Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2475.79 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The Tenant (PG) attended the hearing. The Landlord (AC) was unavailable and was represented at the hearing by MB the Landlord's partner, (hereinafter referred to as the "**Landlord's Agent**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present, service was confirmed. Each party confirmed receipt of the application and evidence (the materials). The Tenant provided a Canada Post tracking number, reproduced on the cover of this decision. Based on the affirmed testimony of both parties, I find that both parties were served with the respective materials in accordance with section 89 of the Act.

The hearing was convened by telephone conference call. The parties were advised that pursuant to Rule 6.11 of the Residential Tenancy Branch Rules of procedure (the "Rules") persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. As neither party requested nor was granted authorization to hire an accredited Court Reporter as allowable under Rule 6.12, I confirmed with the parties that they were not recording the hearing.

Preliminary Issue 1: Tenancy ended

The Tenant advised and the Landlord confirmed that the tenancy ended on July 29, 2022. In addition to the application to cancel the Two Month Notice, the Tenant submitted an application for the Landlord to comply with the Act. As the Tenancy has ended, these claims are accordingly dismissed without leave.

The parties agreed that the remaining claims were the Tenant's application for a Monetary Order and reimbursement of the filing fee.

Issues to be Decided

Is the Tenant entitled to:

1) a monetary order of $2475.79; and
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. Only key, admissible, and relevant evidence is referenced.

There is no written tenancy agreement. The Tenant and the Landlord's Agent disagree on the terms of the oral tenancy agreement; specifically, whether the tenancy was a fixed term tenancy for five (5) years or a periodic month to month tenancy and the parameters of the yard as related to yard maintenance.

The rental unit sits on 2.5 acres of land. The Tenant states the rental property only included maintenance of the front yard; the Landlord's Agent argued it included the front yard and the backyard immediately behind the rental unit. The Tenant was not expected to maintain the entire 2.5 acres as the bulk of the property was not a part of the oral tenancy agreement.

The Tenant asserts that she, her husband, and the Landlord entered into a five (5) year fixed term tenancy agreement. The Landlord told the Tenant she would send a written tenancy agreement in the mail but did not follow through.

The Landlord's Agent stated that he was present when the terms of the tenancy were discussed and agreed to. He testified that the Landlord did not agree to a five (5) year lease; rather, the possibility that the tenancy could continue "up to five (5) years" was discussed. The Landlord's Agent explained that his employment contract in Alberta is for "up to five (5) years" but could be cancelled anytime within that five (5) year window. The Landlord did not have a contract in Alberta. Given employment uncertainty, the Landlord only committed to a month-to-month tenancy. As it turned out, the Landlord moved back to BC earlier than expected due to family and financial obligations.

The parties agree as follows concerning the details of the oral tenancy agreement:

INFORMATION	**DETAILS**
Start of Tenancy	October 27, 2021
End of Tenancy	July 29, 2022
Rent Payable on the 1st of each month	$1200.00
Security and pet damage deposit	Nil

This is an application by the Tenant for a monetary order and reimbursement of the filing fee. The Tenant's claim is akin to loss of quiet enjoyment of the property for: a non-functioning heating system; unusable patio; noise from an excavator and skidder the Landlord brought onto the property; intrusive behaviors of the Landlord; disrupted mail service. The Tenant also applied for reimbursement of moving

expenses; hydro and phone connection fees, a hydro bill, and mail forwarding. The Landlord requests the claims be dismissed without leave to reapply.

Both parties submitted substantial documentary and photo evidence as well as written submissions.

Tenant

The Tenant applied for monetary loss under the Act, Regulation or tenancy agreement in her application dated June 13, 2022 in the following amounts:

TELUS hook ups	$ 100.00
Hydro hook ups	$ 100.00
June rent	$1200.00
Hydro bill (March/April)	$ 515.79
Mail forwarded (June 1, 2022)	$ 60.00
Moving expenses (approximately)	$ 500.00
Total	**$2475.79**

Each of the Tenant's claims are detailed below.

TELUS and Hydro connection fees

The Tenant requests reimbursement for TELUS and Hydro connection fees incurred in November 2021 in the amount of $100.00 per service for a total of $200.00. The Tenant wrote:

> we never would of made this move if we knew that she was going to kick us out 6 months later for no reason whatsoever!!!

