



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes: MNDCT FFT

### **Introduction**

The tenant seeks compensation against their former landlord pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

A dispute resolution hearing was held on June 17 and on December 2, 2022. Attending both hearings were the tenant and the landlord. A witness for the landlord attended the first hearing. All parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

### **Issue**

Is the tenant entitled to compensation?

### **Background and Evidence**

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below. Further, while the parties were involved in a previous dispute (pertaining to an application made by the landlord) from which a decision was issued on September 21, 2021, I am not bound by any findings of fact or law made in that decision. Nor, I must emphasize, will I consider anything in that decision to be evidence of claims made in the present application.

The tenancy began February 1, 2020 and ended on May 31, 2021. Monthly rent was \$1,500.00. A copy of the written tenancy agreement was submitted into evidence.

In their application, the tenant seeks \$15,000.00 in compensation for alleged breaches by the landlord of sections 23, 28, 32, 35, and 65 of the Act. They seek \$750.00 in compensation under the doubling provision provided by section 38 of the Act, in respect of a security deposit that was unlawfully withheld.

Additional claims for compensation for a mirror, chicken coop materials, a wood dresser, a computer, gym mirrors, a laser printer, a solid oak table, a truck canopy, a TV wall mount, for clothing and shoes, for printing costs. The tenant also seeks compensation for moving expenses in the amount of \$699.00. A further \$1,500.00 in compensation is sought for, as described in the tenant's submission, "PAYING 500\$ MORE DUE TO ILLEGAL EVICTION OFF SET JUNE 2021 - AUGUST 2021 WHEN HEARING TOOK PLACE". Last, the tenant seeks \$10,000.00 in aggravated damages. In total, the tenant seeks \$31,958.29.

The tenant testified that she seeks \$15,000.00 for the landlord's having breached her right to quiet enjoyment. Her business was not working out and eventually she had to move out; she was having difficulty paying the rent. The tenant explained that the landlord started trying to evict her in June 2020. The landlord made it clear in early December 2020 that the tenant needed to leave by the end of that month. The landlord intended to move back into the property with his wife, kids, and goats.

However, the landlord then told the tenant that she could stay. According to the tenant the landlord waffled between saying she could and could not stay. It was "ping pong" between June and December, she remarked, and it felt like she was "at the whim of the landlord and what he wanted." Regardless, the tenant continued to look for a new place to live, but this proved difficult given the pandemic and the lack of availability. But the landlord apparently "judged me on that" and apparently everything was the tenant's fault (for not finding a place sooner).

The tenant finally found a place, a vacation rental. However, the tenant was unable to bring much of her property with her and "had to leave things behind." On June 15, 2021, the tenant finally found a proper rental property.

The tenant argued that the landlord followed none of the rules, that there was no proper notice to end the tenancy, and "no decency." In response to a question, I asked of the tenant about what sort of notice to end tenancy the landlord gave her, the tenant responded that the landlord never gave her anything.

In respect of the aggravated damages, described by the tenant as "super aggravated damages," the tenant testified that she lost her job due to the landlord's behavior. She seeks \$10,000.00 for this. The tenant explained that her interactions with the landlord were "really stressful" and that it was stressful whilst looking for a new home. She had to leave work to look for places. And she experienced "lots of anxiety and fear."

The tenant was unable to concentrate at work and was frequently in tears. She was making mistakes. Eventually, she lost her job as a result.

The landlord submitted a 22-page written submission.

During cross-examination (which spanned both hearings), the landlord asked the tenant several questions about her employment. I did not, with respect to the landlord, find the questions particularly relevant and thus will not reproduce them here. The landlord asked the tenant how many times or how often she experienced anxiety and cried, to which the tenant said "I can't recall. At least ten times." And regarding the question itself the tenant remarked "that's retarded." There was also a brief exchange about the parties' awareness of mold in the property.

The landlord asked the tenant about what her best evidence was respecting the alleged breach of the Act, and regarding her right to quiet enjoyment. The tenant then referred to telephone calls and conversations that ensued. She spoke about the landlord's constant changing of his mind and that he expressed regret for inconveniencing her. The tenant explained that she never felt that there was any guarantee about when the landlord might or might not eventually move into the rental unit. She took this to mean that the tenancy was unstable.

The landlord asked the tenant whether her claim that being contacted by the landlord an average of 1.5 times per month for a period of several months is consistent with the alleged breach of the tenant's right to quiet enjoyment. She answered, "yes, if is [about a] tenancy situation."

The landlord testified that there was a defamation lawsuit in court against the tenant's former employer regarding false statements that the employer had made about the landlord. From this, the landlord argued that he was concerned that the tenant would be fabricating evidence in support of this claim. There was, the landlord argued, a "common narrative" such that the employer was sending the tenant home because of the landlord's actions. That the landlord's behavior (about moving into the property) caused the tenant to be unable to perform at work, and that she had to look for a new place to rent. The landlord argued that the tenant did not leave work as frequently as she has claimed. She didn't lose her job. And, as an aside, there was no discussion about any mold until February.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above-noted sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

### **Claim for Security Deposit and Doubling Provision**

The tenant provided almost no testimony and made no submissions or argument during either hearing regarding this claim. As such, I need not consider this aspect of the tenant's application and this claim is dismissed (without leave to reapply).

### **Claims for Property Left Behind and Property Lost Due to Black Mold**

The tenant provided almost no testimony and made no submissions or argument during either hearing regarding these two claims. Though there were many references to the black mold in the tenant's evidence, the tenant spoke very little about this particular claim (or about the landlord's alleged breach that might be related to this claim). No argument or submissions were made during either hearing regarding these two claims.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the tenant has not proven on a balance of probabilities these claims.

### **Claim for Moving Expenses, Aggravated Damages, and Rent Refund**

The tenant seeks various compensation (for storage fees, vehicle storage insurance, gas expenses, rent offset for a new rental) purportedly related to “an illegal eviction process.”

What the tenant has not proven on a balance of probabilities is how the landlord breached the Act such that any of these claims might be considered. This includes the claim for \$10,000 in aggravated damages and \$15,000.00 for ten months worth of rent to be refunded. The tenant’s primary argument is that the landlord breached her right to quiet enjoyment by contacting her and giving her a head’s up that he might be moving into the property at some point. Being contacted once, maybe twice a month, is not, in my finding, behavior that rises to the level such egregiousness that a tenant’s right to quiet enjoyment is breached.

It is not lost on me that the tenant was experiencing a higher-than-normal level of uncertainty about how long the tenancy would last. However, the tenant was well aware that the landlord would eventually move back into the property with his wife and kids. Indeed, it could be said that the landlord was giving the tenant a head’s up that other landlords might not have done.

That the landlord kept changing his mind, though probably quite bothersome from a certainty perspective, is not unreasonable. For reasons that were never made clear to me, the tenant appeared to suffer a great deal of stress and anxiety over a situation that was foreseeable from the very start of the tenancy: that the landlord would at some point move back into the property. Indeed, the tenant could have simply told the landlord, give me a *Two Month Notice to End Tenancy for Landlord’s Use of Property* when you know what you want to do, otherwise, stop bothering me. However, the parties continued to engage in monthly dialogue about the landlord’s intentions.

Taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the tenant has not, on a balance of probabilities, proven that she is entitled to compensation for these claims.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant’s filing fee.

In this dispute, as the tenant was not successful in any of the claims advanced, the application to recover the cost of the application filing fee is dismissed.

### Conclusion

For the reasons given above the tenant's application is hereby dismissed, without leave to reapply.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act and by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: December 6, 2022

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Residential Tenancy Branch