



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

**CNR, CNL, MNRT, MNDCT, DRI, LRE, OLC, FFT
OPU-DR, MNU-DR, MNDL, MNDCL, FFL**

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") pursuant to section 46;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- A monetary order for compensation for rent, damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (“10 Day Notice”) pursuant to sections 46 and 55;
- 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 tenant to reimburse the landlord for the filing fee pursuant to section 72.

Attendance

I explained the hearing process to the parties and provided an opportunity to ask questions.

I advised the parties that under Rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under Rule 6.12, and each party confirmed they were not recording the proceedings.

I informed the parties about Rule 6.10 of the Rules. Interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. I asked the parties not to speak over or interrupt any person giving evidence or me. I requested they hold their questions and responses until it was their opportunity to speak.

Each party provided their email address for receiving my Decision.

During the hearing, the parties had the opportunity to make submissions, present documentary evidence, and call witnesses.

The parties are referenced in the singular.

Preliminary issues are addressed.

1. Service by Tenant

The landlord acknowledged receipt of the tenant's documents. Pursuant to the evidence and the landlord's acknowledgement, I find the tenant served their Notice of Hearing and Application for Dispute Resolution on the landlord in compliance with the Act.

2. Service by Landlord

The landlord testified they had not served their Notice of Hearing and Application for Dispute Resolution. The tenant had no notice of the landlord's application.

The *Rules of Procedure* set out how an applicant must serve documents.

Section 2.5 sets out the documents that should be submitted within three days of making the Application; this includes copies of all documentary and digital evidence to be relied upon. The landlords acknowledged they did not comply with sections 2.5 and 3.1.

The landlord is both an applicant and a respondent in this cross-application. Rules 3.5 and 3.16 require the landlord to establish the following:

Rule 3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Residential Tenancy Branch Rules of Procedure Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

At the hearing, I reserved my finding regarding service by the landlord.

Having reviewed the testimony and the Rules, I find the landlord has not complied with the Rules of Procedure as either an applicant or respondent. As the tenant has not had notice of the landlord's application or received evidence, I dismiss the landlord's application with leave to reapply. As the tenant has not received the landlord's documents, I do not consider the landlord's documentary evidence with regard to the tenant's application.

In considering the tenant's application, I consider the oral testimony of the landlord at the hearing in my final determination.

3. Tenant's Forwarding address

The tenant provided their forwarding address at the hearing which is referenced on the first page of this Decision. I therefore find the tenant has complied with the Act regarding provision of the forwarding address effective the date of this Decision.

4. Amendment to Tenant's Claim

The tenant applied to amend their claim to include the return of the security deposit. At the time the tenant filed the Application for Dispute Resolution, they were still living in the unit.

The landlord agreed to the amendment.

The parties agreed the tenant had provided a security deposit of \$1,600.00 at the beginning of the tenancy.

Section 4.2 of the Rules of Procedure provides that a monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the landlord could reasonably anticipate their claim would be amended to include a request for the return of the security deposit. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to allow the tenant to request the return of the security deposit of \$1,600.00.

5. Vacancy and Withdrawal of Claims

The tenant's testified they vacated the unit on December 3, 2022.

Accordingly, the tenant withdrew all claims except:

- 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 for the landlord to return the security deposit pursuant to section 38;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The remainder of the tenant's claims are dismissed without leave to reapply.

Settlement

The parties reached a partial settlement during the hearing.

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order. I discussed settlement with the parties with their consent.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both that I would not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

During the hearing, the landlord acknowledged he has some of the tenant's possessions:

1. Treadmill
2. Pressure washer
3. Barbecue

During the hearing, the parties agreed to meet at the unit on March 4, 2023, between 1:00 PM and 3:00 PM at which time the landlord shall give to the tenant all the tenant's property in the landlord's possession wherever located which includes the above three items.

The Act in section 65(e) allows the Director to make an Order requiring a landlord to return personal property:

65 (1) Without limiting the general authority in section 62 (3) [arbitrator's authority], if an arbitrator finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the arbitrator may make any of the following orders:

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

Further to the agreement between the parties, I Order as follows:

1. The parties shall meet at the unit on March 4, 2023 between 1:00 PM and 3:00 PM.
2. At that time, the landlord shall deliver to the tenant all the tenant's personal property in the landlord's possession, wherever located, including, but not limited to, the above three items, namely:
 1. Treadmill
 2. Pressure washer
 3. Barbecue

4. Should the landlord fail to return the property as ordered, the tenant is at liberty to bring another application to address the matter.

These settlement terms were discussed extensively in the hearing. Each party consented to the terms.