The Tenant, since moving on July 29, 2022, had to pay to reconnect these services.

The Tenant did not submit invoices or receipts confirming the initial connection fees or the reconnection fee.

Hydro bill (Inadequately functioning pellet stove)

The Tenant testified that the primary heating system in the rental unit was a pellet stove. In February 2022, she noticed the stove "was not burning properly" and told the Landlord. The Tenant testified she arranged for someone to service the stove at her own cost of $200.00.

> …about stove it's not burning right,,,keeps going out and too many pellets, I know a guy who works on them, we waiting to hear back from him [husband] left me cash to pay him…. [reproduced as written]

The Tenant said that there was a piece missing from the basket that holds the pellets and the bottom of the basket was rusted out. The Tenant took the basket to a welder to repair the basket and the welder welded a thin piece of metal to the bottom of the basket to mend the hole.

The Tenant included partial text message conversations between her and the Landlord about the problems with the stove, as evidence the Landlord was aware of the pellet stove problems.

The Tenant said that because the pellet stove was not burning properly, she had to purchase space heaters to keep the rental unit warm through March and April 2022. The Tenant submitted a Hydro bill payable May 6, 2022 in the amount of $515.79.

June rent

The Tenant applied for reimbursement of rent paid in June 2022 for loss of quiet enjoyment of the rental property. The Tenant stated that the Landlord had heavy equipment on the property for the entire month of June, which interfered with her quiet enjoyment of the rental property. The Tenant submitted proof of rent payment.

The Tenant testified that Landlord/Tenant relationship issues first surfaced on May 30, 2022, when she received a 24-hour notice for inspection at the rental unit set for 4 p.m. on May 31.

The Landlord arrived early on May 31, 2022 at 2:55 p.m., called the Tenant from the rental unit driveway and asked permission to do the inspection ahead of schedule. The Tenant agreed and stated that the Landlord aggressively barged past her to the pellet stove saying, "this is all I wanted to see", grabbed the pellet pot, and left, saying that the Tenant was not burning the pellets properly, and the basket needed replacing. She "stormed out" of the rental unit.

The Tenant stated that she felt she was being treated unfairly and the Landlord was being rude and aggressive for no apparent reason.

The Tenant stated that the front yard was included with the rental unit. She maintained the yard, planting flowers, mowing the grass, and tending to the weeds. Maintaining the other areas on the 2.5 acres was not part of the tenancy agreement. The Tenant submitted photos of the front yard, confirming a well-maintained yard.

The Tenant stated from the beginning of June, the Landlord was:

> …..in my yard every morning for the last 3 days making as much noise as possible out our bedroom windows, shes ripped up all the padio area that she included in our rental. [reproduced as written].

In oral testimony, the Tenant stated the Landlord used a weed eater outside the bedroom windows starting at 8 a.m. The Landlord cut down all the flowers the Tenant planted in her garden and provided photos. The Landlord's Agent did not dispute the Tenant's testimony, stating the back yard was unkempt and required significant maintenance including weed eating since some of the grass was "knee high" because the Tenant did not maintain it as she should have.

On June 3, the Landlord brought in an excavator to work in the yard starting at 8 a.m. and

> …..ripped the whole patio area up that was included in our agreement as our personal space.

The Tenant goes on to state:

> I cannot even relax at my own home with all this unnecessary work being done all hours of the day 7 days a week! [reproduced as written]

The Tenant further states that the Landlord was:

> …..staying on our property and making our lives very uncomfortable 24/7. She also informed us that there is another couple moving onto our property July 1st/22. We now have zero privacy and cannot find comfort in our home! Because of all the stress she has caused and her being around my property 24/7 I have now had to take time off work to stay home with my granddaughter and make sure she is not bothered by [the Landlord]. [reproduced as written]

The Landlord told the Tenant that she was investing $20,000 in improvements to the property to make space for RV pads to rent out and that the Tenant "didn't rent the whole property".

Mail Forwarded

The Tenant provides the following evidence in undisputed testimony. The Tenant states that the Landlord asked the Tenant to collect the Landlord's personal mail from the mailbox soon after the start of the tenancy. The Landlord did not change her mailing address. The Landlord collected the mail periodically whenever she returned to BC to visit her son. The mailbox was locked and the Tenant shared the mailbox with the Landlord. The Tenant provided text message evidence supporting the Landlord's ask.

