Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNRT, MNDCT, RP, PSF, LRE, OLC, OT**

Introduction

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

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;

- 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 landlord to carry out repairs pursuant to section 32;

- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);

- 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 of Possession for the tenant pursuant to section 54;

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The landlords are referenced in the singular.

Preliminary Issues are addressed:

1. Delivery of Decision
2. Preliminary Issue – Service
3. Preliminary Issue – Settlement
4. Preliminary Issue - Order of Possession
5. Preliminary Issue - Severance
6. Preliminary Issue – Conduct of Landlords

1. *Delivery of Decision*

Each party confirmed their email address to which a copy of the Decision will be sent.

2. *Preliminary Issue – Service*

The tenant submitted three amendments to her application adding additional claims.

The landlord acknowledged service of all the tenant's documents. No issues were raised.

The landlord did not submit documentary evidence.

3. *Preliminary Issue – Settlement*

I explained to the parties that under section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute. 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 explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued.

4. *Preliminary Issue - Order of Possession*

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

> *55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
>
> *(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
>
> *(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

The landlord requested an Order of Possession.

5. *Preliminary Issue - Severance*

The tenant's application included several claims in addition to the tenant's application to dispute the landlord's One Month Notice.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I explained to the parties at the outset of the hearing that I would address the remainder of the tenant's claims as time permitted.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained the tenant may reapply for any claims I dismissed (with leave to reapply) claims subject to any applicable limits set out in the Act, should the tenancy continue.

6. *Preliminary Issue – Conduct of Landlords*

Rule 6.10 of the Residential Tenancy Branch ("RTB") Rules of Procedure states:

> 6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

At the beginning of the hearing, I explained the hearing was scheduled for one hour. To conduct a fair and full hearing in a timely manner, I explained the following to the parties. I would not permit interrupting or disrupting the hearing. I may give directions to any person in attendance at a hearing who is rude, hostile or acts inappropriately. I may exclude or mute any person from the dispute resolution hearing who does not comply with my direction. I may proceed in the absence of that excluded party.

Despite this information, the landlords interrupted me and the tenant many times during the hearing,. I repeatedly warned them, to short-lived effect, to stop doing

so. I said I would mute their participation if they did not stop. They continued to talk over me and interject. They spoke loudly and sounded angry.

One of the landlords informed me more than once that the RTB was in favour of the tenant, and she wanted an arbitrator who would listen to the landlord as well.

The landlords repeatedly said they had many documents to submit to show the tenant's claims were invalid. They did not submit any documents before the hearing. They said many times they would "email the documents to the RTB today" and each time I explained the hearing process. I said that no documents could be submitted after the hearing. They appeared unwilling to accept this information and repeatedly insisted they had many documents to prove their point of view to me and would nevertheless submit them.

As a result of the landlords' conduct, the hearing took longer than expected.

During the hearing, I strongly urged the landlords to obtain assistance in any other appearance before the RTB.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The tenant submitted written submissions, portions of which are included in this Decision as written.

Tenancy Background

Neither of the parties submitted a copy of the tenancy agreement although they both acknowledged there was a written agreement. The tenant said she had lost her copy of the agreement and the condition inspection report. She requested the landlord provide a copy of both documents to her.

The unit is a 3-bedroom, 2 garage home, although the tenant testified the landlord has retained control without her consent of some of the unit by locking some areas and using them for storage. The tenant requested access to the entire unit.

The parties disagreed on the start date of the tenancy. The landlord stated the tenancy began on September 1, 2020, and they had a copy of the agreement.

However, the tenant testified as follows. The tenancy started December 1, 2020. She paid rent for the month of November 2020 but did not move in until the end of November. She paid the landlord rent for a month or more at the beginning of the tenancy when they did not permit her to occupy the unit as they were carrying out renovations. The tenant requested an accounting for rent received.

