



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, RP, MNDCT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- an order to allow the Tenant to reduce rent by \$2,000.00. pursuant to section 65;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32; and
- a Monetary Order of \$8,000.00 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service of documents for dispute resolution. The Landlord acknowledged receipt of the notice of dispute resolution proceeding package and the Tenant's documentary evidence. The Tenant acknowledged receipt of the Landlord's documentary evidence.

### Preliminary Matter – Tenancy Has Ended

The parties agreed that the tenancy ended on May 30, 2022. Since the Tenant has left the rental unit, I find the Tenant's claim for an order that the Landlord make repairs to the rental unit to be moot. Accordingly, I dismiss the Tenant's claim under this part without leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to a rent reduction?
2. Is the Tenant entitled to compensation for monetary loss or money owed by the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on April 1, 2016 and ended on May 30, 2022. At the time that the tenancy ended, rent was \$1,002.00 per month. The Tenant paid a security deposit of \$447.50 and a pet damage deposit of \$447.50, both of which the Landlord has returned to the Tenant. A copy of the parties' tenancy agreement has been submitted into evidence.

The rental unit is the lower suite in one half of a duplex property. The Landlord has other tenants residing in the upper suite. The Landlord does not own the other half of the duplex.

*a. The Tenant's Evidence*

The Tenant submitted a monetary order worksheet summarizing the amounts sought as follows:

| Item   | Amount             |
|--|--------------------|
| Loss of quiet enjoyment  | \$8,132.50         |
| Replacement fridge   | \$700.00           |
| Flowers destroyed by Landlord                                  | \$200.00           |
| Food lost due to faulty fridges (\$75.00 × 2 fridge failures)  | \$150.00           |
| Skeins of wool destroyed by water (\$2.00 × 200 skeins)        | \$400.00           |
| Take-away meals when stove blocked (\$30.00 per day × 14 days) | \$420.00           |
| <b>Total</b>   | <b>\$10,002.50</b> |

The Tenant submitted that she suffered a loss of quiet enjoyment of the rental unit as a result of:

- the Landlord weed-whacking the flowers in the Tenant's garden several times;
- mould in the rental unit that was not remediated;
- the Tenant's window being sprayed with water several times;
- insects entering the rental unit from outside due lack of proper sealing;
- the Tenant's toilet frequently backing up, which was not adequately fixed;
- the door not locking properly and upper tenants often leaving the shared door to the outside unlocked;
- the Landlord installing security cameras which monitored the Tenant's comings and goings (the Tenant submitted photographs of the cameras in support);
- the Landlord spraying herbicide on the property without notifying the Tenant, leading the Tenant to need to go to the hospital;
- upper tenants fighting loudly in their unit, with "highly disturbing" yelling and swearing; and
- lack of soundproofing between the upper and lower units, with "loud banging" audible at "all hours of the day and night".

The Tenant estimates that the above issues resulted in an average of 3 hours per day (or 12.5% of each day) of "unreasonable disruption and disturbance" during the affected period of the tenancy. The Tenant seeks compensation for loss of quiet enjoyment in the amount of \$8,132.50, calculated as  $12.5\% \times \text{the cost of rent} \times \text{number of months}$  from November 2016 to May 2022.

The Tenant testified that it was "miserable" and "loud" on the days the upper tenants were home from work. The Tenant testified the upper tenants fought a lot, and police would be called. The Tenant testified that there would be some peace and quiet during the day, but in the evenings and weekends when the upper tenants were home, there was seldom peace and quiet. The Tenant stated that the Landlord did very little to resolve this problem.

The Tenant submitted the following recordings with audio into evidence:

- July 25, 2016 upper tenants moving furniture at 2:32 am
- July 11, 2017 upper tenants fighting (two recordings)
- March 16, 2018 upper tenants fighting
- July 13, 2018 footsteps through bedroom ceiling
- November 7, 2019 footsteps at night
- November 22, 2019 footsteps and talking