The parties were unable to agree on the remainder of the outstanding issues and the hearing resumed.

Issue(s) to be Decided

Is the tenant entitled to:

- 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*;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- Return of the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

Preliminary

The hearing was scheduled for one hour. Considerable conflicting testimony was submitted in a lengthy hearing of 1 hour and 30 minutes.

Tenancy

The tenant testified they are a family with 3 young children. The entered into a tenancy agreement with the landlord for the upper level of a house. The tenancy lasted for 6 years. They submitted a copy of the tenancy agreement, details as follows:

INFORMATION	DETAILS
Type of Tenancy	Month-to-month
Beginning Date	November 1, 2016
Vacancy Date	December 3, 2022
Rent payable on first of month	\$1,680.00
Security deposit	\$1,600.00
Condition Inspection Report – in or out	no

Tenant's Claims

A summary of the tenant's claims follows.

1. *Dispute of Rent Increase*
2. *Claim for Disruption and Harassment (Loss of Quiet Enjoyment)*
3. *Compensation for Personal Possessions*
4. *Security deposit Return*

1. *Dispute Rent Increase*

The tenant testified the parties agreed to increase the monthly rent from \$1,600.00 to \$1,680.00 effective January 1, 2019. The tenant was not aware at the time that the increase was greater than allowed under the Act. They learned later the landlord was non-compliant with required rent increase procedure and they were under no obligation to accept the increase.

Following January 1, 2019, the tenant paid the increased amount without objection.

The tenant acknowledged they did not complain to the landlord about the increase or ask for a reduction until bringing this application.

The tenant requested an award for \$80.00 a month for the unlawful rent increase from January 1, 2019.

2. Claim for Disturbance and Harassment – Loss of Quiet Enjoyment

The tenant's claim under this heading is akin to a claim for loss of quiet enjoyment. They testified as follows.

The tenant was unable to pay a rent increase demanded by the landlord. The landlord became angry and embarked on a series of actions designed to drive them out of the unit. This included falsely refusing to acknowledge cash payments and a refusal to provide one month's rent as compensation for the issuance of the Two Month Notice.

The tenant requested:

- a. A finding they paid rent and utilities in cash for the month of October 2022
- b. An order requiring the landlord to pay one month's rent as compensation pursuant to the issuance of a Two Month Notice
- c. Compensation for loss of quiet enjoyment

The tenant's key submissions are as follows.

On June 26, 2022, the landlord and both tenants had a meeting in the backyard of the unit. The landlord asked for an increase in rent to \$3,000.00. The tenant said they could not afford it and offered \$2,000.00.

The tenant said this was the beginning of the serious problems between the parties. After this, the male tenant said the male landlord became increasingly upset and "tortured" them in various ways. He made it impossible to continue living in the unit. He acted in a determined manner to get them out.

The landlord listed the house for sale. The tenant suspected his motive was to force them to move. When it did not sell right away, the landlord issued a Two Month Notice on September 27, 2022, stating that their child was moving into the unit. The Notice stated the tenant was to move out by November 30, 2022. A copy of the Notice was submitted.

The tenant said the landlord's daughter lived downstairs and they knew the landlord's family well. They did not believe the landlord's child was moving into the unit. They claimed the Notice was issued in bad faith with the sole purpose of getting them to move so the landlord could rent the unit at higher rent.

The tenant disputed the Notice within the time allowed.

In their written submissions, the tenant stated:

I am disputing because I know the family and I know that the single daughter is not moving into a 4bed. He has been very aggressive and asked us to pay extra \$800/month back in June. We tried to agree on a different amount. He refused anything less than \$2500/m. He then put the house up for sale 2 days later. The house isn't selling. He served our notice while the house was still up For sale.

Now the sign is down. He is very intimidating. It is very expensive to move we don't have money saved.

All communications between the parties broke down.

The landlord increased pressure on the tenant to move out. For example, in November 2022, the landlord turned off the water and the heat to the tenant's unit. The tenant called the police and submitted a police file number as confirmation. The officer told the landlord to turn the water and heat back on. Nevertheless, the tenant said they were without hot water for several days. The unit became cold and inadequately heated. The landlord did not comply with the direction of the police.

The tenant believed the landlord was entering their home without their permission when they were away. They submitted substantial testimony of the landlord's repeated duplicitous and unlawful entering of their unit.

In mid-November 2022, the parties had a call about the tenant moving out. The landlords were upset and informed the tenant,

"If you don't move, we will burn the house down and you in it."

