Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to ss. 33 and 67 to be paid back for the cost of emergency repairs made during the tenancy;
- a monetary order pursuant to s. 67 compensating for loss or other money owed; and
- return of her filing fee pursuant to s. 72.

T.C. appeared as the Tenant. B.G. appeared as the former Landlord. B.G. was represented by counsel. N.S. appeared as the Landlord's former property manager and as agent for the corporate co-respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I asked the Tenant whether she served her application and evidence on the respondents. Both respondents acknowledged receipt of the Notice of Dispute Resolution but denied receipt of any supporting evidence. The Tenant testified that she served the application and evidence via registered mail, though could not recall the date nor was I provided with proof of service. The Tenant provided a monetary order worksheet, a one-page handwritten note, and a schedule of parties to the Residential Tenancy Branch as her supporting evidence for this application.

Dealing first with the Notice of Dispute Resolution, I find it was served in accordance with s. 89 of the *Act* by way of registered mail, which the respondents acknowledge receiving.

Looking next to the evidence provided by the Tenant, I find it telling that both respondents denied receipt of the evidence, despite acknowledging receipt of the Notice of Dispute Resolution. The Tenant provides no proof of service to support the evidence was included in the registered mail. I find that it is more likely than not that the supporting documents provided to the Residential Tenancy Branch by the Tenant was not included in the registered mail package sent to the respondents. Accordingly, the evidence provided by the Tenant to the Residential Tenancy Branch is not included and shall not be considered by me as to do so when it has not been served would be procedurally unfair to the respondents.

Counsel confirmed that the Landlord served no evidence in response to the application as no documentary evidence served on her thus making it difficult to respond.

N.S. advised having served the Tenant with response evidence by way of email after having obtained a substitutional service order from the Residential Tenancy Branch on May 19, 2022. I am advised that he sent his response evidence to the Tenant, though the Tenant denies receiving it. When asked to confirm when it was sent, N.S. advised this was done on April 26, 2022, March 14, 2022, or November 2, 2022. I note some of the dates provided by N.S. predate when he obtained the substitutional service order. I have not been provided with a copy of an email with the attached documents by N.S. as proof of service.

Given that Tenant denies receipt of the corporate respondent's evidence and that N.S. has failed to provide proof of service, I find that corporate respondent has failed to demonstrate service of its evidence. I find that it would be procedurally unfair to include and consider the evidence as part of these proceedings as it has not been served.

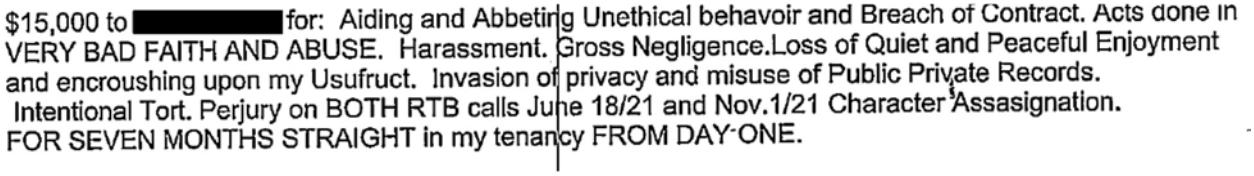
Preliminary Issue – Tenant's Claim to be Paid Back the Cost of Emergency Repairs

Review of her application indicates this was in relation to the Tenant's claim of replacing a broken shower head and hose. During the hearing, the Tenant advised that she was no longer pursuing her claim for emergency repairs as she took the items at the end of the tenancy.

As the Tenant is no longer pursuing this claim, it is dismissed without leave to reapply.

Preliminary Issue – Naming of Corporate Respondent

The Tenant names the former property management property as a respondent in this matter. Review of the application states the following with respect to this portion of the claim:


$15,000 to [redacted] for: Aiding and Abbeting Unethical behavoir and Breach of Contract. Acts done in VERY BAD FAITH AND ABUSE. Harassment. Gross Negligence.Loss of Quiet and Peaceful Enjoyment and encroushing upon my Usufruct. Invasion of privacy and misuse of Public Private Records. Intentional Tort. Perjury on BOTH RTB calls June 18/21 and Nov.1/21 Character Assasignation. FOR SEVEN MONTHS STRAIGHT in my tenancy FROM DAY ONE.

The redacted portion above is N.S.'s name, which I have redacted in the interest of his privacy.

There are two issues with the claim. First, the application and the oral submissions from the Tenant make it clear that she is seeking compensation from N.S. in his personal capacity, despite naming the management company as the Landlord. It is entirely inappropriate to seek compensation from a party that is not even named in the application. Secondly, and this is most critical here, the property management company is not the landlord.

