Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing was reconvened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated February 26, 2021 (the "2 Month Notice") pursuant to section 51.2; and
- an order to seek compensation from the Landlord pursuant to section 67
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on June 28, 2022 at 1:30 pm ("Original Hearing"). The hearing was scheduled for a 60-minute period. However, by 76 minutes, it became clear that the parties would not be able for complete their testimony and rebuttals. As a result, pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the Original Hearing and issued a decision dated July 7, 2022 ("Interim Decision"). The Interim Decision stated that the parties were not permitted to serve the other party, or submit to the Residential Tenancy Branch ("RTB"), any further evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP"), scheduled for August 5, 2022 at 9:30 am ("Adjourned Hearing"), were served on the parties by the RTB.

The Landlord and the Tenant attended the Original Hearing and the Adjourned Hearing. At the Original Hearing, I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties

were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. A witness ("BD") attended the Original Hearing to provide testimony on behalf of the Landlord.

Preliminary Matter – Service of NNDRP and Tenant's Evidence on Landlord

At the Original Hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence by registered mail ("NDRP Package") on the Landlord by registered mail on December 4, 2021. The Tenant provided the Canada Post tracking number to corroborate her testimony. The Tenant stated the NDRP Package was returned by Canada Post on the basis that it was unclaimed by the addressee.

Section 88(c) and subsection 89(1)(c) of the Act state:

> 88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
> […]
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
> […]
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> […]

The Tenant served the NDRP Package on the Landlord by registered mail on December 4, 2021. As such, she used a method for service permitted by section 88(c) and subsection 89(1)(c) of the Act. Pursuant to section 90 of the Act, the Landlord was deemed to have received the NDRP Package on December 9, 2021.

In addition, the Tenant stated she went to the residential property and was able to enter the building and deposit a copy of the NDRP Package in the Landlord's mail slot. The Tenant stated she then sent a text and email to the Landlord advising she delivered a copy of the NDRP Package in the Landlord's mail slot. The Landlord initially stated she did not receive the NDRP Package. The Landlord subsequently stated she received a notice from Canada Post advising there was registered mail for pickup. The Landlord stated that, when she went to pick up the NDRP Package, it had already been returned to the sender. The Landlord stated she suspected the Tenant would be making an application for dispute resolution, so she called the RTB and received a courtesy copy of the NDRP from the RTB. The Landlord also admitted she received the NDRP Package that the Tenant served through in the mailbox located at the residential property. Based on the foregoing, I find the Landlord did in fact receive a copy of the NDRP Package.

Preliminary Matter – Service of Landlord's Evidence on Tenant

At the Original Hearing, the Landlord stated she served her evidence on the Tenant by email on June 21, 2022. Although the Landlord did not submit any evidence to establish the Tenant consented to service of documents by email, the Tenant admitted she received the Landlord's evidence. The Landlord did not provide any testimony that her evidence was not available until less than seven days before the Original Hearing. The Tenant stated acceptance of the late evidence would be prejudicial to her.

Section 43(1) of the *Residential Tenancy Regulations* states:

> 43(1) For the purposes of section 88 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

The Landlord stated she emailed her evidence to the Tenant on June 21, 2022. Pursuant to section 43(1) of the *Residential Tenancy Regulations*, the Tenant was deemed to have received the Landlord's evidence on June 24, 2022.

Rule 3.15 of the RoP states:

> **3.15 Respondent's evidence provided in single package**
>
> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
>
> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, *the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.* See also Rules 3.7 and 3.10.
>
> [emphasis in italics added]

As the Tenant was deemed to have received the Landlord's evidence on June 24, 2022, it was received by the Tenant less than seven days prior to the hearing.

> **3.17 Consideration of new and relevant evidence**
>
> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered *depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.*
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence *does not unreasonably prejudice one party or result in a breach of the principles of natural justice*.

> Both parties must have the opportunity to be heard on the question of accepting late evidence.
>
> If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].
>
> [emphasis in italics added]

The Landlord did not provide any testimony, or submit any evidence, that the evidence that was deemed to have been served the Tenant less than seven days before the hearing, should be accepted on the basis that it was new and relevant evidence. The Landlord was aware the Tenant made the Application in December 2021 and the Landlord had more than five months to serve her evidence on the Tenant before the deadline for service on the Tenant, and submissions to the RTB. As such, I find the Landlord neglected to ensure she served her evidence was received by the Tenant, and submitted to the RTB, at least seven days before the Original Hearing. Based on the foregoing, I find the Landlord's evidence was not new and relevant and that it would be prejudicial to the Tenant. As such I find the Landlord's evidence is not inadmissible for this proceeding. However, I advised the Landlord that she had the option of providing, or calling witnesses to provide, testimony on the contents of the inadmissible evidence.