The tenant believed the landlord was escalating the dispute and meant to harm them if they did not move out. The tenant became afraid to let their children play outside. They decided to accept the Two Month Notice and move out as soon as possible. They moved out on December 3, 2022. That day, the movers took most of their possessions. The tenant intended to return to collect the balance of their items and clean the unit. However, when they came back, they discovered the landlord had changed the lock. He refused to let the tenant back in.

The tenant acknowledged they have little experience and know-how with tenancy matters. They testified the landlord insisted on receiving cash for rent and payment of

utilities. They complied. They paid cash to the landlord “about half the time” or e-transferred the money. The landlord never issued receipts upon request.

The tenant acknowledged they miscalculated the move-out date and believed it to be December 15, 2022.

The tenant said they paid rent and utilities in cash for October 2022 and, as was the usual practice between the parties, the tenant did not receive a receipt. The landlord issued a 10 Day Notice to the tenant; the tenant believed this was a tactic to get them to move out and was not honestly reflective of what they owed.

During the hearing, the landlord claimed the tenant did not pay rent and utilities for October or November 2022.

As well, another financial dispute involved the receipt of one month’s rent as compensation pursuant to the landlord’s issuance of the Two Month Notice on September 27, 2022. The tenant believed they were entitled to one month’s rent as compensation and did not pay rent for November 2022. They have never received utility bills for November 2022.

The landlord acknowledged they issued a Two Month Notice but for reasons which were not clear denied the tenant is entitled to one month’s rent as compensation as required under the Act.

As stated, the tenant moved out on December 3, 2022, pursuant to the Notice and incorrectly believed they had until December 15, 2022, to move out and clean. They came back to clean the unit some days later and to retrieve the remainder of their possessions. However, the landlord had changed the locks and they were not allowed into the unit.

No condition inspection was conducted on moving in or out.

Landlord's Evidence

The landlord denied all the tenant's evidence. The landlord testified the tenant's owed rent for October and November 2022 as well as utilities. The landlord testified he had a substantial claim for compensation and damages. He has not returned the security deposit.

3. Compensation for Personal Possessions

The tenant claimed compensation for 5 missing items in a total value of \$995.00:

ITEM	AMOUNT
Baby car seat	\$200.00
Child's furniture - vanity	\$150.00
Barbie Dreamhouse	\$300.00
Jolly jumper	\$195.00
Fridge	\$150.00
TOTAL	\$995.00

The tenant did not submit receipts of original purchases. The family had used all items. They have not replaced them. They submitted several pages of pictures of similar items and submitted valuations of replacement used items sourced from the internet.

Landlord's Evidence

The landlord denied all the tenant's evidence. The landlord acknowledged they changed the lock after the tenant vacated on December 3, 2023. They have agreed the tenant may pick up some of their possessions as agreed upon. They deny they have any of the remaining items.

4. *Security deposit Return*

The tenant requested return of the security deposit.

The landlord acknowledged the tenant paid the security deposit in the amount testified but said the tenants damaged the unit, did not pay rent/utilities, and are not entitled to get the money back.

The landlord acknowledged receipt of the tenant's forwarding address during the hearing.

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.

Credibility

I have considered credibility of the parties. 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. I find the tenant provided a likely narrative of what took place between the parties. I find the facts more likely than not to be the facts related by the tenant. The landlord acknowledged a pattern of receiving cash for payments of rent and utilities without issuance of receipts. The tenant's evidence of having the water and heat disconnected is supported by a police file number. Copies of the 10 Day Notice and Two Month Notice were submitted and the landlord acknowledged issuance of the Notices.

I accept the tenant's evidence that the landlord became upset when the tenant would not agree to pay more rent and began exerting unlawful force to get them to move out. The landlord engaged in a pattern of escalating pressure on the tenant and I find it probable the landlord threatened the tenant with harm if they did not do what he wanted, that is, pay more rent or move out.

I find the credible narrative by the tenant to show the landlord was flagrantly violating their obligations as landlords under the Act.

I find the landlord's denial of every claim the tenant made to be self-serving and unbelievable in the circumstances. I do not believe the landlord's testimony.

Because of the above, I give little or no weight to the landlord's version of events.. As a result of my findings regarding credibility, I give the tenant's testimony significant weight. Where the version of events differs, I prefer the tenant's version.

My findings with respect to each claim follow.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] 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.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the tenant to prove their claims.

1. Payment of Rent, Award for Overpayment

I find the parties voluntarily and freely agreed to the rent increase over 3 years ago from \$1,600.00 to \$1,680.00.

The tenant described willingly agreeing to the increase which seemed reasonable to them in the circumstances.

