



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 24, 2021, and ended on January 27, 2022. Monthly rent was set at \$750.00, payable on the first of the month. The tenant's security deposit was returned on January 28, 2022 by e-transfer.

The tenant is making a monetary claim for \$4,581.56 for loss of quiet enjoyment and associated costs related to ending this tenancy, as detailed in the table below:

Item	Amount
September 2021 Rent	\$750.00
October 2021 Rent	750.00
November 2021 Rent	750.00
December 2021 Rent	750.00
January 2022 Rent	750.00
Emergency Airbnb January 2022	331.56
Airbnb Rent February 2022	500.00
Total Monetary Order Requested	\$4,581.56

The tenant filed this application seeking monetary compensation as they feel that the landlord failed to take proper action to deal with problematic tenants who also resided in the home. The tenant also feels that the landlord failed to comply with the *Act* by entering the home without giving proper notice before doing so. The applicant rented a room in the home that was shared with other tenants. The tenants shared the common areas, such as the kitchen, living room, and bathrooms.

In September 2021, the tenant LP and their girlfriend moved into one of the rooms. The tenant provided a detailed written account with the issues they had with LP and their girlfriend, as well as with the landlord and landlord's family.

The tenant stated that they worked from home, and were constantly disturbed by the other tenants, as well as the landlord. The tenant described the issues, which included fights between LP and their girlfriend, being disturbed by disputes that took place between the other tenants and the landlord and landlord's sons, the attendance of police, ownership disputes over the couch, and rising tensions between the tenants which the tenant feels the landlord failed to properly address.

The tenant also felt disturbed by the landlord, whom the tenant noted would show up without proper notice. The tenant felt that they were constantly disturbed without any consideration, and felt that the landlord had added to the drama instead of reducing it.

The tenant felt that the landlord failed to enforce the rules in the tenancy agreement, which included no smoking, no marijuana, and no animals. The tenant stated that LP and their girlfriend routinely broke these rules, which the landlord failed to address. As a result, the tenant and their girlfriend had to endure the smoke which entered through their open window, and were subjected to dog feces left in the home. The tenant also stated that they had reached out about other issues such as door slamming, their trash being knocked over, and constant noise disturbances.

The tenant submitted a log of the text messages sent by them since LP and their girlfriend moved into the rental unit, which the tenant counted to be at least 81. The tenant stated that not only did the landlord ignore their complaints, they had shown the private messages to LP and their girlfriend, which caused further aggravation.

The tenant testified that the landlord failed in their obligations to protect their right to quiet enjoyment. The tenant provided a copy of a letter written to the landlord on January 21, 2022 as a follow-up to a previous conversation which constituted as "an official request" that the landlord find a remedy for the problem with LP. The tenant referenced recent escalations of aggressive and disturbing behaviour, and expressed concern about how the tenant has been kept "continually in the dark", and how the landlord has refused to take responsibility to deal with problems the tenant has informed the landlord about. The tenant described how the landlord's lack of response had forced them to speak to LP personally, which escalated the situation unnecessarily. The tenant requested to be moved downstairs for safety reasons, and gave the landlord a deadline of January 27, 2022 to respond.

The tenant gave written notice on January 23, 2022 to terminate the tenancy as of January 27, 2022. The tenant stated that his girlfriend and him had to pack up and flee to stay in Airbnb residences as they felt threatened. The tenancy between LP and the landlord ended after the landlord had served LP with a 10 Day Notice for Unpaid Rent on December 16, 2021, and an Order of Possession was granted on February 3, 2022.

The tenant also submitted a letter dated January 29, 2022. The letter states that their name is LP, and described the problems they had with the landlord and their family, as well as issues between the other tenants. The author states that many problems “would have been dealt with amicably if [the landlord] had acted properly and fulfilled her role as a landlord” (name of landlord removed for privacy reasons).

The letter goes on to describe issues with the uneven division of space, and how the other tenant, MA, would occupy “roughly 70% of the space in the living room” and “occupies all of the common closets and majority of the space within the kitchen”. The author states that this caused tension between the tenants as they needed to negotiate the space division, and were not offered much assistance or direction from the landlord.

The author also states that they had a dispute with the tenant applicant over the use and ownership of the couches, and that the landlord’s refusal to address the issue “caused tension between [ET] and I which arose from time to time because of this underlying premise (name replaced with initials for privacy reason).