Issues to be Decided

Is the Tenant entitled to:

- compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
- compensation from the Landlord pursuant to section 67?
- authorization to recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or

arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of the tenancy agreement ("Tenancy Agreement") between the former owner of the residential premises ("Property") and the Tenant dated November 26, 2007. The Landlord stated she was one of the new owners of the Property in which the rental unit is located and took possession of the Property on February 26, 2021. Later during the Original Hearing, the Landlord stated the Property is owed by corporate entity ("W3H "), that she was an agent of W3H. However, the Landlord did not submit any evidence or call any witnesses to corroborate this statement.

The parties agreed the tenancy commenced on January 1, 2008, for a fixed term ending June 30, 2008, with rent of $1,100.00 payable on the 1st day of each month. The parties agreed the rent was $1,227.00 per month when the tenancy ended The Tenant was to pay a security deposit of $550.00. The Landlord stated the security deposit was received from the Tenant and the parties agreed the deposit was returned to the Tenant after the tenancy ended. The parties agreed the Tenant vacated the rental unit on April 13, 2021.

The Tenant submitted into evidence a copy of the 2 Month Notice stated it had been served on her by the Landlord. The Tenant stated the effective date on the notice for move-out was April 30, 2021. The Tenant stated she vacated the rental unit on April 13, 2021. The upper portion of page 2 of the 2 Month Notice stated:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

- [✓] The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

- ( ) The landlord or the landlord's spouse
- (✓) The child of the landlord or landlord's spouse
- ( ) The father or mother of the landlord or landlord's spouse

- [✓] The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- [ ] All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
- [ ] The tenant no longer qualifies for the subsidized rental unit.

The Landlord stated W3H is a family corporation and that the son ("JD") of one of the shareholders ("ND") of W3H was going to move into the rental unit after the Tenant vacated it. The Landlord stated that JD was living in the United States. The Landlord stated the 2 Month Notice required the Tenant to vacate the rental unit on May 31, 2021. The Landlord stated the Canada-US border closed in April 2021 and it was not re-opened until October 2021. The Landlord stated JD had a blood condition and JD chose not to be vaccinated for COVID-19. The Landlord stated that, as JD was not vaccinated, he was not permitted to cross the Canada-US border into Canada. The Landlord stated JD died on February 14, 2022 before he could return to Canada to occupy the rental unit. The Landlord called BD as a witness who stated JD died on February 14, 2022. The Landlord claimed that, as a result of JD's death, there were extenuating circumstances that prevented the Landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy in the 2 Month Notice for a minimum period of six months. The Landlord admitted that the rental unit was advertised for rent in November and December 2021. The Landlord stated she paid the hydro for the rental unit for nine months before she re-rented the rental unit.

The Tenant stated the Landlord evicted most of the tenants in the residential property in bad faith. The Tenant stated she saw the rental unit was advertised for rent for $2,500.00 per month on Craigslist on November 9, 2021. The Tenant submitted a copy of the advertisement to corroborate her testimony and stated the rent was more than double what she was paying before she vacated the rental unit. The Tenant stated there were other suites in the Property that were available at the time the 2 Month Notice was served. The Tenant claimed she was entitled to $14,724.00, being 12 times the monthly rent, for the Landlord's failure to use the rental unit for the purpose stated in the 2 Month Notice.

The Landlord stated she served the 2 Month Notice on the Tenant because the rental unit was in the best location, had the largest kitchen and large deck and the best view exposure compared to other rental units on the Property. The Landlord stated one else living in the Property has been evicted.

The Tenant stated the Landlord had substantial remediation work perform on the roof outside her rental unit. The Tenant stated renovations were performed on her patio and entire roof on which her patio was located, as well as recarpeting inside the Property, from the beginning of February to April 13, 2021 when she vacated the rental unit. The

Tenant stated the noise caused by the work on the roof interfered with her ability to work during her employment hours. The Tenant stated the City temporarily issued a stop work order for lack of permits. The Tenant stated her patio was completely removed and a jackhammer was used by the workers to remove a large concrete support. The Tenant stated the jackhammering shook her rental unit, cause loud noise and she lost her privacy. The Tenant stated her patio was about 600 square feet. The Tenant stated the Landlord had new carpeting installed in the building and this resulted in additional noise. The Tenant stated the Landlord took over the use of her parking stall from the beginning of February 2021 to April 13, 2021 while renovations were being performed on the Property. The Tenant stated the Landlord did not ask if she could use the parking space and the Landlord did not provide a reduction in rent to compensate the Tenant for the loss of her parking space.