- November 26, 2019 footsteps
- December 3, 2019 vacuuming and footsteps
- December 6, 2019 footsteps and talking
- April 17, 2020 upper tenants stomping at 4:56 am
- June 6, 2021 upper tenants fighting (two recordings)
- August 10, 2021, upper tenants fighting (4 min 39 sec)
- May 3, 2022 footsteps and talking
- May 7, 2022 footsteps
- May 17, 2022 footsteps
- May 25, 2022 footsteps at 1:27 am and 6:46 am
- Undated sounds of footsteps

The Tenant also submitted video recordings dated April 20, 2022 and June 9, 2021 of her window having been sprayed with water. The Tenant's evidence indicates that the upper tenants intentionally spray the Tenant's window with water in the early morning, and when the window is open, water enters the rental unit. The Tenant submitted an email dated August 28, 2016 in which she informs the Landlord and upper tenants of damage to the Tenant's yarn and fabric caused by someone power washing the window.

The Tenant testified that the upper tenants had also harassed and threatened the Tenant and her guests. The Tenant submitted written statements from various friends and acquaintances regarding the negative interactions that they've had with the upper tenants.

The Tenant testified the fridge freezer was not working. The Tenant stated the Landlord put in a thermometer and told the Tenant he had a replacement part on order, but nothing was changed. The Tenant testified that her food kept getting ruined. The Tenant testified that she had a friend help place the fridge in the foyer and installed a used fridge that the Tenant obtained for free. The Tenant stated that the second fridge started to malfunction as well. The Tenant testified that the Landlord then put the old fridge back and placed the other fridge in front of the stove, which prevented the Tenant from accessing the stove for several days. The Tenant testified that neither of the fridges worked. The Tenant testified that due to her medical condition she had to call her brother-in-law to put the fridges outside. The Tenant testified she then went and bought a new fridge. The Tenant submitted a \$736.27 invoice for a replacement fridge with a ship date of December 19, 2021 and an invoice date of January 10, 2022. The Tenant

also submitted an email to the Landlord dated January 12, 2022 regarding the fridge issue.

The Tenant testified that there was mould inside the wall behind the bathroom sink. The Tenant testified that the toilet would back up and get flooded, which caused the linoleum floor in the bathroom to bubble around the edge and out to the kitchen. The Tenant submitted a note dated February 2018 in which she describes a stink coming from the bathroom and kitchen sinks.

The Tenant submitted photographs of the bathroom floor which appears bubbled and raised. The Tenant submitted videos dated March 31, 2021 which show the bathroom floor flooded due to the toilet overflowing. The Tenant testified that she lost crafting supplies due to the toilet backing up and other water leaks.

The Tenant testified she has a medical condition related to her lungs. The Tenant testified the Landlord used a poisonous herbicide on the rental property without first informing her. The Tenant testified that her pets started vomiting and the Tenant herself had to go to the hospital due to trouble breathing. The Tenant submitted a hospital discharge document and prescription medication receipts dated July 8, 2018 in support. The Tenant also submitted photographs of the weed killer, as well as a photograph and video recording which purport to show the weed killer spray and debris entering the rental unit through the Tenant's bedroom door.

The Tenant submitted a letter to the Landlord dated July 1, 2018, which states that the Landlord had damaged the Tenant's plants while weed whacking.

The Tenant testified that she initiated this dispute in 2020 with the assistance of a tenant advocacy group. The Tenant submitted letter and email correspondence prepared by the tenant advocacy group into evidence.

*b. The Landlord's Evidence*

In response, the Landlord submitted that the Tenant made it difficult for the Landlord to deal with any issues during the tenancy because the Tenant did not provide the Landlord with a phone number and would not respond to the Landlord's emails.

The Landlord testified that he would receive notes from the Tenant in the mailbox along with the rent, which would inform the Landlord of what transpired in the past month. The Landlord testified that he never heard about any emergency from the Tenant. The Landlord testified that he had to post written notices on the Tenant's door to do any repairs. The Landlord testified that he lives very close to the rental unit and could have been there to resolve the issues if the Tenant had contacted him.

The Landlord submitted that he replaced the fridge in the rental unit in November 2020. The Landlord testified he did not receive any communication from the Tenant about the fridge not working properly until January 12, 2022, when the Tenant had already replaced it with another one. The Landlord submitted that he removed the fridge and took it to his shop, where he determined that it was operating normally but the thermostat was set to the warmest setting. The Landlord indicated that if the Tenant had called or emailed him, the Landlord would have attended right away to troubleshoot the issue. The Landlord testified he put his fridge back and pushed the Tenant's fridge in front of the stove. The Landlord testified that since the other fridge was the Tenant's, he assumed that the Tenant would get rid of it herself. The Landlord indicated he did not know why the Tenant waited to have the fridge removed.