In her written submissions the tenant stated:

> I met with the [landlord] in October 2020 about renting their rental home at the above address. They were still fixing up the house then, but I gave them a money order for $1,850 for renting their above- address which is/was a 3-bedroom, 2 garage home. They said they were doing a bit of fixing up but that it would be (allegedly) available SOON for November 1, 2020.
>
> As of early in November 2020 they were still not 'finished' fixing things about the house and in fact I OBSERVED THEM still havlNG some meals there. I asked them when I could officially move in and they said "any time" yet they still had 'stuff' there in one (1) of the garages, one of the 3 bedroom (at ground level) and had constructed a 8' x 8' box in the 2nd

garage for a former tenant's belongings. Likewise there still was a trampoline and children's outdoor play set on the property. The [landlord] said they would remove their belongings in the 2nd garage and the 3'd bedroom in "a while". I still do not have access to these areas as of January 2023. (These areas are locked with padlocks.)

The parties agreed the tenant pays monthly rent of $1,850.00 due on the first. However, the tenant testified she has never been late except for the one month when she was in the hospital recovering from a stroke. The landlord disagreed but did not provide a tenant ledger or any other evidence of when and how much was paid. The landlord agreed there was no arrears of rent.

The parties agreed the tenant provided a security deposit and a pet deposit each in the amount of $925.00 which is held by the landlord. They agreed there is no arrears of rent.

The parties agreed the landlord issued a One Month Notice to the tenant as follows:

INFORMATION	**DETAILS**
Type of Notice	One Month Notice
Date of Notice	January 5, 223
Effective Date of Notice	January 31, 2023
Date and Method of Service	Attached to door January 5, 2023 - acknowledged
Effective Date of Service	January 8, 2023
Application for Dispute Resolution filed - date	January 13, 2023

The tenant submitted a copy of the One Month Notice which is in the RTB form. The tenant acknowledged service as set out above. The tenant filed an Application for Dispute Resolution within the 10-day period.

The landlord claimed the following grounds for the issuance of the One Month Notice:

1. Tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
3. Tenant has not done required repairs of damage to the unit/site.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Landlord's Evidence

Each ground in the One Month Notice is addressed. The landlord did not submit any letters of warning or other documentary evidence.

1. *Tenant is repeatedly late paying rent.*

The landlord claimed the tenant was repeatedly late paying rent. However, the landlord did not submit a tenant ledger, copies of receipts, or other evidence to show when payment was made.

During the hearing, I asked the landlord about each month in the 1-year immediately preceding the issuance of the Notice and the landlord was unable to testify to the date rent was received for any of these months. During the hearing, the landlord was given time to search for the bank statements to testify about the payment date. The testimony was not provided. As mentioned earlier, the landlord repeatedly told me they could send me copies of their bank statements after the hearing.

In summary, the landlord testified they were unsure or did not know when payments were made on rent owed by the tenant.

2. *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property*

The landlord testified as follows. The unit was like new with new appliances when the tenancy started. The landlord had not been inside the unit since the tenancy began. Nevertheless, the landlord suspected the interior of the house was damaged and messy.

The landlord testified the tenant never cut the grass although required to maintain the yard. The city had complained to them many times about the condition of the exterior of the unit. The tenant had many items outside cluttering the year. Her dogs dug holes. The neighbours complained to the landlord. The tenant refused to clean up, so the landlord did the work the tenant was supposed to do.

The landlord did not submit any copies of complaints from the city or from neighbours.

The landlord submitted no evidence of "illegal activity".

3. *Tenant has not done required repairs of damage to the unit/site.*

The landlord's testimony under this heading is found in #2 above.

The landlord also testified the tenant had broken two windows and her dogs were damaging the property.

4. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord claimed the tenant's behaviour as described above amounted to a material breach of the agreement.

Tenant's Evidence

The tenant did not have an advocate at the hearing and testified as follows.

