



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SIMAY INVESTMENTS LTD. c/o First Service
Residential and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a Monetary Order of \$13.59 for compensation under the Act;
- an Order to reduce the rent by \$160.85 a month for repairs, services or facilities agreed upon, but not provided;
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed; and
- recovery of her \$100.00 Application filing fee.

The Tenant and two agents for the Landlord, A.U. and S.R. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Should the Landlord be Ordered to make repairs, and if so, which ones?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 1, 2015, ran to March 31, 2016, and then operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$970.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$485.00, and no pet damage deposit.

#1 COMPENSATION - MONETARY LOSS OR OTHER MONEY OWED → \$113.59

The Tenant explained her first claim as being for recovery of the registered mail cost she incurred for serving documents for this proceeding. She also included the \$100.00 Application filing fee in this amount.

I advised the Tenant that the Act does not authorize recovery of costs to prepare for a hearing. Further, I informed her that arbitrators generally award an applicant with recovery of the Application filing fee depending on how successful she is in the hearing.

#2 REDUCE RENT FOR REPAIRS, FACILITIES NOT PROVIDED → \$160.85/mth

The Tenant's second claim is for a rent reduction, because she said she is unable to sleep in the bedroom, because of the unreasonable disturbance of a security light

installed a few feet below her bedroom window in March 2020.

I asked the Tenant about her use of blinds to block out the light, and she explained what she has tried to do to resolve the problem:

I have gone through two sets of blinds and curtain rods. The first was not dark enough, thick enough, and I had to buy a second set and a black out curtain rod. It sits as close to the window as possible to block the light. I have that on my wall in the bedroom. I have provided photos of the curtain and window.

And I also had to purchase wood slats, because the curtain rod sits as close as it can, but there's still light that shines onto my ceiling. The slats fit in perfectly, and rest on the curtain rod and blocks out the light.

So that's all the work that I've done, and it is required regardless of the time of year - I have to sleep with the window closed. The light is still in my bedroom despite these steps.

The Agents said:

The sensor has been there longer than 2020. I wasn't managing at that time, but the building manager was there from 2016, and the sensor was there already. She said it's been since 2020, since she was not able to sleep, but it was there since she moved in.

This side of the building is open to public entry; anyone can come there, and there are a lot of homeless around. The light is only triggered when someone walks by, when normally at night no one is there.

We moved the light; one of her photos shows a pin from the old place, and we moved it to a lower spot. One of pictures has it written - original placer of sensor light. Her window is higher on the right hand side. In another picture, also in my evidence, the sensor distance from [her unit] – it's been relocated way lower down from the window, almost close to ground level.

Also, from the evidence for the sensor location in my evidence, it was moved in January 2022.

The Tenant responded, as follows:

A lot of that was inaccurate. I moved in 2016, and if it was below my window, it wasn't active. See my March 2020 email – it's the first time I was aware of the sensor light. I immediately contacted the property manager, [C.L.].

[The Agent, S.R.] also mentioned that they've used a photo – see outdoor city design tips from the City. This shows the light fixture is a non-full cutoff sensor. A city inspector confirmed this. A second city inspector came just this past summer (I infer the Agent meant to say that it is a full-cutoff sensor)..

The Tenant continued:

In 2019 there was a change to bylaws. The new building bylaw allows inspectors to enforce light pollution, but it fell away due to Covid. The outdoor lighting design tips are their recommendations. That pdf was provided to the property managers in 2022, but it's the amendments, not the by law; however, both inspectors emailed the pdf to [the property managers]. The light is so bright that it shines on the building across the way.

The light wattage is unnecessarily bright and unreasonable. I have never asked them to turn off the light. The issue is that despite my pleading and emails in two years, I cannot sleep in my bedroom. The resolution provided is incredibly simple and easy and cost effective. I'm at a loss as to why they have not followed by them.

The movement of the sensor light didn't happen in 2022. They moved it only two feet in the exact same spot and it didn't make a single bit of difference. There are multiple emails from March 2020 through January 2022, begging and pleading with them to do something.

The second issue – whenever the light is faulty, they don't respond in a quick manner. It shows no concern for their Tenant being really, really disturbed by this for a long time. It has exacerbated my medical condition. I'm paying for the rental of a bedroom.

There are periods of time when I can sleep – I'm so exhausted that the light doesn't disturb me. There are periods when it was blinking on and off, and they left it for days like that. It was also stuck in the on position, and it took four days until they sent someone to fix that.

I have offered cost effective solutions, and the City has attempted to assist me. But either I vacate or apply to RTB.

In the Outdoor Lighting Design Tips information provided by the City ("Lighting Tips"), it states:

Any lighting that is facing a lane needs to have full-cutoff fixtures to minimize light pollution on adjacent residents. ... Under our new outdoor lighting requirements, your lighting design must now: Have full-cutoff fixtures. Fixtures that are fully shielded to reduce light spill and unnecessary light pollution.

The Lighting Tips includes diagrams of which lights are full-cutoff fixtures, and which are non-full-cutoff fixtures. The photographs of the offending light fixture clearly match the diagrams of non-full-cutoff fixtures.