The letter also described noise issues, including early morning banging by MA, and the unauthorized and unanticipated entries into the home by the landlord, landlord’s sons, and their agent, despite repeated requests for proper notice before doing so. Lastly, the letter describes the aggressive and threatening confrontations by the landlord’s son, and how the landlord would repeatedly call the police. The letter is signed by LP, and provided an email address they can be reached at.

The tenant is seeking reimbursement of the rent paid from September 2022 to January 2022, as well as the cost of emergency accommodation.

The landlord argued that there were many complaints between the tenants, and that much of the disputes were interpersonal disputes between the tenants that outside of the landlord’s scope of power and responsibility. The landlord submits that the tenant applicant was a problematic tenant, as noted by the complaints submitted by the other tenant residing there. The landlord submitted copies of the correspondence sent by that

tenant complaining about how the tenant would disturb them, walk around the common areas in only their underwear, and occupy a large portion of the common area for their home office.

The landlord submitted an email sent on October 19, 2021 by MA, which stated that the tenant would hang their clothing, including underwear, in the common areas, and complaining about how the tenant was “getting aggressive and mean”. MA noted that they did not want to talk to the tenant directly due to their mental health and safety. MA attached photos of the clothing hanging in the common areas.

The landlord stated that upon report of how LP was a drug user, their agent KK investigated, and noted that there were no injection scars on LP’s arm. The landlord feels that the tenant was upset that LP was provided the master bedroom, which LP paid \$1,000.00 per month for.

The landlord also noted that all tenants were expected to share the common areas, and admitted that they did enter the common areas of the home in order to deal with problems in the home.

The landlord argued that the tenant would occupy much of the common areas for their home office, which prevented others from using the space. The landlord also noted that the tenant would occupy 2/3 of the refrigerator, and as a consequence they had to purchase a private refrigerator for LP to use in their room. The landlord stated that this is just one example of how they had to “solve all the problems that ET created”. The landlord stated that they attempt to find a solution by talking to LP, but that LP “became aggressive/violent with us” when the landlord proposed that LP find a new place to live. The landlord also notes that they had contacted the RTB for advice, and felt that they had fulfilled their obligations as a landlord.

The landlord argued that the tenant failed to substantiate and support the amounts claimed, which amounted to a 100% refund of the rent from September 2021 to January 2022. The landlord testified that the tenancy ended after all tenants were served with a 2 Month Notice for Landlord’s Use, and were provided the required compensation equivalent to one month’s rent. The landlord disputes that this tenancy ended because of their failure to fulfill their obligations, and dispute the monetary claims made by the tenant.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claims on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant's application were to be provided as part

of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 28 of the Act states the following:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony and evidentiary materials submitted by both parties. I accept the evidence of the tenant that they had suffered much distress during this tenancy. The onus is on the tenant, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffer a loss in the amounts claimed.

It is clear that there was a considerable amount of tension between the tenants, particularly between the tenant applicant and LP. Disputes easily became problematic considering the fact that although the tenants had their own personal rooms, the tenants still shared common areas such as the living room and kitchen. As described in the evidence, there was considerable dispute over the use and allocation of the common area facilities and the furnishings. The tenant alleges that the landlord failed to adequately address the issues brought up by the tenants, and alleviate and manage the tension during this tenancy by properly addressing their complaints.

As stated above, I have no doubts that the tenant was unable to enjoy their tenancy due to the conflicts that took place during this tenancy. This is evident by the correspondence between all the parties. As the rental agreement was for multiple tenants and occupants sharing common areas and close living quarters, a breach of a term of the tenancy agreement or *Act* by one party could have a significant and adverse affect on the enjoyment of the tenancy by the other tenants. For example, a no pet clause that applies to all parties, if breached, could have a significant impact on the

other tenants' enjoyment of the home if one party were to breach that term.

Furthermore, disputes over the use of common areas, such as the case referenced in this dispute, could significantly impact a tenant's right to quiet enjoyment of not only the common areas, but the entire home. In this case, I find the tenant has established that there were multiple issues that they raised with the landlord, including reports of a dog in the rental unit which had defecated on the property, and a dispute over the use of the common areas and furnishings.

