



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant application: MNDC  
Landlord application: MND-S, MNDC-S, FF

### **Introduction**

This hearing convened by teleconference on July 26, 2022, to deal with the parties' respective applications for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- compensation for a monetary loss or other money owed.

The landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the cost of the filing fee.

The tenant, tenant's legal representatives, and the landlord's agents (landlord), attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties confirmed receipt of the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

After 73 minutes, it was clear there was insufficient time to conclude all the issues in dispute in the time allotted. The hearing was adjourned. An Interim Decision was issued on July 26, 2022, in which the hearing was adjourned to a date and time set by the Residential Tenancy Branch (RTB). The Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the tenant, different legal representatives for the tenant, the landlord's agents, and the landlord's witness were in attendance and the hearing continued. Both parties were reminded that they were still affirmed for the continuation of the hearing. The hearing continued and the parties provided their submissions and evidence, and responses.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

Is the landlord entitled to keep the tenant's security deposit, to further monetary compensation from the tenant, and recovery of the cost of the filing fee?

#### Background and Evidence

The tenancy began on May 1, 2015 and ended on or about the end of November 2020. The tenant paid a security deposit of \$334. The tenancy ended by way of an order of possession of the rental unit being granted to the landlord for an effective date of November 30, 2020.

The tenant's monetary claim is \$15,862.75, comprised of \$10,862.50 for general damages and \$5,000 for aggravated damages. The claim is described as 50% of the rent during the tenancy (May 15, 2015 to November 30, 2020) 66.5 months x \$163.50 (50% of \$327) = \$10,862.50.

As to the aggravated damages, the tenant describes the claim for the landlord's "negligent and egregious behaviour in dealing with these issues".

In support of her application, the tenant submitted a 109 page written submission, containing police reports, incident reports, written recounting of events during the tenancy, and a transcript of an unauthorized recording between the tenant and the landlord's agent. The tenant also filed video evidence.

The tenant testified to the following: The tenant found herself being harassed by another tenant and reported the incidents to the landlord's agent. During the tenancy, there were multiple issues with another tenant in the building, which the landlord failed to resolve. The matters reached a boiling point when the other tenant, "T", assaulted the tenant because T wanted a fight with the tenant. The police would only say to stay away from each other. The tenant could "honestly say" that she felt harassed every day.

The tenant submitted that the landlord turned off her hydro.

A written summary was provided by the tenant, in addition to many other written other summaries. Included in the written summary was the following:

1. My right to quiet enjoyment of my home was breached during the course of my tenancy, which began on May 1, 2015. Throughout my tenancy, I experienced harm as a result of another tenant constantly harassing, stalking, and bullying me. This tenant's behaviour included standing outside my door, waiting for me to leave, constantly opening and slamming the door to the recycling room, harassing and yelling at me.

2. This harm was compounded by the [ ] management who failed to address this situation despite having received numerous complaints via letter and incident reports, all of which were sent directly to [ ]. While these behaviours occurred, I repeatedly requested the landlord (the [ ]) to address this behaviour with the tenant but they did not. Subsequently, I was harassed by the [ ] management, including receiving a letter from [ ] telling me to apply to BC Housing for a transfer "if [I am] finding it difficult to tolerate living in this unit."
3. I first advised the [ ] on November 16, 2015 of the harassment, stalking, and bullying by the other tenant.
4. I am seeking general damages in the amount of: 50% of my rent during my tenancy (May 15, 2015 to November 30, 2020): 66.5 months x \$163.50 (50% of \$327) = \$10,862.50.
5. I am also seeking aggravated damages, for the [ ]'s negligent and egregious behaviour in dealing with these issues, in the amount of \$5,000.

[Reproduced as written except for anonymizing personal information to protect privacy]

Landlord's response –

The landlord, LR, said the landlord was mission-driven and non-profit providing affordable housing for independent living.

*Res judicata -*

The landlord argued that the matters in the tenant's present application had been decided upon in a previous dispute resolution hearing between the parties. In that dispute resolution, the tenant contested a 1 Month Notice for cause issued by the landlord, the second such Notice issued to the tenant in during this tenancy. The landlord referred to the previous dispute resolution file, with number, which is referenced on the cover page of this Decision. In that dispute, the landlord and tenant entered into a settled agreement, on July 16, 2020, which included the language as follows:

*"These terms comprise the full and final settlement of all aspects of this dispute for both Parties."*

The landlord submitted that because the issues in that matter involved allegations of misconduct by the tenant towards T, that settled decision concluded all of the matters in dispute. For this reason, the tenant is estopped from pursuing her claim.

