

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended the hearing (“the tenant”). Tenant KDCH primarily provided testimony.

At the beginning of the hearing, the agent SS attended for the landlord AS. Fifteen minutes after the start of the hearing, landlord AS joined the call. AS and SS are referenced as “the landlord”.

The parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The landlord acknowledged service of the Notice of Hearing. Neither party submitted documentary evidence.

Preliminary Matter – Tenant Request for Adjournment

The tenant requested an adjournment of the hearing and stated that they needed more time to prepare. The tenant stated that the unit was uninhabitable following a fire on March 1, 2021 and the tenant was busy for a considerable time afterward looking for another place to live and dealing with the difficulties of losing their personal possessions. The tenant acknowledged that this hearing related to their Application for Dispute Resolution, which was submitted March 7, 2022 almost 8 months earlier.

The landlord objected to the adjournment being granted stating that the case had gone on long enough. The landlord wanted the matter heard and concluded.

In considering the tenant's application for an adjournment, I reviewed the criteria established in Rule 7.9 of the RTB Rules, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I found that an adjournment was unlikely to result in a resolution. I determined that the tenant had failed to take adequate steps to prepare for the hearing in the almost 8 months following filing of the Notice of Hearing. The tenant submitted no evidence in support the request for an adjournment and failed to establish that the adjournment was necessary to provide them with a fair opportunity to prepare. The tenant was unable to articulate what he would do differently between today and the adjourned date except to assemble, print and serve emails and texts which have long been available to them.

Considering the testimony of the parties, the evidence and the factors above, I rejected the tenant's application for an adjournment. I informed the parties of my decision.

Accordingly, the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for damages or compensation as well as reimbursement of the filing fee?

Background and Evidence

This is an application by a tenant for a Monetary Order and reimbursement of the filing fee. The tenant claimed loss of quiet enjoyment for a non-functioning furnace in the rental unit from December 15, 2021 to March 1, 2022, a non-functioning toilet for the month of February 2022, and reimbursement of rent for unliveable conditions in the unit from a fire on March 1, 2022.

The landlord requested that the claims be dismissed without leave to reapply.

The parties submitted substantial conflicting testimony in a lengthy hearing. Not all this evidence is referenced in my decision. Only key, admissible and relevant evidence in support of my findings is referenced.

The tenant submitted a copy of the tenancy agreement. They explained that the unit was a single-family residence with a furnace and laundry facilities and both tenants lived there. The tenant separately rented a shop where they carried on a business.

The parties agreed the month-to-month tenancy began on November 1, 2021 (although the agreement states October 1, 2021) and ended on March 1, 2022, when a fire of undetermined cause damaged the unit making it unliveable. Rent was \$2,000.00 monthly and the tenant did not pay a security deposit.

The parties agreed on the following:

1. The tenant paid all rent due to the end of March 2022, including for the months of December 2021 and January, February, and March 2022.
2. On December 15, 2021, the tenant informed the landlord by text that the furnace was not working. The furnace did not work from that time until the end of the tenancy.
3. A fire damaged the unit on March 1, 2022. The cause of the fire is under investigation. The unit became unliveable, and the tenant vacated that day.
4. For 4 weeks before the fire occurred, the unit was without a functioning toilet.
5. On March 1, 2022, when the fire occurred, the tenant moved into their recreation vehicle located on the property. The tenant never occupied the unit again and moved off the property on April 1, 2022.

At the hearing, the tenant withdrew all claims except the following:

ITEM	AMOUNT
Compensation for rent December 2021 to March 2022 - 4 x \$2,000	\$8,000.00
Reimbursement of the filing fee	\$100.00
TOTAL MONETARY AWARD REQUESTED BY TENANT	\$8,100.00

The tenant requested an award of reimbursement of all rent paid rent from December 15 to March 1, 2022, because of “unliveable/Inhabitable conditions”, as stated in their application.

The landlord claimed the tenant did not pay the utilities as they were required under the agreement. The landlord expressed various complaints about the tenant such as their having “squatters” stay with them in their recreational vehicle after the fire on March 1, 2022. The landlord denied the tenant was entitled to any compensation.