I find that the landlord failed to provide sufficient evidence of any proper investigations that were conducted by them, or any written warnings and notices were issued in response to the tenant's complaints. The landlord responded in their evidence that the dog and dog feces issues was addressed and resolved after the landlord informed LP that dogs were not allowed. Although this one issue may have been addressed without need of any formal written warnings, or notices, I note that there were other issues raised by the tenant that were seemingly ignored or dismissed by the landlord.

I am satisfied that the tenant provided sufficient evidence to support that there was an ongoing and unresolved dispute over the ownership and use of the couch in the common area. This is further supported by a letter that was written by LP. Although I acknowledge that the landlord had the difficult task of managing tenancies where interpersonal issues may arise, I find that this dispute in particular pertained to a potential breach of the tenancy agreement, and therefore fell within the landlord's responsibility to manage. In this case, this role would belong to the landlord, or their designated agent(s). I find that the landlord had concluded that ET was responsible for much of the conflict in the home. Although ET may have been responsible for starting, or contributing, to the growing tension in the home, the landlord has failed to provide evidence that ET or any of the other tenants were served with warning letters or notices for their behaviour. Instead, I find that the landlord dismissed ET's complaints as "unfair", and relied on the police when the tension grew even more.

Furthermore, I note the landlord admitted to entering the rental home on multiple occasions without giving the tenant ET notice beforehand, stating that "if the situation doesn't require [ET], there shouldn't be a need to give notice as the whole house isn't rented to [ET]."

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

Residential Tenancy Policy Guideline #7 provides further clarification on the definition of “reasonable purpose” which includes:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

I note that in this case, the common areas are included as part of the payable rent, and therefore although the tenant may not have exclusive use of these common areas, the tenant is still entitled to be given proper notice before entry by the landlord, unless the exception is allowed under the *Act*. In this case, I find that the landlord admitted to “consistently enter[ing] the house without notice”, which I do not find justified, nor done with proper notice as required by section 29 of the *Act*.

I am satisfied that the landlord failed in their obligations to ensure the tenant’s right to quiet enjoyment of the rental unit from September 2021 to when they moved out on

January 27, 2022. I must now consider whether the tenant is supported the amount claimed, which in this case is a 100% refund of their rent.

Although I sympathize with the tenant and the fact that they suffered greatly during this tenancy, I find that they did not establish how the amount requested was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the 100% loss the tenant is seeking in this application.

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As noted above I find that the landlord’s actions had significantly impacted the tenant’s right to quiet enjoyment during this tenancy. I find that the tenant faced significant distress as a result of the landlord’s actions. However, I do not find that any significant loss has been proven. Although the tenant did establish that there were issues not addressed in this tenancy, and that the landlord did enter the rental unit on multiple occasions without proper notice, the onus still falls on the applicant to support their claim.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant compensation in the amount of \$250.00 in nominal damages for the loss of quiet enjoyment during this tenancy from September 2021 to January 2022 (\$50.00 per month x 5 months). Although the landlord did provide the tenant the equivalent of one month’s rent as compensation for January 2022, this right to compensation is required and triggered by the issuance of a 2 Month Notice, and does not affect the tenant’s right to claim for damages or losses that took place during the tenancy.

The tenant also applied to recover AirBnb charges for stays in January and February 2022. As noted above the onus falls on the tenant to support their claims. In this case, I find that the tenant moved out after they were served with a 2 Month Notice to End Tenancy for Landlord's Use. I am not satisfied that the tenant had established that the home was unsafe for occupation, or that their safety, or the safety of their belongings, was at risk if they did not move out immediately.

The duty to mitigate losses is only one of the criteria that needs to be met when making a claim. As stated earlier in this decision, the claimant must not only prove the value of the loss, the claimant must also prove that the losses were solely due to the other party's contravention of the *Act* or tenancy agreement. Only after these requirements are met, can the applicant be successful in their claim. In consideration of the claim for AirBnb charges, I am not satisfied that the tenant had sufficiently supported that these losses were due to the landlord's contravention of the *Act*. Accordingly, I dismiss these claims without leave to reapply.

I note that much of the tenant's application references the conduct, and specifically the noncompliance of the landlord and their agents. The Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a)contravened a provision of this Act or the regulations,
- (b)failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c)given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

As the tenant's application had merit, I allow the tenant to recover the filing fee.

Conclusion

I issue a \$350.00 Monetary Order in favour of the tenant.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the tenant's application without leave to reapply.

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 7, 2022

Residential Tenancy Branch