On May 31, 2022, when the Landlord showed up on the porch with the Two Month Notice, the Tenant had placed the mail in a black garbage bag, told the Landlord the mail was in the bag, but the Landlord left without taking the mail. The Tenant took the bag and placed it in the covered woodshed and notified the Landlord.

On June 1, 2022, when the Tenant went to pick up her mail she was unable to access the mailbox. She went to the post office and was told that the Landlord had changed the locks. The Tenant paid $60.00 to switch her mail to general delivery and was without her mail for 6-7 weeks because the mail had to be re-routed. The Landlord did not offer her a key or tell her ahead of time that she was changing the lock on the mailbox.

Moving expenses

The Tenant estimates moving locations cost about $500.00. She stated she misplaced the receipts but feels she should be compensated for the move since she did not plan on moving so soon.

Landlord's Agent

The Landlord's Agent stated that in May 2022, the Landlord moved home due to personal and financial reasons. The Landlord followed the tenancy requirements when she issued the Two Month Notice. The Notice was issued on May 31, 2022 with a must vacate date of July 31, 2022. As per the Notice, the Tenant was not charged rent for July 2022.

Hydro bill (Inadequately functioning pellet stove)

The Landlord's Agent stated that the pellet stove was in good working order when the Tenant took possession of the rental unit. The reason the stove was not burning fuel properly was because the ash box was full of ashes and the burn pot had welded metal to the bottom of it.

The Landlord's Agent stated that under no circumstances should the burn pot have a piece of metal welded to the bottom of it. This unauthorized modification could easily have caused the pellet stove to overheat and the rental unit to catch fire. Had the stove been serviced by a professional who worked on these types of stoves, that person would never have instructed the Tenant to weld anything to the bottom of the burn pot.

The Landlord's Agent stated that it was the Tenant's decision to buy space heaters rather than contact the Landlord to have the burn pot replaced. Had the Tenant asked for a new burn pot, the Landlord would happily have replaced it but they were unaware the pellet stove was not functioning properly. The Landlord's Agent argues the Landlord should not be held accountable for hydro costs because of choices the Tenant made.

June rent

The Landlord's Agent disputes the Tenant's assertion that heavy equipment was used throughout the month of June. He states that two pieces of equipment were rented between June 2 through June 9, a small excavator and a skidder. The Landlord's Agent stated he could upload proof of the machinery rental agreement, with dates, if required. He states that he is the only person qualified to run the machinery and on the 10th of June returned to Alberta to load up the U-Haul.

Some equipment was rented in July 2022 for a short duration and again, the Landlord's Agent said that receipts with dates were available, if needed.

The Landlord's Agent confirms that the parcel of land is 2.5 acres and that the Landlord was leveling certain sections and laying down gravel. The Landlord owns a trailer that she planned to keep on the property as well as rent out an RV pad.

The Landlord's Agent stated the Tenant was notified when maintenance and upgrades would take place and all work was done in keeping with municipal bylaw requirements.

The Landlord's Agent stated that the Tenant filed a complaint with the City Bylaw Department. A bylaw officer investigated the complaint and determined it was unfounded and closed the file. Neither the Landlord nor the Tenant provided a copy of the bylaw investigation and outcome. The Tenant did not disagree with the Landlord's Agent's evidence.

The Landlord's Agent confirmed that the front yard was well maintained but the back yard had not been maintained at all and required mowing, weeding, weed whacking, and "complete maintenance". Some of the grass was "knee high". The Landlord's Agent states that the rental unit included the front and back yard.

The deck across the front of the house was temporarily remove for the Landlord to move her 40' trailer onto the property.

Mail Forwarding

The Landlord's Agent did not speak to this issue.

Moving Expenses

The Landlord's Agent stated that the Landlord is not responsible for the Tenant's moving expenses just as no one is responsible for their moving expenses from Alberta back to BC. Further, the Landlord's Agent states that the Tenant provided no receipts for the move and he questions the amount claimed.

TELUS and Hydro Connection Fees

The Landlord's Agent states the Landlord should not be responsible for the connection fees. The Landlord came back to British Columbia for personal and financial reasons that were outside her control not with the intention to evict the Tenant.

Analysis

While I have considered all the documentary evidence the parties directed me to and their testimony, not all details of the submission and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Burden of Proof

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.