The landlord's relevant evidence included the previous settled agreement Decision and written argument.

As to the response to the tenant's monetary claim, the landlord testified to the following: The landlord fulfilled all their rights and responsibilities to the tenant and addressed all complaints and issues brought forth by the tenant, by following their complaint procedure. Just because the tenant did not like the results of their investigations does not mean they did not fulfill their obligations. The tenant made unauthorized recordings through out the tenancy, including video recordings of T and audio recordings of the former landlord's agent.

Landlord's witness, YB –

YB testified that she no longer worked at the residential property, and testified as to the following: The landlord received many complaints from other tenants in the building about this tenant. The complaints involved the tenant confronting other tenants and recording them. Due to the many complaints from other residents, the landlord believed it was time to end the tenancy by issuing the 1 Month Notices to the tenant. The tenant was tormenting other tenants with her recordings and there had been a police report due to the tenant attacking another tenant. As to the hydro, there was not intention there, it was a timing matter as a notice to end the tenancy had been given and they believed the tenancy was ending. For that reason, the landlord put the hydro in their name so the rental unit would continue to have power. The tenant was not without power very long.

In cross examination, the witness said that the other tenant, T, was not given preferential treatment as both tenants were given warning letters. However, the landlord is not at liberty to disclose any private information about what actions they may have taken with another tenant.

The landlord's agent, LR, testified to the following: The landlord was no longer receiving complaints from other tenants about noise in the rental unit, which the tenant used to complain about constantly. The tenant has said that she wanted to have recordings so she could take this matter to "the highest court in the land".

LR also went through the documentary evidence at the hearing, providing the responses.

Landlord's application –

As to the landlord's monetary claim, the landlord said that they would stand on their documentary evidence as they were unlikely to ever get anything.

The landlord's monetary claim is \$746.50 for costs over and above the security deposit for cleaning, hauling, and key replacement as the rental unit was abandoned and left dirty. The remaining claim is \$334, which is the amount of the tenant's security deposit held by the landlord as they were not provided a forwarding address until receiving the tenant's application. Thereafter, the landlord applied to retain the security deposit.

The breakdown of the costs are \$211 for suite cleaning, \$60 for carpet cleaning, \$724.50 for hauling, \$80 for unreturned keys, and \$5 for a laundry card.

The landlord's relevant evidence included invoices and the move-in and move-out condition inspection report (Report).

The documentary evidence shows that the tenant failed to attend the move-out inspection, despite having an arranged time.

Tenant's response –

The tenant provided no clear oral response to the landlord's monetary claim and no written response. The responses at the hearing primarily related to her own claim.

The advocate said the tenant left the security deposit as the suite was not cleaned as she was exhausted and depressed and did not have the time or energy. The tenant did not dispute the claim.

Analysis

I have reviewed the extensive evidence submitted for this hearing and will refer to evidence relevant to my findings.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove **all** of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the other. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the party did whatever was reasonable to minimize the damage or losses that were incurred.

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 has not met the onus to prove their claim and the claim fails.

#### Tenant's application –

To begin with, I placed no weight on the tenant's unauthorized recordings of T and the landlord's agent. Parties were unaware of being recorded and I do not find this type of evidence to be reliable as unauthenticated recordings can be altered or modified.

*General damages, 50% of rent during the tenancy, May 15, 2015 through November 30, 2020 –*

I considered whether the tenant did whatever was reasonable to minimize the damage or losses, as required by Act. I find she did not.

I find a reasonable way to minimize a claimed loss is to take immediate steps to make the claim. In this case, the tenant said she was harassed from the beginning of the

tenancy, or May 15, 2015, and did not make this claim until over a year after the tenancy ended on November 30, 2020.

I find by not bringing this claim in a timely manner after noticing the issue the tenant allowed the claim to build and grow during the length of the tenancy.

On this basis, I find the tenant failed to mitigate her loss as required by section 7(2) of the Act as it is unreasonable to wait until the tenancy was over and years after 2015, at the first alleged incident, to take any appropriate steps.

I therefore find the tenant submitted insufficient evidence to meet her burden of proof, and as a result, I **dismiss** the tenant's application for general damages in the amount of \$10,862.50, **without leave to reapply**.

*Aggravated damages, \$5,000 –*

Tenancy Policy Guideline 16 applies and provides as follows,

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

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The landlord's evidence, some of which was included with the tenant's evidence shows a long and troubled tenancy. The landlord provided numerous complaints from other tenants in the residential property, which I find contain disturbing allegations against the tenant. The complaints from the other tenants included letters and complaint forms.