Each of the tenant's claims is addressed.

1. Tenant's Claim - Inadequately functioning furnace

The tenant testified as follows. The tenant notified the landlord by text on December 15, 2021 that the furnace was not working. The landlord acknowledged receipt of the text on that day.

The tenant subsequently asked the landlord many times to fix the furnace and the landlord provided various explanations, such as, parts were on order. The parties agreed the furnace never worked for the remainder of the tenancy.

Without a functioning furnace, the tenant said the unit became increasingly cold and uncomfortable as the outside temperatures dropped during the winter season. The landlord loaned them two space heaters and the tenant borrowed another one.

Despite the heaters, some of the pipes froze and from December 15, 2021, until March 1, 2022, the washer and dryer did not work because the adjacent pipes were frozen.

The parties agreed the tenant paid rent in full during this period without a furnace and there is no outstanding rent owing.

The landlord denied the unit was sufficiently cold for the tenant to claim damages while the furnace was not working. The landlord testified they did everything possible to carry out the repairs which was problematic because of the type of furnace. As they made best efforts to fix the furnace, they are not responsible for any claim for damages by the tenant.

The landlord denied that any pipes froze in the unit or that the tenant was ever without a washer and dryer. The landlord asserted the space heaters he loaned the tenant were adequate to heat the house.

2. Tenant's Claim - Toilet

The parties agreed that four weeks before the fire occurred, the septic tank stopped accepting sewage as it was full. As a result, the landlord acknowledged there was no functioning toilet in the unit for the month of February 2022 until the tenant moved out March 1, 2022.

The tenant said they went to friends' houses or to the nearby town to use the toilet.

The landlord claimed he is not responsible for any inconvenience or loss of enjoyment claimed by the tenant.

3. Tenant's Claim – Fire and Frustration of Agreement

On March 1, 2022, the parties agreed the tenant paid the landlord the rent due that month of \$2,000.00.

They also agreed a fire of undetermined cause occurred that day because of which the tenant was no longer able to live in the unit. The tenant did what they could to minimize their losses, by cleaning possessions, salvaging items and finding another place to live.

The parties agreed the tenant moved out of the rental unit on March 1, 2022, stayed in their travel trailer, and moved off the property on April 1, 2022.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions 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 claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Policy Guideline 1 - Landlord and Tenant – Responsibility for Residential Premises states in part as follows:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

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: 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:

(a)...

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

...

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.

Quiet Enjoyment

The tenant's claim for damages is akin to a claim for compensation for loss of quiet enjoyment.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

22. 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.

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. The Guideline 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 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]

Each of the tenant's claims are addressed.

Credibility

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. Chorny* (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.

I have carefully reviewed the evidence. The tenant's testimony was straightforward and matter of fact. I have concluded the tenant's version of events is credible and reasonable in the circumstances. I find their recounting of what took place, and the personal consequences, rings true.

I find their testimony to be most in 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. I find the landlord acknowledged the truth of the tenant's testimony in many key aspects. I find the landlord's general denial of all responsibility and minimization of the discomfort and inconvenience to the tenant to be disingenuous and insincere.

Findings

Considering the testimony and evidence, in consideration of the Act, and pursuant to *Policy Guideline 6*, I find as follows.

1. Frustrated Tenancy

I accept the undisputed evidence of the parties that there was a fire on March 1, 2022, the cause of which has not yet been determined, which rendered the rental property uninhabitable. I find that the tenancy agreement was frustrated on that date as the agreement became impossible to fulfill. That is, the tenant could no longer live in the unit.

Residential Tenancy Policy Guideline 34 - Frustration provides that:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.

Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The parties agreed the tenant paid rent in the amount of \$2,000.00 on March 1, 2022.

I find the tenant has met the burden of proof for all 4 parts of the 4-part test. I find that this tenancy became frustrated on March 1, 2022 and the tenancy ended on that date. The landlord was no longer able to provide a habitable rental unit. The tenant incurred a monetary loss of \$2,000.00.. The tenant did what they could to minimize their losses, by cleaning possessions, salvaging items and finding another place to live.