The tenant is a 71-year-old single woman with no family and limited support. She lives alone in the unit. She had a stroke in October 2022 which required a stay in the hospital. Her ability to communicate clearly has been affected, as was apparent and acknowledged by her during the hearing. She could not recall the name of the person who was helping her in the community with medical and housing concerns.

The tenant agreed she could benefit from a new living arrangement with assistance. However, no such alternative living was available, and she had nowhere to go.

The tenant testified the landlord are trying to evict her for no reason. She testified this is the fourth One Month Notice they delivered to her, the other two being handwritten. She stated in her written submissions:

1. The [landlords] have tried 3x to evict me with handwritten notices to vacate. The first time was that they stated they wanted to sell the house - at the above address. The second and third handwritten notices stated that their son was going to move into the house.

2. This is the [landlord's] 4th attempt to evict me with their stated claims (see attached RTO 1-month Notice to Evict Notice).

3. This is their most recent attempt, with NEW REASONS TO EVICT ME.

4. None of their claims are true and are attempts at misdirection, misinformation etc. with what actually happened/occurred.

5. They have given me this most recent eviction notice because I informed them - as did other agencies (see below)-that I have had no

> heat and/or hot water since approximately November 2022 and the [landlord] have refused to fix and/or replace the furnace.

The tenant said the furnace and hot water tank stopped working in November 2022. However, when she complained about the lack of heat, the landlord responded she should “just move out”. The tenant stated in her written submissions:

> 11. In December/January 2022/2023 there was an exchange of texts between myself and the [landlord] about the above-mentioned issues [furnace and hot water tank]. They told/texted me to "just move out, we've given you 3 eviction notices and you refuse to move. I repeatedly informed them that these aforementioned 3 written notices were not "legal". In a phone conversation of December 25, 2022 the [landlord] hung up the phone on me.
>
> 12. At this time (texted) I subsequently also informed them that there was a water leak in a downstairs pipe. The [landlord’s] response was "how do we know there's really a leak" ..."just get it fixed yourself".

The tenant denied each of the grounds in the One Month Notice. She responded as follows to the landlord’s grounds for the issuance of the One Month Notice:

1. *Tenant is repeatedly late paying rent.*

The tenant stated she has always paid the rent on time except for October 2022 when she suffered a stroke and was hospitalized.

The tenant submitted written submissions which stated:

> 6. I have always paid my rent of $1,850 per month on time as per guidelines of the Residential Tenancy Act.
> 7. I paid $925 damage deposit and $925 pet deposit also.
> 8. The [name of church] helped me to pay my rent from congregation contributions (i.e., cheques) which were subsequently made out directly to

> the [landlord] which I subsequently registered mailed to the [landlord]. My monthly total rent was always paid in full while I have resided at [address of unit].

The tenant denied she had been late three times in the year before the One Month Notice was issued as the landlord claimed.

2. *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.*
3. *Tenant has not done required repairs of damage to the unit/site.*
4. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The tenant's response to the 2nd, 3rd and 4th grounds follows.

The tenant acknowledged there were two broken windows. However, she explained the sills were so rotted, the windows fell out with minimal pressure. Also, the landlord had broken one window gaining unlawful access.

The tenant denied she had done anything illegal, had not failed to do repairs which were her responsibility, or had breached a material term of the tenancy.

The tenant denied she neglected the yard. She explained she had cut the grass with shears:

> With regards to Notice(s) from the City [name], I cut the grass on the outside perimeter of the fence over the period of 2 summers that I have lived at [address]. As I did not have - nor was given a lawnmower by the [landlord] -- I cut the lawn manually with a pair of big shears which took several days. I subsequently notified the City [name and tel number of by law representative].
>
> Re the notice from the City [name] that I think the [landlord] are specifically referring to, I telephoned and/or texted the City [name] By-law Officer ([name and phone number]) and informed him of my having a

> stroke(s) and that I would fix the listed concerns as I could. As far as I know the [landlord] have not received any 'further' complaint notice(s) re these concerns, despite their noting these in the eviction notice of January 5, 2023.