There was no duress or coercion. The tenant freely contracted with the landlord for a mutually agreed upon rent increase. The tenant has an obligation to inform themselves about the law of rental increases.

I find the tenant's claim under this heading does not meet the first part of the 4-part test. That is, they have not met the burden of proof the landlord failed to comply with the Act, regulations, or the tenancy agreement.

I therefore dismiss the tenant's claim under this heading without leave to reapply.

2. *Claim for Loss of 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]

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 through the cumulative effect of their actions.

The tenant was credible and clearly described the effect the landlord's unlawful behaviour had upon the family. They were genuinely disturbed by the landlord's actions. I accept their testimony in all aspects. That is, I accept the landlord engaged in a pattern of escalating behaviour including threats to the tenant's personal safety with the objective of getting more rent or forcing the tenant to move out so they could rent the unit for more rent.

I accept their evidence the tenant family felt terrified and were afraid the landlord would actually carry out the threats and harm their children. I find the tenant was unable to pay the unlawful rent increase demanded by the landlord in July 2022. The landlord became angry. They began a series of escalating actions to disrupt the tenant, frighten them and get them to move out as soon as possible.

I believe the tenant when they testified to a substantial interference with their ordinary and lawful enjoyment of the premises, particularly during November 2022. I find the landlord's cumulative actions in their totality amounted to frequent and ongoing interference amounting to loss of quiet enjoyment under the Act.

As the landlord acknowledged a pattern of accepting cash and not issuing a receipt, I accept the tenant's believable testimony as reasonable and probable in the circumstances; I find they paid rent and utilities to the landlord in cash for the month of October 2022. I find the landlord denied receipt to increase financial pressure on the tenant to get them to move out so they could increase the rent.

As acknowledged by the landlord, I find the tenant notified him on November 23, 2022 that there was no heat or hot water. I accept the landlord was provided with notice that day and that the services were subsequently unreliable and inadequate for the remainder of the tenancy. I find the landlord caused serious discomfort to the family.

I do not give any credence to the landlord's assertion he did not know why the tenant called the police to make him turn the heat and water back on.

I do not accept as reasonable that the tenant went without reliable services for the final period of the tenancy. I accept the tenant's testimony describing their subjective experience of being increasing cold, uncomfortable and afraid. The landlord ignored the instructions of the police. They wilfully and defiantly persisted to exert pressure on the tenant, including locking them out so they could not retrieve the balance of their possessions.

I accept the tenant lived in the unit during November 2022, but find the conditions were unpleasant and uncomfortable. I find the loss of quiet enjoyment to have occurred primarily during the month of November 2022 as testified by the tenant.

I find the landlord was aware of the tenant's complaints as the police attended. I find they failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord did not meet their obligations under the Act.

I find the tenant made best efforts to move out as quickly as they could after the issuance of the Two Month Notice. I find they made reasonable efforts to mitigate the inconvenience.

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 month of November 2022. I find it is reasonable to place a nominal monetary value on the tenants' loss of quiet in the amount of \$840.00.

I also find the tenant is entitled to one month's rent as compensation under the Act pursuant to the issuance of the Two Month Notice which is not in dispute. **I find the landlord cannot now claim compensation for the month of November 2022 and I find the tenant therefore owed no rent for November 2022**

I find it is reasonable that the tenant receive compensation in the amount \$840.00 and I grant an award to the tenant in this amount.

3. *Security deposit*

The landlord was provided with the tenant's forwarding address at the hearing and the address appears on the first page.

The notice of the tenant's forwarding address is effective under the Act on the date of this Decision.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to Section 38(4)(a).

I find that I dismissed the landlord's application with leave to reapply.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I direct the landlord to return the security deposit as required by the *Act*. I grant the tenant a Monetary Order in the amount of \$800.00.

I grant the tenant leave to reapply for a Monetary Order for the doubling of the security deposit if not returned within the time required under the *Act*.

4. Compensation for Personal Possessions

I find the tenant has met the burden of proof for compensation under this heading.

The landlord's first argument is that the tenant abandoned the unit and contents. I find this argument has no merit.

A tenancy remains in effect until such time it ends under section 44 of the Act. While the tenant miscalculated the required move-out date as December 15, 2022, I find they did not intend to abandon the unit after the movers came on December 3, 2022. I accept their evidence they left items as described earlier, including children's furniture and toys. I find the landlord knew or should have known the tenant would return to collect the remainder of their possessions.

I find the landlord was not entitled to evict the tenant under the Act and the tenancy did not end for unpaid rent.