The Tenant submitted into evidence two pictures of construction materials in her parking space to corroborate her testimony that the Landlord or her contractors used her parking stall. The Tenant claimed the construction work disturbed her quiet enjoyment of the rental unit and interfered with her work obligations. To corroborate her testimony, the Tenant submitted into evidence eight photographs showing the condition of the roof before work was commenced, the removal of her patio, which occupied a portion of the tar and gravel roof, through to completion of replacement of the entire tar and gravel roof that extended well beyond the Tenant's patio. Two of the eight photographs submitted by the Tenant showed workmen working outside her patio door. The Tenant submitted eight audio recordings into evidence to corroborate her testimony on the significant noise levels that occurred during the work performed by the Landlord's contractors. The Tenant claimed she was entitled to $1,060.13 for compensation from the Landlord calculated as follows:

Description of Claim for Compensation	**Amount of Compensation Claimed**
Removal of parking with no prior notice for the months of February, March and ½ of April 2021 at $100.00 per month and no adjustment to rent	$250.00
Disturbance of Quiet Enjoyment due to excessive construction noise	$350.00
Loss of Tenant's patio without notice and no adjustment made to rent	$460.13
Total:	**$1,060.13**

The Landlord stated the Tenant was exaggerating the duration of the work on the roof and patio and the amount of noise it caused. The Landlord stated the roof outside the Tenant's rental unit needed immediate replacement as the wood supports for a solid concrete slab were rotten and there was a serious risk the concrete slab would collapse onto a rental unit located under it. The Landlord stated a jackhammer did not work and it was necessary to remove the concrete support with a crane. The Landlord stated this work took less than 1 ½ hours to perform. The Landlord stated the Tenant's patio was about 100 square feet. The Landlord stated she incurred $450.00 to remove unwanted items on the Tenant's deck area in order to perform the remediation of the roof.

Analysis

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

Pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chomy* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

1. Tenant's Claim for Compensation Equal to 12 Times Rent

The Tenant seeks $14,724.00 compensation pursuant to section 51(2) of the Act on the basis the Landlord did not use the rental unit for the stated purpose in the 2 Month Notice. The Landlord claimed it was her intent that JD would use the rental unit after the tenancy ended. The Landlord stated JD was unable to return to Canada due to COVID-19 travel restrictions and that JD died on February 14, 2022. The Landlord claimed that as a result of JD's death, there were extenuating circumstances that prevented the rental unit from used for the purpose stated in the 1 Month Notice. The Landlord claimed she should be excused from the requirement to pay 12 times the monthly rent payable under the Tenancy Agreement as a result of the extenuating circumstances.

Sections 49(1), subsection 49(2)(a) and sections 49(3), 49(4), 49(7), 51(2) and 51(3) of the Act state:

49(1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or
(b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which *all the voting shares are owned by*

(a) one individual, or
(b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

(a) for the purposes of subsection (3), an individual who
  (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  (ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), *a family corporation that*

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

49(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(I) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[…]

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

49(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

49(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

51(2) Subject to subsection (3), the landlord…must pay the tenant…an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord…does not establish that*

(a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notic*e, and

(b) the rental unit, except in respect of the purpose specified in section 49(6) (a), has been *used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice*.

51(3) The director may excuse the landlord…from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord…from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration,beginning within a reasonable period after the effective date of the notice.

[emphasis in italics added]

Section 51(2) of the Act makes it clear that, on an application for dispute resolution by a tenant for compensation that is equivalent to 12 times the month rent, it is the landlord who must establish, on a balance of probabilities, the rental unit has been used for the stated purpose for at least 6 months', beginning within a reasonable period after the effective date of the 2 Month Notice.

The 2 Month Notice stated two reasons for the 2 Month Notice as follows:

- The rental unit would be used by the child of the landlord or the landlord's spouse
- The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The instructions on page 2 of the 2 Month Notice state:

> Reason for this Two Month's Notice to End Tenancy (check the box that applies)

The instructions clearly state that the Landlord is to check "the box" that applies and does not state check any box that may apply. This is to inform the Tenant as to who will be occupying the rental unit so that the Tenant may monitor whether the rental unit has been used by the landlord, landlord's spouse or the child or parent of the landlord or landlord's spouse. Instead of complying with the instruction provided on page 2, the Landlord checked off two boxes as the reasons for ending the tenancy. The failure of the Landlord to comply with the instructions could reasonably cause confusion for the Tenant as to the identify of the person or persons who were going to occupy the rental unit after the effective date of the 2 Month Notice. As such, I find the 2 Month Notice did not comply with the form and content provisions of section 52 of the Act. I find that, as 2 Month Notice did not comply with the form and content requirements of section 52 of the Act, the 2 Month Notice was ineffective. As such, I find the Landlord is not entitled to claim that I should exercise my discretion to excuse the Landlord from paying the compensation, required by section 51(2) of the Act, on the basis there were extenuating circumstances that prevented the Landlord from using the rental unit for the purposes stated in the 2 Month Notice.

