenants' testimony, including testimony that the landlord did not attempt to make any repairs until after the hearing before the Residential Tenancy Branch in March, 2022.

I agree with Legal Counsel for the tenants that the tenant (DP) was not getting what he paid for. The landlord has compensated the tenant \$1,500.00 for March, 2022 and the tenant did not pay rent for April, 2022, having moved out prior to the end of the month. I allow the \$800.00 per month claim from July 1, 2020 to February, 2022, for a total of \$16,000.00, **less** the \$500.00 that the landlord compensated the tenant for moving expenses, which the landlord was not obligated to do in the circumstances ($20 \times \$800.00 = \$16,000 - \$500.00 = \$15,500.00$).

I have reviewed the photographs, and although the landlord's Legal Counsel suggests that the opinion the tenant received was not reliable, I find that the tenant was justified in replacing his mattress and other items. There is no evidence or submission to suggest that the furniture or electronics could have been repaired or what the cost may have been. It is clear that damages exist and that damages exist as a result of the landlord's failure to properly maintain and repair the building. The tenant has also provided receipts, and I find that the tenant has established special damages for loss of furniture and electronics in the amount of \$5,151.82.

With respect to the claim for the cost of the inspection report ordered by the tenant, that wasn't requested until after the landlord had repeatedly assured the tenant that there were no significant issues. Obviously, the tenants did not believe that, and had the landlords been honest with the tenants, perhaps the tenants would not have retained the company for the inspection. I find that the tenants did so as a result of the landlord's failure to ensure repairs were made and that the rental unit was a safe environment to reside in. I find that the tenant has established the \$1,785.00 claim.

In the circumstances, I find that the tenant (DP) has established a claim totaling \$22,436.82. Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Since the tenant has vacated the rental unit, I dismiss the tenant's application for an order reducing rent.

With respect to the tenant (TB), the claim is rent abatement of 50% since May, 2021 and until ongoing repairs are resolved due to loss of quiet enjoyment, and aggravated damages to the end of February, 2022, general damages for breach of quiet enjoyment of \$1,000.00 and aggravated damages of \$4,000.00 for breach of quiet enjoyment, as well as recovery of the \$100.00 filing fee.

The landlord's Legal Counsel submits that there is no evidence that the tenant (TB) was having issues until late 2021 other than verbal communication, and no notice was given to the landlord that patio repairs were required until the tenant made an Application for Dispute Resolution, and that it was the landlord's contractors who discovered mould in the bedroom closet in May, 2022. However, verbal communication ought to have sufficed, and would very likely have had a meaningful effect if the landlord had taken it seriously.

I also consider the submissions of the landlord's Legal Counsel that the landlord did not know at the time of the March, 2022 hearing that the repairs could not be completed within the time that he indicated at the hearing. However, the repairs required, regardless of how long it actually takes is on the landlord.

I also consider the blatant breach by the landlord in allowing contractors into a rental unit with recording equipment. That is also on the landlord, which gives rise to aggravated damages.

The tenant also testified that she was threatened with eviction, criminal charges and costs associated with cancelling inspections, none of which are appropriate and give rise to aggravated damages. I also accept the undisputed testimony of the tenant that numerous requests were made by the landlord to access the rental unit without any results, and the landlord suggested more than once that the tenant should vacate while repairs were being made without any indication of when the tenant could return, or if the tenant could return.

The tenant's rent is \$1,980.00 per month. In the circumstances, I find that the tenant has established rent abatement of 50% from May, 2021 to date, which amounts to \$16,830.00 ($17 \times \$990.00 = \$16,830.00$) to the end of September, 2022. The landlord

has compensated \$390.00 for March, 2022 rent and 50% rent abatement for July, 2022, and the difference is \$15,450.00 ($\$16,830.00 - \$390.00 - \$990.00 = \$15,450.00$).

I am also satisfied that general and aggravated damages for the landlord's breach of \$5,000.00 has been made out.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in the amount of \$20,550.00 ($\$15,450.00 + \$5,000.00 + \$100.00 = \$20,550.00$).

I also order that the tenant's rent be reduced to \$990.00 per month until all repairs that affect the tenant's rental unit are completed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in the favour of tenant (DP) as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$22,536.82.

The tenant's (DP) application for an order reducing rent is hereby dismissed.

I hereby grant a monetary order in favour of the tenant (TB) as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$20,550.00.

I further order that the tenant's rent (TB) be reduced to \$990.00 per month until all repairs that affect the tenant's rental unit are completed.

This order is final and binding and may be enforced.

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: September 19, 2022

Residential Tenancy Branch