Even if a tenancy had ended and the tenant had not vacated the rental unit, the Act prohibits the landlord from taking possession without a Writ of Possession issued by the Supreme Court of BC. To obtain a Writ of Possession under the Act, the landlord must first obtain an Order of Possession from the RTB. I find that no Order of Possession was granted to the landlord with respect to this tenancy. Therefore, I do not find the landlord had a Writ of Possession to evict the tenant.

Section 44 of the Act also provides that a tenancy ends when a tenant abandons the rental unit. Abandonment is the only time a landlord may remove the tenant's possessions from the rental unit without the above described court order.

Part 5 of the Residential Tenancy Regulation outlines the rules for abandonment of personal property. Under section 24, a tenant is considered to have abandoned personal property in the following situations:

1. The tenancy has ended and the tenant has moved out.
2. They have not paid rent or lived in the rental unit for at least one continuous month.

3. They have removed almost all of their personal property.

In situations 2 and 3, the tenant is only considered to have abandoned the property if:

1. they inform the landlord verbally or in writing that they do not intend to return to the property; or
2. it is unreasonable for the landlord to assume they will return.

I have considered whether there is sufficient evidence of abandonment. Given the evidence before me, I do not find the tenant had abandoned their personal property. Rather, I am satisfied that the tenancy had not legally ended and the tenant had not vacated or removed all their personal property. Their remaining possessions were removed without their consent by the landlord as soon as the tenant left with the movers on December 3, 2022. I find the landlord knew or should have known the tenant planned to return for the remainder of the items.

Section 25 of the Regulation further provides that a landlord must store tenant's personal property for no less than 60 days following the date of removal. The items were a combination of large ones (a treadmill and barbecue, for example) and smaller, personal items (a child's dollhouse). As stated, the landlord knew or should have known the tenant was coming back to get the remainder of their possessions. The landlord did not submit a written list of the property.

Only if the tenant had abandoned the unit may the landlord enter and remove personal property. The landlord's obligations are set out in Part 5 subject to certain exceptions which I find do not apply in this case:

1. exercise duty of care by carefully removing the personal property and ensuring that nothing is damaged, lost, or stolen;
2. store the personal property in a safe place for at least 60 days;
3. keep a written list of the personal property;
4. keep details of the removal and storage of the personal property for at least two years; and
5. upon request, advise the tenant or tenant's representative that the personal

property has been stored, or that it has been disposed of.

In considering the credibility of the tenant's evidence, I find the tenant has met the burden of proof that the landlord failed to comply with their obligations. They locked the tenant out so they could not get the remainder of their possessions. The landlord unilaterally ended the tenancy. The landlord did not remove the items to a safe place or provide an inventory.

I find the landlord's probable motivation for their unlawful behaviour to have been to get money from the tenant to which they were not entitled or as security for the alleged debt with the landlord.

While I have ordered the landlord to return the tenant's possessions, the landlord denied they have the remaining missing items as described by the tenant:

ITEM	AMOUNT
Baby car seat	\$200.00
Child's furniture - vanity	\$150.00
Barbie Dreamhouse	\$300.00
Jolly jumper	\$195.00
Fridge	\$150.00
TOTAL	\$995.00

I have concluded the tenant will not recover the above items in the circumstances, as the landlord has denied having them.

The tenant had provided a valuation as claimed. Without the purchase price of each item and the age, I find I am unable to determine the value of the items for compensation purposes.

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the

value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find this is an appropriate situation for an award of nominal damages. I award the tenant compensation of \$500.00 as nominal damages under this heading.

Summary

As the tenant has been successful, I grant them an award of \$100.00 for reimbursement of the filing fee.

I award the tenant a Monetary Order of **\$2,240.00** as follows:

ITEM	AMOUNT
Loss of quiet enjoyment	\$840.00
Security deposit	\$800.00
Compensation for personal belongings	\$500.00
Filing fee	\$100.00
TOTAL	\$2,240.00

Conclusion

I grant the tenant a Monetary Order of **\$2,240.00**.

This Order must be served on the landlord and may be enforced in the Courts of the Province of BC.

Further to the agreement between the parties, I Order as follows:

1. The parties shall meet at the unit on March 4, 2023 between 1:00 PM and 3:00 PM.
2. At that time, the landlord shall deliver to the tenant all the tenant's personal property in the landlord's possession, wherever located, including, but not limited to, the above three items, namely:
 1. Treadmill
 2. Pressure washer
 3. Barbecue
4. Should the landlord fail to return the property as ordered, the tenant is at liberty to bring another application to address the matter.

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: February 22, 2023

Residential Tenancy Branch