The applicant, in this case the Tenant, bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities **all** of the following four points set out in Residential Tenancy Policy Guideline 16 apply when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming

compensation to provide evidence to establish that compensation is due. 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 "**Four Part Test**")

Sections 7, 65, and 67 address compensation as follows:

> 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.

> **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.

Section 13 of the Act sets out the requirement for tenancy agreements and reads as follows:

> **13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.
>
> (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:
>
> (a) the standard terms;
> (b) the correct legal names of the landlord and tenant;
> (c) the address of the rental unit;
> (d) the date the tenancy agreement is entered into;
> (e) the address for service and telephone number of the landlord or the landlord's agent;

(f) the agreed terms in respect of the following:
(i) the date on which the tenancy starts;
(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
(vi) which services and facilities are included in the rent;
(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Quiet Enjoyment

Section 28 of the Act deals with the Tenant's right to quiet enjoyment. The section states as follows:

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 he rental unit restricted];
d. **use of common areas for reasonable and lawful purposes, free from significant interference.** [emphasis added]

The *Residential Tenancy Policy Guideline 6 – Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows [emphasis added]:

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 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. **[emphasis added]**

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to **residential property** unless the landlord provides each tenant with new keys or other means that give access to the residential property. [emphasis added]

The Act defines "residential property" as follows:

"Residential property" means
….
(d) any other structure located on the parcel or parcels

Policy Guideline 1 states in part:

KEYS

The landlord **must** give each tenant at least one set of keys for the rental unit, main doors, **mail box** and any other common areas under the landlord's control such as recreational or laundry rooms. [emphasis added]

Emergency repairs

33 (1) In this section, **"emergency repairs"** means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time. [emphasis added]

Policy Guideline 51 at page 6 provides further direction if emergency repairs are required and reads, in part:

> Tenants should first attempt at least twice by phone to notify their landlord if the rental unit or home site requires emergency repairs and give the landlord reasonable time to make the repairs. Following up immediately with a written request for these repairs is advisable to show when the tenant notified the landlord of the need for emergency repairs in case an application to for emergency repairs is necessary.

Findings

The evidence from both sides shows that this became a problematic tenancy and neither party is blameless. An acrimonious relationship began after the 2-month notice was issued and escalated

exponentially for the duration of the tenancy.

Tenancy

The Tenant testified that the oral tenancy agreement was for a five (5) year fixed term. The Landlord failed to send the tenancy agreement confirming the term of the lease in the mail.

The Landlord's Agent disputes the Tenant's recollection of the conversation concerning the length of tenancy stating it was the Landlord's intention to only enter into a periodic – month- to- month - tenancy. The Landlord's Agent argued that a five (5) years lease makes no sense given that his contract with the Alberta employer was "up to five years" meaning it could last all of five (5) years or could be cancelled at any time within the five (5) years, and, given the Landlord did not have a fixed employment contract in Alberta.

Neither party argued that the tenancy agreement was for a one-year fixed term.

I have considered the testimony of both parties. The Tenant argues that she would not have moved into the rental unit in the short term and incurred the expenses associated with moving. The Tenant directed me to a text message exchange between her and a family member that reads:

> "[A] been in Alberta with her hubby working, they want to move their, we would sign a 5 year lease" [reproduced as written].

I acknowledge the Tenant's text message; however, it does not state that the Landlord offered a 5-year lease but rather that the Tenant "would sign a 5 year lease" indicating the Tenant were amenable to a long term lease. [emphasis added]

The Landlord's Agent argues that the circumstances of his and Landlord's employment in Alberta were such that entering into a long-term fixed tenancy agreement is counterintuitive. The Landlord's Agent argues the intent was to leave the term open in case employment ended and the couple had to move back.

Where 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 may not have met the onus to prove their claim and the claim may fail.

I find it plausible that the Landlord entered into the tenancy agreement on the premise that the tenancy may be shorter or longer in duration depending on circumstances. The uncertainty surrounding the Landlord's and the Landlord's Agent's employment provides a credible explanation of why the Landlord preferred a periodic month-to-month tenancy rather than a fixed term as it added an avenue of flexibility to end the tenancy if needed. I further note, the Landlord never changed her mailing address and continued to have her mail delivered to the BC address supporting the possible transitory, short-term nature of the relocation.