Another document submitted by the landlord was an October 2, 2019, letter from a chiropractor who reported that the tenant phoned his office in an attempt to influence his testimony as stated in his letter regarding a dispute with T. According to the letter, the tenant claimed T's injuries were fictitious and not due to an assault.

Another letter submitted by the landlord was from a dentist's office who treated T, who reported receiving a phone call from a woman who would not identify herself, but



proceeded to explain that the incident involving T was a lie and repeatedly said that T was a liar.

Additionally, the landlord's evidence relates to two previous dispute resolution hearings, both of which involved the landlord's 1 Month Notices to end the tenancy for cause. In both disputes, the causes listed were related to the conflicts between the tenant and T. The parties reached a settlement prior to the hearing on the 2017 1 Month Notice. The tenant's legal representatives wrote to the landlord's agent's, RM, in a letter of December 4, 2017, and stated that the tenant understood the seriousness of the eviction notice and advises that the conflicts between the tenant and T have stopped since the eviction notice. The letter went on to say that the tenant promised to avoid running into T and to not film T anymore. Due to those assurances, RM agreed to withdraw the October 25, 2017, 1 Month Notice, as indicated in a letter to the tenant on December 12, 2017.

I have reviewed the extensive amount of evidence received from both parties and find that much of the evidence was cumulative to evidence in the two previous dispute resolution applications by the tenant seeking cancellation of the Notices. A large amount of evidence was the same evidence filed in the previous disputes and included the same issues as in those applications. Both matters were settled. In the first dispute, the tenant promised to avoid encounters with T and to not film T anymore. In the second settlement, the tenant agreed to not engage with T if the tenant encountered T in the common areas.

I find the evidence shows the landlord treated the tenant fairly and as they would any other tenant, when receiving complaints from residents of the residential property about the tenant's behaviour. The evidence shows that tenant was given ample opportunity to correct her behaviour, which shows that she did not, as the tenant was issued two 1 Month Notices to end the tenancy during this tenancy. Both disputes of the 1 Month Notice ended in a settled agreement with the tenant promising to correct her behaviour towards T. In my view, this shows the tenant's behaviour was in question as the second agreement resulted in an order of possession of the rental unit being given to the landlord, without a hearing on the merits of either of the landlord's Notices for cause dealing with the tenant's behaviour.

I find most, if not all, the evidence submitted by the tenant was cumulative evidence filed with her two previous applications to dispute the Notices. I do not find this

evidence shows the landlord acted inappropriately towards the tenant, rather I find the evidence shows that it was the tenant's behaviour which caused this tenancy to end. I find the landlord's evidence shows that the landlord dealt with many instances of complaints from other tenants about the tenant's behaviour through out this tenancy.

This leads me to conclude that the tenant was equally, if not largely, responsible for the issues between the tenant and T. Otherwise, I would have expected the tenant to proceed to hear the merits of the landlord's two 1 Month Notices involving her conduct towards T in order to clear her role in these disputes. When evaluating the extensive amount of evidence, I find the landlord acted appropriately when dealing with two difficult tenants. For these reasons, I find the tenant submitted insufficient evidence to support her claim for aggravated damages.

Therefore, I find the tenant submitted insufficient evidence to support her monetary claim against the landlord. I **dismiss** the tenant's claim of \$15,862.75, comprised of \$10,862.50 for general damages and \$5,000 for aggravated damages, **without leave to reapply**.

*Landlord's application –*

Section 37 (2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all keys or other means of access to and within the residential property.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I find that the landlord provided sufficient and undisputed evidence that the tenant did not leave the rental unit reasonably clean and undamaged, less reasonable wear and tear. I therefore find the tenant did not comply with her obligation under the Act, and that it was necessary for the landlord to incur the costs claimed. Furthermore, I find the evidence to accurately show the extent of the cleaning required caused by the tenant and that these costs were reasonable. I also find the landlord submitted sufficient evidence to show the tenant did not return the key or laundry card.

I therefore find the landlord submitted sufficient evidence to support their claim of **\$211** for suite cleaning, **\$60** for carpet cleaning, **\$724.50** for hauling, **\$80** for unreturned keys, **\$5** for a laundry card and the filing fee of **\$100**. I therefore find the landlord has established a total monetary claim of **\$1,180.50**.

I order that the landlord retain the security deposit of **\$334** in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 of the Act for the balance due of **\$846.50**.

The landlord is provided with a Monetary Order (Order) in the above terms and the tenant must be served with this Order if enforcement is necessary. Should the tenant 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.

### Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application for monetary compensation is granted and they have been awarded a monetary order in the amount of **\$846.50**.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 6, 2023

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Residential Tenancy Branch