I asked the Tenant for suggestions of what she would like the Landlord to do, and she said the following:

1. Install a full-cutoff fixture when light is reaching my window; full cutoff means light is only directed on the pathway below. See the photos from the City's pdf – it shows how light flows in different types of fixtures;
2. Second option, install a shield above the sensor light;
3. Third option, move it away from bedroom window, and not just down a couple feet.

These three options have been presented since the summer of 2020. It is in violation to my right to quiet enjoyment.

The Agents responded:

This light is quite far away from her window and it is a full cutoff; I have a report in my evidence you can refer to. The full cutoff has no shield, because it is a full cutoff. See the picture of the light. There's no light coming from the top. We have been trying to help [the Tenant], and we relocated the sensor. The location is at the entrance of the hallway, and her window is further up. So, we cannot move it anywhere else, because it is the start of the hallway.

I cannot recall a time that the light was on the full-time. Every time she emailed

me, I went to the building at night time and it was operating normally. The normal sensors are on for 10 seconds, but we put it on for 5 seconds and it is on the lowest light it can be. I have the voltage on it and it's only 24.

I asked the Agents why they could not put a shield up, anyway. They said:

We talked to the technician, and because it is a sensor light, we cannot block the area it is covering. They said it works the same as the shield – see the photo – the top part is completely black.

I note that a lot of the Landlord's evidence submitted relates to a mould and cleaning issue, rather than the lighting issue.

The Landlord submitted a copy of information about the type of light fixture installed beneath the Tenant's window. The fixture does not look like a full-cutoff fixture set out in the City's Lighting Tips. Further, the information provided by the Landlord does not indicate what type of light cutoff this fixture has.

I asked the Agents about the Tenant's experience, and they said: "We have done everything on our part, and we have seven or eight tenants on that side, and we have not heard anything from anyone else."

I asked the Agents if it was possible to install a shield above the light fixture, and they said: "It's physically impossible. You can't block a sensor with a shield. As a landlord we responded promptly on every email and made every attempt to rectify this situation. I'm lost as to what else the Tenant wants."

The Tenant said: My emails will prove that they do not respond quickly – I have submitted all the emails and they are pages long, but it is evidence."

I asked the Tenant how she calculated the amount she is claiming in rent reduction for this matter. The Tenant said that she used the square footage of the rental unit that was set out in the original advertisement for the unit. She said she calculated the square footage of the bedroom to be 72 square feet, so that she could calculate what portion of her rent goes to the usage of this room.

The Agent said that the square footage of this unit is actually 464 square feet.

The Tenant's calculations were:

$$\frac{\text{Bedroom sq ft}}{\text{Total sq ft}} = \frac{72}{500} \times \$1117.00 = \$160.85/\text{month}$$

Using the Landlord's square footage of 464, rather than 500, the calculation is:

$$\frac{\text{Bedroom sq ft}}{\text{Total sq ft}} = \frac{72}{464} \times \$1117.00 = \$173.33/\text{month}$$

I find from the Parties evidence before me that the Tenant pays approximately \$173.33 per month for the use of her bedroom on a square footage basis.

The Tenant indicated that she has applied for a rent reduction to be retroactive to the date on which she sent the Landlord a final request for assistance in this matter prior to applying for dispute resolution at the RTB. In this letter, dated March 1, 2022, the Tenant said:

I am writing to request resolution to the ongoing issue of the sensor light that was installed near my bedroom window in March 2020. This is a follow-up to the email sent January 10, 2022. This issue has been outstanding for two years, and I have made every attempt to be co-operative and patient. However, I must consider the ongoing negative impact to my health and well being. I have advised previously; I am prepared to file an application with the Residential Tenancy Branch to have this matter adjudicated. This letter is my last attempt before filing.

...

Please follow the outdoor lighting design tips as sent to you by the City of Vancouver or move the sensor light away from my bedroom window - by **April 1, 2022**.

- Attached: PDF excerpt from Residential Tenancy branch guidelines, point 6 Right to Quiet Enjoyment
- Attached: photos of lighting between buildings, sensor light and bedroom window
- Attached: City of Vancouver outdoor lighting design tips
- Attached: International Dark Sky Association - Human Health
- Attached: International Dark Sky Association - Lighting Crime and Safety
- Attached: email communications regarding issue

Thank you for your prompt attention to this timely matter. .

[emphasis in original]

The Tenant said that in 2019 the City bylaws changed, such that a building bylaw allows inspectors to enforce light pollution. However, the Tenant noted that this:

...fell away due to Covid. Outdoor lighting design tips are their recommendations. That pdf was provided to the property managers, the amendments are not the law yet; however, both inspectors emailed the pdf to [the property managers]. The light is so bright that it shines on the building across the way.

#3 REPAIRS ARE NEEDED

Throughout the hearing, the Tenant indicated that the Landlord has the means of resolving this problem with various measures. As set out in her evidence, the Tenant suggested that the Landlord could install a shield above the light to block it from shining into the Tenant's bedroom window. Alternatively, the Landlords could install a truly full-cutoff fixture in place of the light fixture that causes the Tenant's disturbance.