It is also important to note that agreeing to agree to future terms that are uncertain is not sufficient grounds to make a legally enforceable agreement. An agreement to agree thus remains an

unenforceable agreement that merely implies the binding of two parties to a future agreement but does not guarantee it. While the possibility of a five (5) year lease may have been discussed as an option if the relocation circumstances worked out, the Tenant failed to meet the burden of proof that the tenancy agreement was a five (5) year fixed term. I find, on a balance of probabilities, that the 5-year term was discussed as an option but the tenancy was a periodic month-to-month tenancy.

Notwithstanding, I find the Landlord breached s. 13 of the Act by failing to provide the Tenant with a copy of the written tenancy agreement confirming the terms within 21 days after entering into a tenancy agreement.

Moving Expenses

The tenancy was a periodic month-to-month tenancy. The Landlord served the Tenant with a Two Month Notice on May 31, 2022 with an effective date of July 31, 2022. The reason the Two Months' Notice to End Tenancy was issued reads as follows:

> 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 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.

I make no finding on the merits or the form and content of the Two-Month Notice, since the tenancy has ended. I have included a link to Residential Tenancy Branch Policy Guideline 2A, "Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member"[1] for the parties' reference.

The tenancy ended on July 29, 2022 when the Tenant vacated the rental unit. While the Tenant testified that her preference would have been to remain in the rental unit long term, she also stated she recognized and accepted the circumstances that led to the Landlord returning to BC and found alternate an alternate rental unit.

I find the Tenant accepted the Two Months' Notice and vacated the property. I therefore dismiss the Tenant's application to recover the moving costs in the amount of $500.00.

TELUS and Hydro Connection Fees

The tenancy was month to month. Unless otherwise specified, the cost of the connection fees

[1] Ending a Tenancy for Occupancy by Landlord Purchaser or Close Family Member

for utilities and services are a Tenant's responsibility whether the tenancy is short or long term. I, therefore, dismiss the Tenant's application to recover the TELUS and Hydro connection fees in the amount of $200.00.

Hydro bill

The Tenant stated she incurred significant hydro costs due to the malfunctioning pellet stove, the primary heating system in the rental unit. The Tenant alleged the Landlord was aware the pellet stove was not working and failed to fix it. This resulted in the purchase and use of space heaters to heat the rental unit. The Tenant submitted a Hydro bill payable May 6, 2022 in the amount of $515.79.

Repairs to a primary heating system are considered "emergency repairs" and are covered in s. 33 of the Act. Section 33 of the Act allows a tenant to make emergency repairs only if specific conditions are met:

- The emergency repairs are needed.
- The Tenant has made at least two (2) attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts the Tenant has given the LL reasonable time to make the repairs.

Policy Guideline 51 provides additional direction on this matter.

The Tenant submitted a series of incomplete text messages between her and the Landlord confirming problems with the pellet stove. The Tenant told the Landlord she purchased a couple of space heaters to heat the rental unit. The Tenant provided handwritten annotations of text messages allegedly sent February 16, 2022. In subsequent text messages, the Tenant tells the Landlord that she [the Tenant] arranged for servicing at a cost $200.00. There is insufficient evidence that the Tenant told the Landlord that she planned to take the burn pot to a welder to affix a thin metal sheet to the bottom of the burn pot. No further follow-up messages between Tenant and Landlord concerning this matter were provided.

The Landlord's Agent stated that he and the Landlord were unaware that a new burn pot was required and, had they known, they would have immediately sent one to the Tenant as a defective burn pot can create a significant fire hazard.

There is insufficient evidence confirming the Tenant told the Landlord about the damaged burn pot or that she requested a new burn pot from the Landlord.

I find the Tenant did not meet the burden of proof, on a balance of probabilities, for a claim of loss of quiet enjoyment for the malfunctioning primary heating system. The text messages sent to the Landlord suggest the pellet stove was serviced and repaired.

Further, the Tenant provided insufficient evidence showing she followed the protocols for notifying the Landlord that emergency repairs to the primary heating system were required. I find the Tenant failed to demonstrate the Landlord breached s. 33 of the Act by failing to act reasonably and expediently to assure the Tenant had a functioning primary heating system. The Tenant's claim under s. 28 for a loss of

quiet enjoyment and the resulting increased hydro expenses resulting from the faulty pellet stove is dismissed, without leave to reapply.