The Landlord did not provide any evidence that JD was her child or her parent. As such, the first reason, being that the rental unit would be occupied by a child of the Landlord would not apply. However, even assuming the 2 Month Notice was valid and that I should interpret the 2 Month Notice as giving the Tenant notice that the landlord of the rental unit is a family corporation and the rental unit would be used by a person, or a close family member of that person, the Landlord's argument that there were extenuating circumstances that prevented the Landlord from accomplishing the stated also fails as explained below.

Residential Tenancy Branch Policy Guideline 2A ("PG 2A") provides guidance on when a landlord to end a tenancy if the Landlord. PG 2A states in part:

> If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.
>
> If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
>
> *The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive*

Residential Tenancy Branch Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenancy under the Act. PG 50 states in part:

> **Reasonable Period**
>
> A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. […]
>
> A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. *A somewhat longer period may be reasonable depending on the circumstances.* For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

[…]

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months

[emphasis in italics added]

Section 49(4) of the Act allows a landlord that is a family corporation to end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. Section 49(1) of the Act defines a "family corporation" as a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members. Section 49(1) defines a landlord, for the purposes of subsection 49(4), as a family corporation that, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

The Landlord stated the rental unit was to be used by BK, the son of ND, that ND was a shareholder of W3H and W3H was the owner of the Property. I am satisfied, based on the evidence of the Landlord and BD, that JD died on February 14, 2022. However, the Landlord did not provide any evidence, such as a State of Title Certificate, or call any witnesses, to establish that W3H was the owner of the Property and that W3H holds a reversionary interest in the Property exceeding 3 years and holds not less than ½ of the full reversionary interest. Furthermore, the Landlord did not provide any evidence, such as a Register of Shareholders for W3H, or call any witnesses, to establish that ND was a shareholder of W3H. As such, I find that the Landlord has failed to establish, on a balance of probabilities, that JD was a person who was entitled to occupy the rental unit pursuant to section 49(4) of the Act.

As the Landlord has not established JD was entitled to occupy the rental unit, I find the Landlord cannot now argue that I should exercise my discretion to excuse the Landlord from paying the compensation required by section 51(2) on the basis there were extenuating circumstances that prevented the Landlord from accomplishing the purpose for ending the tenancy stated in the 2 Month Notice. As such, pursuant to section 51(2) of the Act, I Order the Landlord to pay the Tenant compensation equal to 12 times the monthly rent of $1,227, being $14,724.00.

2. Tenant's Claim for Compensation from the Landlord

The Tenant claimed the Landlord owed her $1,060.13 for monetary loss as a result of the Landlord breaching the Tenancy Agreement during the tenancy.

Sections 7 and 67 of the Act state:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the 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 Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

> 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.
>
> These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).
>
> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Tenant must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

The Tenant claimed the Landlord owed her $250.00 for the loss of her parking stall for February, March and ½ of April 2021. The Tenant testified paragraph 6 of the Tenancy Agreement provided she was entitled to one inside parking space. The Tenant stated the Landlord did not reduce her rent while her parking space was being used by the Landlord's contractors. The Tenant submitted two photographs showing her rental space occupied by building materials.

The Landlord acknowledged that the Landlord's contractors used the Tenant's parking space while performing renovations but stated the Tenant never used the parking space. Based on the testimony of the parties, I find the Tenant was entitled to one inside parking space pursuant to the terms of the Tenancy Agreement. Whether the Tenant used the parking space is irrelevant. The Tenant had the option of using it, or allowing any of her guests to use it, at any time she wanted. I find the Landlord did not compensate the Landlord for the use of the parking space. As such the Landlord must compensate the Tenant for withdrawing a facility she was entitled to pursuant to the terms of the Tenancy Agreement. Based on the foregoing, I find the Tenant has established, on a balance of probabilities, that she is entitled to compensation for loss of her parking space.

I find the Tenant's claim of $100.00 per month to be excessive and that a reasonable amount for covered parking in a residential location would be $75.00 per month. As such, I find the Tenant is entitled to $187.50, being $75.00 per month multiplied by 2 1/2 months, for loss of her parking space. I order the Landlord to pay the Tenant compensation of $187.50 for the Tenant's loss of this amenity of the rental unit.