The tenant denied the landlord had to clean up the exterior of the house as they testified. She testified the landlord came to the unit more than once without notice, removed some of their own possessions, and unlawfully took some of her belongings as well. She never denied them admission to the unit as they alleged.

The tenant wants the landlord to stop coming to the unit without notice.

Tenant's Claims

The tenant brought several claims.

As stated, the tenant requested cancellation of the One Month Notice. She also requested orders as follows:

ITEM	DETAILS
1. An order requiring the landlord to carry out repairs - section 32; 2. An order requiring the landlord to provide services or facilities required by the tenancy agreement or law - section 62(3); 3. An order requiring the landlord to comply with the Act - section 62;	1. Fix the furnace, hot water tank, leaking pipe(s), fridge and washing machine. 2. Provide copy tenancy agreement, condition inspection, accounting.
4. An order to restrict or suspend the landlord's right of entry - section 70;	1. Landlord to comply with the Act and stop attending at unit without notice
5. An Order of Possession for the tenant - section 54;	1. Landlord remove locks on all parts of the unit and provide possession of entire

	unit to tenant
6. A monetary order for compensation for damage or loss - section 67 of the *Act*;	1. Loss of quiet enjoyment - inadequate conditions, lack of repair, leading to suffering, inconvenience, and periodic relocation. 2. Reimbursement $136.50 for repairs

Each of the tenant's claims is addressed using the above categories.

1. *An order requiring the landlord to carry out repairs - section 32;*
2. *An order requiring the landlord to provide services or facilities required by the tenancy agreement or law - section 62(3);*
3. *An order requiring the landlord to comply with the Act - section 62;*

Details:

- *Fix the furnace, hot water tank, leaking pipe(s), fridge and washing machine.*
- *Provide copy tenancy agreement, condition inspection, accounting.*

The tenant testified as follows. The unit has had no heat or hot water since November 2022. She has been unable to live in the unit during the subsequent cold weather and moved to a shelter or transition home to be warm and to bathe.

The tenant notified the landlord right away and subsequent communication was mostly by phone or, periodically, by email. She stated she does not have a computer and used one at the library.

The tenant submitted copies of some of the emails. For example, she submitted a copy of an email dated January 3, 2023 to the landlord stating there was no heat or hot water at the house.

Because the landlord did promise to fix the problems, the tenant said she arranged for a heating repair company to inspect the furnace. She also obtained a quote for the “removal and disposal of the old [hot water] tank, and the installation of the new tank” which she sent to the landlord on January 5, 2023, a copy of the email being submitted.

The tenant stated as follows in her written submissions:

> 13. In November/December 2022 I discovered I had no heat, etc. I finally was in touch with [name of hearing company] (Chilliwack) to find out why. See above and attached documents.
>
> (a) December 20, 2022: As I had just had a stroke (and still recovering) I was in touch with the Stroke Foundation to do a teleconference but I could not do this because of extreme cold (-15). The Stroke Foundation contacted the Chilliwack RCMP to do a 'wellness check' on me. Chilliwack RCMP Constable [name] attended and he came to the house. He said he would contact the [landlord] on December 21, 2022 which he did.
>
> (b) The [landlords] were informed of the gas furnace and hot water not working as per Chilliwack RCMP Constable Gill.
>
> (c) On December 21, 20221 went to the [name] Transition House {tel number) in Chilliwack as a result of the extreme cold and lack of hot water and gas furnace heating.
>
> (d) The [name] Transition House Co-ordinator informed the [landlord] of the aforementioned lack of FURNACE HEAT AND HOT WATER. Finally, on December 30/31, 2022 the [landlord] informed her that "everything was fixed".

(e) When I returned to the house on [address], I discovered that NOTHING HAD BEEN FIXED. I notified the [name] Transition staff in telephone conversations that they had been lied to, by the [landlord].