I accordingly grant the tenant an award of \$2,000.00 for compensation for rent paid for March 2022.

2. Inadequately functioning furnace

I find as follows.

The tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment as the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently to assure the tenant had a functioning primary heating system.

As acknowledged by the landlord, I find the tenant notified him on December 15, 2021 that the furnace had stopped working. I accept the landlord was provided with notice that day and that the furnace was inoperable for the remainder of the tenancy.

I find the tenant paid rent as follows for this period during which the furnace was not working:

ITEM	AMOUNT
December 15 – 30, 2021	\$1,000.00
Rent for January and February 2022	\$4,000.00
TOTAL	\$5,000.00

I do not accept as reasonable that the tenant went without a furnace from December 15, 2021 to March 1, 2022.

I accept the tenant's testimony describing their subjective experience of being increasing cold and uncomfortable when the furnace stopped working. I believe the tenant when they testified to a substantial interference with their ordinary and lawful enjoyment of the premises. I accept their description as factual of all aspects of the conditions of the unit while the furnace was not working. I find their testimony reasonable that pipes froze as the space heaters were inadequate, a consequence of inadequate heating.

I accept the tenant lived in the unit during this time, but find the conditions were unpleasant and uncomfortable. I find the unit was unsuitable for occupation as reasonably expected by them. I find the loss of quiet enjoyment extended for the period claimed by the tenant, although the level of discomfort varied from time to time depending on the outside temperature.

I find the landlord was aware of the tenant's complaints but failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord's response to the situation to be slow, ineffective and indifferent to the tenant's discomfort. I find the landlord failed to take reasonable steps to fix the furnace in a timely and efficient manner. I find the landlord did not meet their obligations under the Act to assure that the unit was adequately heated.

In consideration of the quantum of damages, I refer again to the *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.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for the period from December 15, 2021 to March 1, 2022, a period during which I find the tenant paid rent of \$5,000.00.

I find it is reasonable that the tenant receive compensation in the amount of 30% of the rent paid in this period which I find is \$1,500.00.

I grant a monetary award to the tenant in this amount.

3. Toilet

I find as follows.

The tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment as the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently to assure the tenant had a functioning toilet for the month of February 2022. I find the tenant has met the burden of proof for their claim under this heading and has met all 4 parts of the 4-part test.

The landlord agreed the tenant did not have a functioning toilet for February 2022. I accept the tenant's testimony of the inconvenience this caused.

I find the landlord was aware of the tenant's complaints about the toilet and request for repairs but failed to take reasonable steps to correct the situation or to compensate the tenant. The landlord did not meet their obligations under the Act.

The loss of a functioning toilet is as inconvenient and substantial an interference with the ordinary and lawful enjoyment of the premises as the loss of a functioning furnace.

In consideration of the quantum of damages, I refer again to the *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.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for the period from month of February 2022.

I find it is reasonable that the tenant receives additional compensation to the earlier award in the amount of 30% of the rent paid in this period which I find is \$600.00.

Filing Fee

As the tenant has been successful in this matter, I grant the tenant reimbursement of the filing fee of \$100.00 under section 72.

Summary of Award

I grant the tenant a Monetary Order of **\$4,200.00** as follows:

ITEM	AMOUNT
Furnace - Rent from December 15, 2021 to March 1, 2022, \$5,000.00 x 30% = \$1,500.00	\$1,500.00
Toilet - Rent for month of February 2022, \$2,000.00 x 30%	\$600.00
Rent for March 2022	\$2,000.00
Reimbursement of filing fee	\$100.00
TOTAL AWARD	\$4,200.00

Conclusion

I grant the tenant a Monetary Order of **\$4,200.00**.

This Order must be served on the landlord. The Order may be filed and enforced as an Order of the Courts 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*.

Dated: November 02, 2022

Residential Tenancy Branch