The Landlord testified that although the Tenant's video of the toilet overflowing was dated March 31, 2021, the Landlord had not received any note about flooding from the Tenant when he collected the rent on April 1, 2021. The Landlord submitted that he was unaware of when or how this problem occurred. The Landlord testified he was only a phone call or email away. The Landlord stated that he cannot resolve an emergency if the Tenant only complains later.

The Landlord testified that it was the same with the herbicide issue, where the Tenant could have asked him not to use the product, and the Landlord would have agreed. The Landlord stated that instead, the Tenant left the Landlord a note much later, itemizing all the problems it had caused. The Landlord questioned how the Tenant had to foresight to take a photograph of the herbicide bottle in the driveway before having a reaction and needing to go to the hospital.

The Landlord acknowledged he may have damaged some of the Tenant's plants while weed eating the rental property. The Landlord submitted that there was no clear delineation between the lawn and the flower bed. The Landlord submitted that it was not

intentional, and at the Tenant's request, the Landlord stopped cutting the grass on the Tenant's front yard.

The Landlord submitted that he inspected the rental unit on November 24, 2020 and found no evidence of mould. The Landlord submitted photographs of the bathroom and kitchen sink areas taken on November 24, 2020. The Landlord argued that the photographs submitted by the Tenant do not show mould. The Landlord testified that in 2018, he was told by the owners of the other side of the duplex that they had found a small leak inside the common wall when they were renovating, which they repaired.

The Landlord testified that he had communicated the upper tenants about the noise issue and acknowledged that those tenants did fight. The Landlord stated he was at a loss of what to do about it and that police had been called.

The Landlord testified he had an insulation contractor inspect the rental unit. The Landlord testified the contractor said they would need to drill holes every 16 inches in the ceiling of the rental unit to add insulation. The Landlord submitted that the upper and lower suites share a heating and ventilation system, and that he was concerned about the amount of dust and debris that would be caused. The Landlord testified that he was aware MN had asthma. The Landlord submitted that he asked for MN's permission to proceed with the work, but never heard back from MN.

In his written submissions, the Landlord indicated that the male upper tenant moved out in 2021, and as far as the Landlord was aware, the female upper tenant, MN, now lives alone. The Landlord submitted a written statement from MN dated December 14, 2020 ("MN's Letter") which states, in part, that the Tenant had contacted MN about the sound proofing between their units before moving in, and that MN had been upfront about the units being able to hear one another. The Landlord testified that the noise was from day one and questioned why the Tenant would stay in the rental unit for 6 years if she did not like the place.

Regarding the Tenant's allegation of water sprayed on her window, MN's Letter states that the upper tenants were just watering the garden which is right in front of the Tenant's window and that it was an "honest mistake".

The Landlord argued that the Tenant filed this dispute as retaliation for the Landlord having served the Tenant with a 2 month notice to end tenancy on February 2, 2022.

## 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.

In this case, the Tenant claims compensation as follows:

| Item   | Amount             |
|--|--------------------|
| Loss of quiet enjoyment  | \$8,132.50         |
| Replacement fridge   | \$700.00           |
| Flowers destroyed by Landlord                                  | \$200.00           |
| Food lost due to faulty fridges (\$75.00 × 2 fridge failures)  | \$150.00           |
| Skeins of wool destroyed by water (\$2.00 × 200 skeins)        | \$400.00           |
| Take-away meals when stove blocked (\$30.00 per day × 14 days) | \$420.00           |
| <b>Total</b>   | <b>\$10,002.50</b> |

I note the Tenant had indicated on her application that she was seeking \$8,000.00 as compensation for monetary loss, which appears to roughly correspond with the Tenant's loss of quiet enjoyment claim. The Tenant had also indicated that she was seeking \$2,000.00 in rent reduction, which appears to correspond with the remaining items claimed.