Mail forwarding

In a text message dated February 8, 2022, the Landlord directs the Tenant to pick up a key for the mailbox from the Post Office.

> Hey if u go to the post office on [X street] they have a key for u its 30.00 will send now. I found the keyboard have misplace it again so this is guaranteed. My apologies I will probably have a tone of mail in there if u could set it aside I will be home in a few weeks if not sooner to visit my son and can grab it then. U just need a hydro bill showing u live there with some form of ID. [reproduced as written] [emphasis added]

The Landlord, in the above referenced text message, confirmed the mailbox is assigned to the rental unit address.

Policy Guideline 1 states a Landlord **must** give the Tenant(s) a key to the mailbox. S. 31(1) of the Act prohibits a Landlord from unilaterally changing the locks on a residential property, defined as "any other structure" on a residential property [a mailbox] "unless the landlord provides each tenant with new keys or other means that give access to the residential property". The Landlord did not do so.

I have considered the history of this matter, the parties' testimony and evidence, s. 28 and 31 of Act and Policy Guideline 1. The Landlord, in contravention of s. 28 and 31 of the Act, unlawfully re-keyed the mailbox effectively denying the Tenant access to the mailbox which was residential property.

I find the Tenant has met the burden of proof on a balance of probabilities for a claim for setting up a general delivery address with the post office. Although the Tenant did not provide a receipt for the mail forwarding, I have assessed the reasonableness of the cost and have determined $60.00 equitable.

I grant a monetary award to the Tenant in the amount of $60.00.

June Rent

The Tenant is requesting compensation for interference with the ordinary and lawful enjoyment of the premises that she alleged started immediately following issuance of the Two Month Notice.

I have turned my mind to the criteria set forth in s. 28 of the Act and Policy Guideline 6. I have set out each issue below and determined if any loss resulted from the Landlord's breach of the Act and, if a breach occurred, assessed an equitable value resulting from the breach .

Weed Eating outside the bedroom windows for 3 days
In undisputed testimony, the Tenant stated that on June 1, 2022, and continuing for three (3) days, the Landlord was weed whacking outside the rental unit's bedroom windows from 8 a.m. each morning.

The Landlord's Agent argued that the backyard was not maintained by the Tenant leaving the Landlord

with a mess; therefore, the weed eating was justified because the grass in places was above knee height.

The Landlord breached the Act when she failed to provide the Tenant with a written tenancy agreement. This resulted in a dispute about what yard maintenance was the Tenant's responsibility. The Landlord is allowed to maintain the property and the Tenant is entitled to "reasonable privacy" and "freedom from unreasonable disturbance". Weed whacking outside bedroom windows at 8 a.m. violates the Tenant's right to quiet enjoyment under the Act. The Landlord could have and should have consulted with the Tenant to find a mutually agreed to time for the yard maintenance.

I find the Landlord breached the Tenant's right to quiet enjoyment. In this circumstance, I determined that 10% of the June rent is equitable for the loss of quiet enjoyment of the rental unit.

Flowers

In undisputed testimony, the Tenant testified the Landlord cut down the Tenant's flower garden. A rental property includes more than just the rental unit. At minimum the tenancy agreement included the front yard and landscaping (trees, shrubs, flowers and any other feature) that the Tenant was required to maintain. When the Landlord cut the flowers the tenancy agreement was still in effect; thus the Tenant was entitled to exclusive possession of the rental unit. Cutting down the flower garden significantly interfered with the Tenant's right, under the Act, to exclusive possession and enjoyment of the property.

I find the Landlord breached the Tenant's right under s. 28 of the Act. In the circumstances I have determined that 10% of the June rent is equitable for the loss of quiet enjoyment of the rental unit.

Mailbox

The Landlord changed the mailbox key on June 1, 2022 without notifying the Tenant or providing another key thereby depriving the Tenant access to the mailbox and their mail. The Tenant also testified that loss of access to the mailbox not only disrupted mail service for 6-7 weeks but also her daily quiet time routine, when she walked to and from the mailbox.

The mailbox is residential property. I find the Landlord breached the Tenant's right under sections 28 and 31 of the Act and Policy Guideline 1. In this circumstance, I determined that 15% of the June rent is equitable for the loss of quiet enjoyment of the rental unit.