(f) On many nights since January 1, 2023 when I left the [name] Transition Shelter, I have had to resort to staying at the [name] Shelter in Chilliwack, [address and phone number] due to extreme weather conditions and the lack of access to gas heat and/or hot water, etc. at [address of unit].

(g) The lack of these aforementioned access to 'services' (which I have paid for to be included with my rent)- HEAT AND/OR HOT WATER- has left me with the inability to clean,shower, make meals, etc. to make/take care of my basic needs, etc., do household chores, etc.

(h) I also contacted the OHCS ResidentiafTenancy Office and spoke to '[name]', Information Officer, Residential Tenancy Branch, Office of Housing and Construction Standards, Ministry of Attorney General and Minister Reponsible for Housing and spoke to him of all of the above. (see attached)

…

FRIDGE/WASHING MACHINE: I have not had fully functioning items for quite a while. Any conversation was a phone/1:1 conversations with the landlords to fix/repair these items so I do not have e-mail and/or text records of these.

The tenant paid a heating company to examine the furnace and paid $136.00 for the bill, a copy of which was submitted. In her written submissions, the tenant stated:

6. The [name] Heating technician wrote the furnace is approximately 50 years old and hasn't been serviced in many years.

7. The [name] service technician also stated that the pilot light on the hot water heater refused to light and the whole hot water heater needed to be replaced also.
8. I paid $136.00 'service bill' in [December 2022] to the [name] Heating Company

[…]

11. In December/January 2022/2023 there was an exchange of texts between myself and the [landlord] about the above-mentioned issues. They told/texted me to "just move out, we've given you 3 eviction notices and you refuse to move. I repeatedly informed them that these aforementioned 3 written notices were not "legal". In a phone conversation of December 25, 2022 [the landlord] hung up the phone on me.

The tenant attempted to replace the broken windows at her own expense and reports as follows in her written submissions:

They [the landlord] were also most insistent I not try to OPEN ANY OF THE FRONT WINDOWS BECAUSE THEY WERE VERY OLD AND PAINTED SHUT. (The wood surrounding the front windows and others in the house was indeed so rotten they had to be painted shut so as to not have the wooden frames disintegrate and separate from the glass.) One of the 3 front windows had in fact been TAPED SHUT WITH RED (clear) DUCT TAPE AS !TWAS BROKEN AND PUT BACK TOGETHER, I.E., NOT REPLACEDJUSTTAPED TOGETHER.

(The neighbor across the street can/has verified this as he had said the window was broken even when the last tenant was there.)

NOTE: I contacted [name of company] Glass on [name] Road to repair the 2 windows but they said they could not replace the glass due to the rotted state of the whole window frame and recommended that those (original) windows be replaced by newer ones. I verbally (phone) [the landlord] of this,

but as of now the 2 windows have not been fixed/repaired/replaced and they continue to blame me.

Landlord's Response

The landlord denied all the tenant's claims. They denied that there was no heat in the unit and testified there was heat the day of the hearing, which the tenant said was not true. They claimed the unit was in adequate state of repair.

The landlord said the tenant should not be living alone and is not competent. She should move out.

4. An order to restrict or suspend the landlord's right of entry - section 70;

Details: Landlord to comply with the Act and stop attending at unit without notice

The tenant testified as follows. The landlord yells at her every time they communicate and will not let her speak. They have padlocks on some of the area on the unit without her consent. They enter the unit to gain access to these areas without permission. They have broken a window to the unit gaining unlawful access. They have taken some of her possessions.

The tenant said that before her stroke, she worked in a retail store. The landlord came to her place of employment to pressure her to move out.

The tenant stated in her written submissions:

> Note: The [landlord] came to the house when I was not there and without any prior notice as they have/had done on quite a few occasions. My dogs barked at the windows (noses pressed to the glass, etc.) and the window displaced from the ROTTED FRAME AND BROKE, ETC.
>
> One of the windows was broken as a result of the [landlord] trying to ILLEGALLY ACCESS the house at [address] and my dogs' subsequent response to their attempt at illegal entry to the property and/or house.