However, I find the Tenant has framed her loss of quiet enjoyment claim as a percentage reduction of rent paid in the past, while the other items are stated in terms of value of damaged property or expenses incurred. Accordingly, I will deal with the Tenant's loss of quiet enjoyment claim as a claim for retroactive rent reduction under section 65 of the Act, and the Tenant's other claims under compensation for monetary loss under section 67 of the Act.

### *1. Is the Tenant entitled to a retroactive rent reduction?*

Section 28 of the Act states:

#### **Protection of tenant's right to quiet enjoyment**

28 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.

Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment ("Policy Guideline 6") states:

**B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

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.

(emphasis added)

Section 65(1)(f) of the Act states:

**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:

[...]

- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

The Tenant submits that her loss of quiet enjoyment stems from various causes, which for ease of discussion I will group into the following categories: (a) issues relating to the condition of the rental unit, (b) unreasonable disturbances by the upper tenants, and (c) issues relating to the Landlord's conduct.

*a. Issues Relating to the Rental Unit*

The Tenant indicated that the rental unit had problems relating to lack of soundproofing, mould, improper sealing, and the toilet backing up.

Sections 32(1) and 32(5) of the Act state:

**Landlord and tenant obligations to repair and maintain**

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) 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.

Regarding the issue of soundproofing between the units, I find there is insufficient evidence to suggest that the state of the soundproofing and insulation of the rental property fails to comply with any health, safety or housing standards required by law or is otherwise unsuitable for occupation by a tenant, having regard to its age, character and location, as required under section 32(1) of the Act.

Some audible sounds of daily life transferring through shared walls or ceilings and floors is to be expected when residing in a multi-family dwelling. Indeed, the Tenant acknowledged in her written submissions that between April and October 2016, “the noise and disruptions were bearable”. The photographs of the rental property submitted show that it is an older property, in which the sound insulation will not be as effective as in newer units. As such, I find the Tenant is not entitled to compensation for loss of quiet enjoyment due to noise transfers involving the ordinary sounds of daily life from the Tenant’s neighbours.

I note the Tenant submits that she also suffered a loss of quiet enjoyment due to excessive and unreasonable noise caused by the upper tenants. I find this to be a separate concern which I will address later in this decision.

Regarding the issues of mould, sealing, and the toilet backing up, overall I find there was insufficient evidence for me to conclude that these problems were substantive and sufficiently frequent to warrant a finding of loss of quiet enjoyment.

Policy Guideline 6 states: “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.”

I find the photographs submitted by the Tenant show some bubbling of the linoleum flooring, but no visible mould. I note that even if I accept the Tenant’s testimony that there was mould inside the insulation of the wall, I do not find the evidence to suggest a sufficiently serious impact on the Tenant’s use and enjoyment of the rental unit to warrant a rent reduction.

The Tenant submitted video recordings which purport to show some dampness and debris on the floor, which the Tenant says results from inadequate sealing. I find there is insufficient evidence about how frequently this issue occurred. I also find that the evidence does not suggest this to be more than a temporary discomfort or inconvenience.

Similarly, while I accept the Tenant’s evidence that the toilet flooded on March 31, 2021, I find the Tenant has provided insufficient evidence to show that this was a frequent and ongoing issue, or that the Tenant had been unable to use the bathroom for an extended period as a result.

Accordingly, I decline to award a rent reduction for loss of quiet enjoyment under this portion of the Tenant’s claims.

*b. Unreasonable Disturbances by the Upper Tenants*

Based on the Tenant’s evidence, including multiple audio recordings and witness statements, I am satisfied that the Tenant has suffered a loss of quiet enjoyment of the rental unit due to substantive and ongoing interference from the upper tenants in the form of excessive noise (fighting, yelling, swearing, and stomping) and harassment (threats to the Tenant and the Tenant’s guests).

In concluding that the upper tenants had threatened or harassed the Tenant and her guests, I rely in particular on the Tenant's testimony, the handwritten note and Facebook post which are said to have been made by the male upper tenant, the signed statement of DY dated April 13, 2020, the signed statement of MI dated June 1, 2020, and a letter from TJ dated March 21, 2021. I find the evidence indicates that police were involved, which the Landlord acknowledged.