The Tenant claimed $350.00 for loss of her quiet enjoyment from the beginning of February 2021 to April 13, 2021 while the roof was being remediated and the laying of carpets in the Property

Residential Tenancy Policy Guideline 6 ("PG 6") deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. PG 6 states in part:

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.

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.

The Tenant submitted eight audio recordings to corroborate her testimony of how loud the noise was. The Tenant submitted seven photographs to corroborate her testimony that the entire roof outside of the rental unit had been replaced and that roofers were working directly outside her patio door resulting in a loss of her privacy. The Landlord stated it only took 1 ½ hours to remove the concrete beam that supported part of the roof and that the carpet layers did not make any noise when replacing the carpets.

I have reviewed the photos provided by the Tenant and see the tar and gravel roof under her patio, and the entire roof extending beyond her patio, were removed and replaced. The Landlord stated a large concrete support for the roof required replacement as there was a risk the entire roof could collapse onto a rental unit located below. The Landlord stated that, as the contractors were unable to remove the concrete support with a jackhammer, they used a crane to lift it out. Based on the Landlord's own testimony, I find the remediation of the roof outside of the Tenant's rental unit was more intensive and lasted considerably longer than the Landlord suggested at the hearing. As such, I find the Landlord's testimony on the intensity and duration of the disturbance of the Tenant's quiet enjoyment to be unreliable. Based on the foregoing, I find the Tenant has established, on a balance of probabilities, that the Tenant is entitled to compensation for disturbance of her quiet enjoyment that she was entitled to pursuant to section 28 of the Act. I find the Tenant's claim for compensation for disturbance of her quiet enjoyment for the period claimed to be reasonable. As such, I order the Landlord to pay the Tenant $350.00 for disturbance of the Tenant's quiet enjoyment.

The Tenant claimed $460.13 for the loss of use of her patio. The Tenant stated her patio was removed when the Landlord had the roof replaced outside her rental unit starting in early February 2021 and that she did not have use of her patio until her tenancy ended on April 13, 2021, The Tenant submitted into evidence a picture of the roof in which the perimeter of the deck could be clearly viewed. The Landlord did not deny the Tenant was denied use of the patio from the beginning of February until the Tenant vacated the rental unit on July 13, 2021. As such, I find the Tenant is entitled to compensation from the Landlord for loss of use of the patio.

The Tenant stated her rental unit was 600 square feet and estimated the patio was 142 to 158 square feet but she did not provide the actual dimensions of the patio. The Landlord stated it was much smaller. Lying on the ground towards the outer corner of where the Tenant's patio was formerly located were several 4' x 8' sheets of plywood.

Using the dimensions of the plywood sheets as a reference point, I would estimate the Tenant's patio, as demarcated by the black marks left when the barriers surrounding the patio were removed, was at least 158 square feet. As such, I find the Tenant's testimony on the size of the patio to be more reliable than the size estimated provided by the Landlord. The parties agreed the interior of the rental unit was approximately 600 square feet. As such, the patio represented approximately 20% of the total square footage of the rental unit. However, the patio was not enclosed and would have significantly less utility than the inside of the rental unit which was heated and protected from the elements . Based on the foregoing, I find the patio had a value of 25% of the value of the inside of the rental unit. As such, I calculate the monetary loss of the value of the rental unit over 2 ½ months is:

$1,100.00 rent per month x 2 ½ months x 25% x 20% = $137.50

I find the Tenant's claim for $460.13 for loss of use of the patio is excessive. I find a reasonable estimate for the loss of use of her patio to be $137.50. As such, I order the Landlord to pay the Tenant $137.50 for the Tenant's loss of use of the patio.

As the Tenant has been successful in her claims, pursuant to section 72(1), I order the Landlord pay for the $100.00 filing fee of the Application.

Conclusion

I order the Landlord pay the Tenant $15,499.00 representing the following:

Description	Amount
Compensation for Failure of Landlord to Use Rental Unit for Purpose stated in 2 Month Notice	$14,274.00
Compensation for Loss of Use of Parking	$187.50
Compensation for Disturbance of Tenant's Quiet Enjoyment	$350.00
Compensation for Loss of Tenant's Use of Patio	$137.50
Reimbursement of Tenant's filing fee for Application	$100.00
Total	**$15,499.00**

This Monetary Order must be served by the Tenant on the Landlord and may be enforced in Provincial 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 4, 2022

Residential Tenancy Branch