> I am aware of this because [landlord] told me himself that he had seen my dogs break one of the windows and this was likewise verified by neighbours.
>
> […]
>
> SHOWING UP AT MY PLACE OF EMPLOYMENT HARASSMENT
>
> On at least 4 occasions they showed up UNANNOUNCED at my place of employment (Costco) and went to various of my colleagues wanting to know in which area I was working (demos). When they found where I was working, they were quite insistent on having conversations despite my informing them that "I was working".

The landlord denied the tenant's claims in their entirety.

5. An Order of Possession for the tenant - section 54;

Details: Landlord remove locks on all parts of the unit and provide possession of entire unit to tenant

As stated above, the tenant testified as follows. The landlord has padlocks on some of the area on the unit without her consent. They enter the unit to gain access to these areas without permission or notice. They have broken a window to the unit gaining unlawful access to her living area. They have taken some of her possessions.

The landlord denied all of the tenant's claims in their entirety.

6. A monetary order for compensation for damage or loss - section 67 of the Act;

Details:

- Reimbursement $136.50 for repairs
- Loss of quiet enjoyment - inadequate conditions, lack of repair, leading to suffering, inconvenience, and periodic relocation.

The tenant requested the landlord compensate her for the amount paid for inspection of the furnace being $136.50.

The tenant submitted a copy of an invoice dated December 21, 2022 in the amount of $136.50 for inspection of the furnace. She requested reimbursement as the landlord refused to repair the furnace and she took action herself to see why she had no heat.

The landlord denied that any such inspection had been carried out or was necessary.

The tenant also requested the landlord compensate her for the inadequate conditions in the unit leading to suffering, inconvenience, and periodic relocation.

The tenant said she always paid the rent in full even after the furnace stopped working on December 21, 2022. At the hearing, the tenant did not ask for a specific percentage of the rent and asked me to decide the amount of any compensation.

The details of the tenant’s claims are referenced earlier..She described the inconvenience of not having heat or hot water during the coldest months of the winter. She explained that from time to time she would go to a transition home or a shelter to get warm and to bathe. The tenant complained that the landlord had seriously and deliberately not followed the law. Throughout the tenancy, the landlord has repeatedly informed the tenant they would not repair or maintain the premises.

The tenant stated she sought the help of the workers in the shelters to get the unit habitable and they involved the RCMP. She stated she had brought a complaint against the landlord to the Compliance and Enforcement Unit (CEU), Government of BC, which ensures compliance with the residential tenancy laws of BC. No written report from CEU was submitted.

The landlord denied they had failed in any respect to provide suitable accommodations to the tenant.

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.

Burden of Proof

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.

The claimant bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Policy Guideline 1 - Landlord and Tenant – Responsibility for Residential Premises states in part as follows:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

Sections 7, 65 and 67 address compensation as follows:

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.

Director's orders: breach of Act, regulations or tenancy agreement
65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
(a)…
(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
(c) that any money paid by a tenant to a landlord must be
(I) repaid to the tenant,
(ii) deducted from rent, or
(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;
…

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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.

Credibility

Given the conflicting testimony, much of this case hinges on a determination of credibility. 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. The tenant's testimony was straightforward and matter of fact. I have concluded the tenant's version of events is credible and reasonable in the circumstances. I find their recounting of what took place, and the personal consequences, rings true. I believe the tenant when she describes how cold the unit was when the furnace did not work and how inconvenient is was not to have hot water. I accept her testimony that this condition, and other needed repairs she described, continues to this day. The tenant's evidence was supported by a receipt from a heating repair company describing the poor condition of the furnace and by copies of correspondence with the landlord. The tenant provided a concise, clear timeline of events in a written submission which I believed in all aspects; I have quoted many parts of the written submissions in this Decision.