I find the Landlord was aware of the upper tenants' behaviours but did not take adequate steps to correct them. I find it was incumbent on the Landlord to issue written warnings to the upper tenants, and if their behaviour had not improved, to consider whether a one month notice to end tenancy for cause would have been warranted in the circumstances. I find the Landlord has not provided evidence to demonstrate that such steps had been taken.

I find the Tenant's evidence suggests that the male upper tenant was the primary source of the problems described. I accept the Landlord's evidence that the male upper tenant moved out sometime in 2021. I find the Tenant's evidence indicates records of the upper tenants fighting in 2021, but not in 2022. Based on this evidence, I disallow the period of time claimed by the Tenant for 2022, and fix the period of retroactive rent reduction under this part from November 2016 to December 2021.

Regarding the percentage of rent reduction to be granted, I note the Tenant seeks 12.5% for loss of quiet enjoyment in the aggregate. I find it is appropriate to award a lower percentage of rent reduction relating solely to unreasonable disturbances caused by the upper tenants. I find it would be appropriate to fix the percentage of rent reduction at 2.5% during the relevant period.

Based on the above and pursuant to section 65(1)(f) of the Act, I grant the Tenant a retroactive rent reduction of 2.5% from November 2016 to December 2021, or \$1,501.25, for loss of quiet enjoyment due to unreasonable disturbances caused by the upper tenants.

*c. Issues Relating to the Landlord's Conduct*

Regarding the Tenant's complaint about the security cameras on the rental property "monitoring [the Tenant's] comings and goings without [the Tenant's consent]", I find it is reasonable for the Landlord to have cameras on the rental property outside the rental unit for security reasons. I note the Tenant included an email in which the Tenant

alleges that the cameras were pointed towards the Tenant's door and window. However, I do not find the photographs submitted by the Tenant to show that the cameras are capable of capturing areas inside the rental unit. I find there is insufficient evidence that the Landlord has breached the Tenant's right to reasonable privacy by virtue of these security cameras.

Regarding the Landlord's use of herbicide on the rental property, I find that the Landlord should have informed the Tenant in advance or gave the Tenant some warning on the day that the herbicides were being used. I accept the Tenant's evidence that she had to go to the hospital for one day and that the Tenant suffered unreasonable disturbance as a result. I find that although this was a one-time incident, the impact on the Tenant's quiet enjoyment of the rental unit was fairly substantial. Accordingly, I award the Tenant a one-time reduction of rent in the amount of one day's rent, or  $\$964.00 / 31 \text{ days} = \$31.10$ .

*2. Is the Tenant entitled to compensation for monetary loss or money owed by the Landlord?*

Section 67 of the Act states:

**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.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states:

**C. COMPENSATION**

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. In order to determine whether compensation is due, the arbitrator may determine 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 Tenant claims compensation for (a) a replacement fridge, (b) flowers destroyed by the Landlord, (c) food lost due to faulty fridges, (d) skeins of wool destroyed by water, and (e) take-away meals when the stove was blocked.

*a. Replacement Fridge*

In this case, I find that the Landlord has an obligation to provide the Tenant with a working refrigerator as per clause 3(b) of the parties' tenancy agreement.

The Tenant seeks to recover \$700.00 for the cost of a replacement fridge, which amount I find to be supported by the invoice submitted.

However, I am not satisfied that the Tenant has acted reasonably to minimize her damage or loss in the circumstances.

Residential Tenancy Policy Guideline 5. Duty to Minimize Loss states:

**B. REASONABLE EFFORTS TO MINIMIZE LOSSES**

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;

- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

(emphasis added)

I find there is insufficient evidence of the Tenant having promptly reported the fridge problem to the Landlord and having requested repairs or a replacement.

I find the evidence indicates that the Tenant ordered a new refrigerator on or around December 19, 2021.

In the Tenant's email to the Landlord dated January 12, 2022, the Tenant writes: "This fridge doesn't work better now than it did the first time it was in this kitchen and I had to replace it. The fridge is sitting outside under the awning. You can pick it up at your leisure." I find that the wording in this email suggests the Tenant purchased the replacement fridge first before letting the Landlord know of her intention to replace the fridge herself.