Patio

The Landlord removed the Tenant's patio to allow the Landlord's 40' trailer access to the property. The Landlord's Agent stated that the configuration of the driveway did not allow for the trailer to be moved onto the property unless the patio was removed. The Landlord provided the Tenant notice of the temporary removal of the patio. The Tenant placed a c-container partially in the area of the patio, thereby preventing the Landlord from re-installing the patio. The Tenant did not dispute the Landlord's Agent's testimony.

The evidence supports the Landlord intended to replace the patio but was unable to do so. The Tenant's claim for loss of quiet enjoyment on this ground is dismissed, without leave to reapply.

Property Maintenance: Excavator and Skidder

Both the Tenant and the Landlord's Agent confirm that the tenant did not have exclusive possession of the entire 2.5 acres. The Tenant had exclusive possession of the property immediately in front of the rental unit, and possibly the back yard.

The Landlord's Agent testified he used an excavator and skidder twice, once in June for a period of 9 days and, again, in early July to level the property, lay gravel, and make improvements. The improvements were made to property not included in the oral tenancy agreement.

The Tenant argues this was "unnecessary work being done all hours of the day 7 days a week" but provided insufficient evidence to support this claim.

The Landlord's Agent testified that the Tenant filed a complaint with the municipal bylaw department. The complaint was investigated and closed. The Tenant did not dispute the Landlord's Agent's testimony in this regard. Based on the undisputed testimony of the Landlord's Agent, I find that the work that was done on the part of the property controlled by the Landlord complied with municipal bylaws: hours of work; noise bylaws etc.

While I appreciate disruption and noise caused by construction on neighboring properties, I dismiss the Tenant's claim for loss of quiet enjoyment related to maintenance of the Landlord's property that was excluded from the Tenant's oral tenancy agreement.

Landlord's Occupation of the Property

The Landlord moved into the trailer placed on the property. The Tenant stated that it made their lives uncomfortable. The Landlord also told the Tenant that another couple would be moving onto the property on July 1, 2022. The Tenant wrote,

> We now have zero privacy and cannot find comfort in our own home!

The Tenant was entitled to quiet enjoyment of the rental unit and the yard included with said rental unit. The Tenant did not rent the entire 2.5 acres. The Landlord retained possession of the land adjoining the rental unit and is entitled to live on the land and/or rent out other areas on her property. While I do not disagree that the Tenant lost privacy when "neighbors" moved in, the Landlord was within her right to live there and rent out other parcels of land.

I dismiss the Tenant's claim for loss of quiet enjoyment related to the maintenance of the property under the Landlord's control.

Based on the evidence, the Landlord/Tenant relationship became increasingly acrimonious, with both parties contributing to the deterioration. While neither party is blameless, there is a power imbalance in the Landlord/Tenant relationship and I find the Landlord knowingly engaged in disruptive conduct that negatively impacted the Tenant's right under the Act to quiet enjoyment.

Although I am unable to ascertain the precise number of days or percentage with certainty, in consideration of the quantum of damages, I refer again to Residential Tenancy Policy Guideline 6 which states:

> 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.

Taking into careful consideration all the oral testimony and documentary evidence presented by the parties and applying the law to the facts, I find the Tenant has met the burden of proof on a balance of probabilities for a claim of 35% loss of quiet enjoyment for the period June 1 through June 30, 2022 during which the Tenant paid rent in the amount of $1200.00. I award the Tenant $420.00 in damages.

Filing Fee

As the Tenant has been partially successful with respect to their claim, I grant the Tenant an award for reimbursement of the filing fee in the amount of $50.00.

Summary of Award

ITEM	AMOUNT
Disruption of Mail Service	$60.00
Loss of Quiet Enjoyment (June/22)	$420.00
Partial reimbursement of Filing Fee	$50.00
TOTAL	**$530.00**

Accordingly, I award the Tenant a Monetary Order in the amount of **$530.00.**

Conclusion

I dismiss without leave to reapply the Tenant's application to cancel the Two Month Notice, the Order for the Landlord to comply with the Act, reimbursement of the hydro bill, moving expenses, and connection fees for utilities and services.

Pursuant to section 67, and 72 of the Act, I order that the Landlord pay the Tenant **$530.00**. This Monetary Order must be served on the Landlord. This Order may be filed and enforced in the courts of the Province of BC.

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*.

Date: November 13, 2022

Residential Tenancy Branch