The *Act* regulates residential tenancies in BC and the Residential Tenancy Branch only has delegated authority to deal with disputes under the *Act*. The Residential Tenancy Branch's jurisdiction is, therefore, limited to disputes between landlords and tenants as it relates to residential tenancies or under narrow circumstances, disputes between tenants and purchasers as per s. 51(2) of the *Act* or strata corporations as per s. 138 of the *Strata Property Act*. In this matter, the property manager was merely an agent of the Landlord. Strictly speaking, the property manager was not privy to the tenancy agreement and is a third party to the contract. It is not the landlord.

Under the circumstances, I find I do not have jurisdiction to determine the dispute between the property manager and the Tenant. The property manager is not party to the tenancy between the Landlord and Tenant. Any liability due to the property manager's alleged breach of the *Act* would accrue to the Landlord acting as her agent. If the property manager acted outside its authority as agent of the Landlord, that is a

matter to be dealt with between the Landlord and the property manager. It is outside the four-corners of this process.

I remove the corporate property manager from this claim as it was improperly pled and is outside the jurisdiction of the *Act*.

Preliminary Issue – Tenant's Adjournment Request

During the hearing, the Tenant made a request for an adjournment. I summarily declined her request. To be clear, the Tenant made the request near to the conclusion of the hearing and did so on the basis that her documents were still in storage and that she could not adequately prepare for the hearing.

Rule 7.9 of the Rules of Procedure sets out the criteria for granting an adjournment and states the following:

> **7.9 Criteria for granting an adjournment**
> Without restricting the authority of the arbitrator to consider 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;
> - whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> - the possible prejudice to each party.

I declined the adjournment request without need for additional submissions as the Tenant made the request for additional time to prepare for her own application. In other words, the basis of the request was the result of her own inaction. I note that this matter was filed with the Residential Tenancy Branch in April 2022 and the hearing took place in December 2022. It is inconceivable to me that the Tenant did not have sufficient time to get organized and prepare for her own application. The adjournment, had it been granted, would have been deeply prejudicial to the respondents by having this matter delayed further after the hearing had already commenced and submissions made. It is for these reasons that the adjournment request was denied. The hearing concluded within the time scheduled.

Issues to be Decided

1) Is the Tenant entitled to monetary compensation?
2) Is the Tenant entitled to the return of her filing fee?

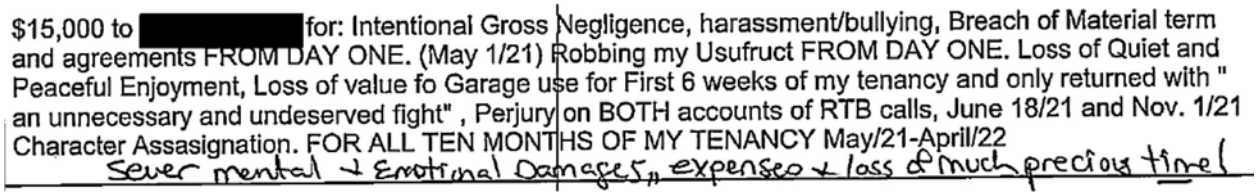
Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant vacated the rental unit on March 31, 2022.
- Rent of $2,800.00 was due on the first day of each month.

The Tenant's application states the following with respect to her claim against the Landlord:


$15,000 to [redacted] for: Intentional Gross Negligence, harassment/bullying, Breach of Material term and agreements FROM DAY ONE. (May 1/21) Robbing my Usufruct FROM DAY ONE. Loss of Quiet and Peaceful Enjoyment, Loss of value fo Garage use for First 6 weeks of my tenancy and only returned with " an unnecessary and undeserved fight" , Perjury on BOTH accounts of RTB calls, June 18/21 and Nov. 1/21 Character Assasignation. FOR ALL TEN MONTHS OF MY TENANCY May/21-April/22
Sever mental + Emotional Damages, expenseo + loss of much precious time(

I have redacted the Landlord's name in the interest of her privacy.

The Tenant alleges she was harassed and maligned by the Landlord and her property manager throughout the tenancy. The Tenant further alleges that the friction between her the Landlord began on the first day of the tenancy after a dispute regarding the Landlord's plant, which the Tenant says she wanted her to keep within the rental unit. The Tenant testified that she was served with a notice to end tenancy on the first day of the tenancy by the Landlord following this dispute. I have not been provided with a copy of the notice to end tenancy.

The Tenant says the Landlord had a revolving door of property managers for the first few weeks of the tenancy, though it appears that N.S. came into the role and remained in it for some time. The Tenant says that she was willing to vacate and asked for help finding a new place from the Landlord or her property manager but was offered no help.