The Agents' response to these proposal is set out above.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

#1 COMPENSATION - MONETARY LOSS OR OTHER MONEY OWED → \$113.59

As explained to the Parties in the hearing, costs such as registered mail incurred to

serve documentary evidence for this proceeding are not reimbursable under the Act. As such, this claim is dismissed without leave to reapply. Recovery of the \$100.00 Application filing fee is addressed below.

#2 REDUCE RENT FOR REPAIRS, FACILITIES NOT PROVIDED → \$160.85/mth

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6 ("PG #6") clarifies the requirement in section 28:

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 landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations. .

[emphasis added]

Based on the evidence before me, including the Tenant's photographs of the light sensor and the City's Lighting Tips, I find that the light in question is interfering with the Tenant's right to quiet enjoyment of her bedroom for sleep. I find this to be a significant interference with this Tenant's enjoyment and suitable use of her bedroom. I find that the Tenant has persevered in trying to resolve the problem herself with black out curtains, and carefully placed wooden slats. I find that the Landlord initially attempted to assist the Tenant in this regard by moving the light. However, unfortunately, this did not resolve the problem.

I find that the problem relates in part to the Agents' insistence that this is a full-cutoff fixture set out in the Lighting Tips. The Agents did not indicate why they believe the light to be a full-cutoff fixture, nor did they direct me to evidence supporting this position. Based on the evidence before me overall, I find that the light in question is not a full cutoff-fixture and that it is interfering with the Tenant's ability to sleep in the bedroom that she pays money to rent.

I find that the Tenant has proven on a balance of probabilities that the Landlord is interfering with the Tenant's right to quiet enjoyment of the rental unit, pursuant to section 28 of the Act, by not addressing this matter such that it solves the problem.

As a result, I award the Tenant with a rent reduction of **\$173.33** per month, based on the calculations set out above, and pursuant to sections 28 and 67 of the Act. The Tenant has requested that this reduction be applied retroactively to her rent payments to March 1, 2022, the date on which she sent her registered mail request for assistance from the Landlord prior to applying for RTB dispute resolution. I find the Tenant's request in this regard to be reasonable in the circumstances. I find the Tenant's request also demonstrates restraint in mitigating her losses, as the problem dates back two years, not just to March 1, 2022.

As such, and pursuant to sections 28, 65, and 67 of the Act, I **award the Tenant** with a rent reduction of **\$1,213.31** from the Landlord, which is seven months' rent reduction reflecting the Tenant's loss of use of her bedroom, including to the date of this Decision.

#3 REPAIRS ARE NEEDED

Section 32 of the Act requires that a landlord maintain the rental unit 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, which make it suitable for occupation by the tenant.

As I have found that the Tenant remains disturbed by the light fixture in place below her room, I find an appropriate resolution would be to replace the light fixture with a full-cutoff fixture set out in the Lighting Tips. I would have suggested using a shield to resolve this problem, but the Agents testified that it would be impossible to install a shield for the type of light fixture in place.

As the lighting requirements bylaw has not yet been passed in the City, the Landlord may believe they are not required to make this repair. However, as emphasized above, the Act requires landlords to maintain the residential property such that it is suitable for occupation by the tenant. I find that it is not currently suitable for occupation, because of the light disturbance seeping into the Tenant's bedroom window.

The Agents said that it would be impossible to install a shield for the current light fixture; therefore, I find the only reasonable solution in the circumstances is to install an appropriate, full-cutoff light fixture, in place of the current, offending fixture.

Based on the evidence before me overall, and pursuant to sections 62 and 65 of the Act I **Order** the Landlord to **install a full-cutoff fixture** in place of the current light fixture in question as soon as possible.

Given her success in this matter, I also award the Tenant with recovery of the **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act.

Summary

The Tenant's claim for recovery of her registered mail fees for serving documents is not authorized by the Act, and therefore, it is dismissed without leave to reapply.

The Tenant is authorized to deduct her total monetary awards of **\$1,313.31** from upcoming rent payments, in complete satisfaction of these awards, and pursuant to sections 65 and 67 of the Act.

The **Landlord is Ordered** to replace the current light fixture with a **full-cutoff fixture** as soon as possible.

The Tenant is authorized to deduct **\$173.33** from future rent payments, if the light fixture has not been replaced on the first of the new month(s).

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence on a balance of probabilities to prove the validity of her claims.

The Tenant is authorized to deduct **\$173.33** from her rent retroactive to March 1, 2022, and including September 2022.

The **Landlord is Ordered** to replace the offending light fixture with a **full-cutoff fixture** as soon as possible.

The Tenant is also authorized to deduct \$173.33 from her future rent for any months in which the light fixture has not been replaced by the Landlord.

The Tenant is awarded recovery of her **\$100.00** Application filing fee from the Landlord.

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 01, 2022

Residential Tenancy Branch