I accept the Landlord's evidence that he had replaced the fridge in November 2020 and had not received any communications about problems with the fridge again until January 12, 2022. I accept the Landlord's testimony that he lives close by and would have come to troubleshoot the issue if the Tenant had called or emailed him.

Based on the foregoing, I am not satisfied that it was reasonable for the Tenant to purchase a new fridge and expect the Landlord to reimburse her for it, without first giving the Landlord an opportunity to repair or replace the fridge at the Landlord's cost. As such, I find that the Tenant has not acted reasonably to mitigate her loss of \$700.00 and that it was not a reasonable or necessary expense. Accordingly, I decline to award the Tenant compensation for this claim under section 67 of the Act.

*b. Flowers*

I find the Landlord acknowledges that he may have unintentionally damaged some of the Tenant's flowers while maintaining the front yard, and that he has stopped the yard work at the Tenant's request.

I find the Tenant's letter to the Landlord dated July 1, 2018 contains some descriptions of the species of plants that were damaged and claims that the number of plants lost were "half a dozen or more". However, I find the Tenant has not submitted any evidence in support of the value of the plants lost other than to claim compensation in the amount of \$200.00. In the absence of any reference to support the value of these plants, I am unable to conclude on a balance of probabilities that they are worth \$200.00.

Policy Guideline 16 states that "nominal damages", which are a "minimal award", "may be awarded where [...] no significant loss has been proven, but it has been proven that there has been an infraction of a legal right".

Based on the foregoing, I award the Tenant nominal damages of \$30.00 for the damaged or destroyed flowers.

*c. Food Lost*

I find the Tenant has not provided sufficient evidence to prove, on a balance of probabilities, the amount of the Tenant's loss claimed under this part. I find the Tenant's evidence did not include any details on when or how the fridge failures occurred, or what items were lost as a result of the failures. I find that the lack of specificity means the Tenant has not established her claim for compensation on a balance of probabilities. Accordingly, I decline to award the Tenant compensation for this claim under section 67 of the Act.

*d. Skeins of Wool*

The Tenant claims compensation for wool damaged when the upper tenants sprayed water through her window. I find the evidence is unclear as to whether the Tenant also had wool ruined by other sources of water damage, such as the flooding caused by the bathroom toilet.

Overall, I find the Tenant has not provided sufficient evidence to support the number and value of the wool claimed to have been damaged. For example, the Tenant has not submitted any photographs of the damaged wool or any receipts for their purchase. Therefore, I conclude that the Tenant has not proven this claim on a balance of probabilities, and I decline to award the Tenant compensation for this claim under section 67 of the Act.

*e. Take-away Meals*

With respect to the Tenant's claim under this part, I am not satisfied that the Tenant has acted reasonably to minimize her loss. While I accept the Tenant's evidence that she cannot move the fridge by herself, I find the Tenant should have alerted the Landlord if she found herself unable to access the stove. I find the Tenant could have asked the Landlord to reposition the fridge so that the stove can be unblocked while the Tenant waits to have the fridge permanently disposed of. I find there is insufficient evidence to suggest that the Tenant had communicated this issue to the Landlord at all before she eventually had the fridge removed by someone else. Absent such communication, I am not satisfied the Tenant is entitled to claim the cost of her take-away meals from the Landlord. I also agree with the Landlord that he is not obligated to dispose of the Tenant's fridge for the Tenant. Accordingly, I decline to award the Tenant compensation for this claim under section 67 of the Act.

Conclusion

Pursuant to sections 65 and 67 of the Act, I award the Tenant compensation as follows:

| Item   | Amount            |
|--|-------------------|
| Retroactive rent reduction of 2.5% of rent from November 2016 to December 2021 for loss of quiet enjoyment due to disturbance by upper tenants | \$1,501.25        |
| Retroactive rent reduction of 1 day (\$964.00 / 31 days) for loss of quiet enjoyment due to Landlord's herbicide use                           | \$31.10           |
| Nominal damages for damaged or destroyed flowers   | \$30.00           |
| <b>Total</b>   | <b>\$1,562.35</b> |

I grant the Tenant a Monetary Order of **\$1,562.35**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: September 11, 2022

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Residential Tenancy Branch