The Tenant further alleges that the landlord-tenant relationship was abusive and that she was humiliated by the Landlord and made to be an object of gossip in the neighbourhood. The Tenant says the Landlord prevented her guests from attending the property and that she was served with another notice to end tenancy by the Landlord's property manager while one of her friends came to visit. The Tenant says the property manager obtained court records pertaining to her, which she says was in breach of her privacy and was a trespass.

The Tenant's monetary claim, as pled within the application, is for $30,000.00. I enquired how the Tenant came to this amount. The Tenant testified that she was advised by someone at the Residential Tenancy Branch to seek a high amount and that ultimately the assigned arbitrator would determine the appropriate claim. She says she was willing to settle for less but that the respondents declined her offer.

I have previously been involved in a dispute between these parties, a point I advised the parties of at the outset of the hearing. No issues were raised by the parties with respect to my involvement in the previous application. I note that in that matter I cancelled two notices to end tenancy: a One-Month Notice and a Two-Month Notice. I am advised by counsel for the Landlord that the Tenant was evicted after a One-Month Notice issued by the Landlord after the parties' attendance before me was upheld. I was advised the hearing for that application was held in March 2022 and was provided with the file number on that matter.

I note that in both the application before me and the one heard in March 2022 the Tenant advanced monetary claims similar to the present application, though the amounts sought by the Tenant have increased from $1,000.00, to $12,000.00, and now $30,000.00. In both decisions, those claims were severed pursuant to Rule 2.3 of the Rules of Procedure and dismissed with leave to reapply.

Landlord's counsel argued the matter ought to be dismissed as the pleadings do not reveal a valid claim and lacks sufficient particulars.

Analysis

The Tenant seeks monetary compensation.

Landlord's counsel argues that the Tenant's claim lacks a valid claim in law and has insufficient particulars. I do not agree with Landlord's counsel. I appreciate the claim is

nebulous and is pled with use of quasi-legal language in a manner consistent with someone who has no knowledge of the law. Further, some of the claims are in relation common law claims in tort, none of which can be adjudicated by the Residential Tenancy Branch. However, boiled down to its basic aspect, the Tenant's application demonstrates she is claiming for breach of quiet enjoyment during her tenancy. That is a claim is one that is recognized in the *Act* and one for which I do have jurisdiction.

I have also turned my mind to whether the doctrine of res judicata may apply to this case. I note that both and the arbitrator in the March 2022 decision dismissed the monetary claims with leave to reapply such that the claim has yet to be determined. I find that res judicata does not apply here.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 28 of the *Act* sets out a tenant's right to the quiet enjoyment of their rental. These include the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit as set out under s. 29, and the right to use common areas for reasonable and lawful purposes, free from significant interference.

In this instance, I find that the Tenant has failed to demonstrate the Landlord breached the *Act* at all. The Tenant provided wide ranging submissions and allegations without providing any supporting evidence. The submissions were so generalized that they were without substance or meaning. She requested an adjournment to better prepare for her application midway through the hearing. As noted above, I declined the Tenant's request. Though I did not summarize in the background and evidence section, at one

point the Tenant testified that she debated appearing to the hearing at all. It is clear to me that the Tenant was not seriously pursuing this claim. She did not even bother to organize evidence in support of her application despite having months to do so, much less serve it. The present application borders on an abuse of process.

The Tenant says she was issued with multiple notices to end tenancy. I note that this is true based on the previous hearings before the Residential Tenancy Branch. However, one of those notices was upheld, the other was withdrawn, and the other two were cancelled by me. I note that I previously found the Landlord issued the Two-Month Notice in bad faith. Despite that, the Landlord is permitted under the *Act* to issue notices to end tenancy. Mere issuance of multiple notices to end tenancy, a right for which landlords are entitled under the *Act*, does not demonstrate a breach of quiet enjoyment on its own. One would expect documents, correspondence, maybe even witnesses, all of which would be required to demonstrate that the Landlord exercised her right under the *Act* to issue notices to end tenancy such that they constituted a breach of the Tenant's right to quiet enjoyment. Rather than any of this, I am left with the Tenant's bare submissions.

Finally, the Tenant advances a monetary claim for $30,000.00, though could provide no rational basis for why she seeks this amount other than she did not want to be constrained by her pleadings when seeking compensation. This is not a claim in tort where general damages are assessed as a rough form of compensation for someone who can prove they were wronged. Monetary claims under the *Act* require an applicant to quantify their loss. In this instance, I find that the Tenant has failed to do so and appears to have drawn this number from thin air.

I find that the Tenant has failed to prove her claim on a balance of probabilities. It is dismissed without leave to reapply.

Conclusion

The Tenant's claim for monetary compensation under s. 67 of the *Act* is dismissed without leave to reapply.

The Tenant was unsuccessful in her application. I find that she is not entitled to the return of her filing fee. Her claim under s. 72 of the *Act* is dismissed 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: December 14, 2022

Residential Tenancy Branch