I find the tenant's testimony to be most in 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 find the landlord

acknowledged the truth of the tenant's testimony in many key aspects, such as, for example providing no evidence of late rental payments. I find the landlord's general denial of all responsibility and minimization of the discomfort and inconvenience to the tenant to be disingenuous and insincere.

I therefore give the landlord's testimony little weight. Where the parties version of events disagree, I prefer the tenant's account of what took place.

The landlord's claim is now addressed for an Order of Possession under the One Month Notice.

One Month Notice

Section 47(4) of the Act provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In the present case the tenant filed an Application for Dispute Resolution within the allowed period.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the One Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand the landlord must demonstrate any of the causes listed in the Notice:

1. Tenant is repeatedly late paying rent.

2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
3. Tenant has not done required repairs of damage to the unit/site.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I have carefully reviewed the landlord's testimony which was unsupported by any documents. As stated, I find the landlord did not provide credible testimony and I give greater weight to the persuasive evidence of the tenant.

Accordingly, I find the landlord has failed to meet the burden of proof with respect to any of the causes listed in the One Month Notice.

I therefore dismiss the Notice which is of no effect.

I find the tenancy shall continue until it is ended in accordance with the agreement and the Act.

The remainder of the tenant's claims are now addressed.

1. *An order requiring the landlord to carry out repairs - section 32;*
2. *An order requiring the landlord to provide services or facilities required by the tenancy agreement or law - section 62(3);*
3. *An order requiring the landlord to comply with the Act - section 62;*

Details:

- *Fix the furnace, hot water tank, leaking pipe(s), fridge and washing machine.*
- *Provide copy tenancy agreement, condition inspection, accounting*

The tenant requested the landlord be required to fix the furnace, hot water tank, leaking pipe(s) and windows as well as provide a functioning fridge and washing machine.

I accept the tenant's credible testimony in all aspects. I find that the tenancy agreement included the provision of a furnace, hot water tank, and appliances (fridge and washing machine). I find an implied term that all these services would be adequate and functioning.

While I have been unable to ascertain the precise date that each element failed, I find the landlord has not provided these services and has not provided a unit compliant with the Act from December 1, 2022 to date.

With respect to the provision of heat and hot water, I direct as follows:

1. The landlord shall provide a functioning furnace and hot water tank as follows.
2. Pursuant to section 62, the landlord shall retain a qualified person to conduct an appropriate investigation into the provision of heat and hot water to the unit and to recommend a plan of work for the continuous reliable adequate supply of heat and hot water to the unit, the work to be completed in one month from the date of this Decision.
3. The qualified person in # 2 shall provide written reports to the parties upon inspection and upon completion of the work certifying heat and hot water are reliable. The written reports may be emailed to the parties at the email address on the first page. They shall take photographs of the before and after of all repairs, copies of the photographs to be provided to the tenant with the reports.

With respect to the broken windows and appliances, I direct as follows:

4. Pursuant to section 62, the landlord shall retain a qualified person to carry out an inspection of the general condition of the unit including the condition of the windows/sills and appliances, identify any repairs/replacement needed, develop a schedule for such repairs/replacement, and carry out the work within one month of the date of this Decision.

5. The qualified person in # 2 shall provide written reports to the parties upon inspection and upon completion of the work certifying the identified repairs

are carried out. They shall take photographs of the before and after of all work done and appliances fixed/replaced, copies of the photographs to be provided to the tenant.

6. With respect to the provision of reports, as the tenant does not have a computer, I direct the landlord to provide the tenant with hard copies of all reports required above as follows:

    (a) The documents shall be delivered to the tenant's mailbox.
    (b) Copies of the documents shall be provided to the tenant's advocate upon the provision of a name and email address from such person.

4. An order to restrict or suspend the landlord's right of entry - section 70;

Details: Landlord to comply with the Act and stop attending at unit without notice

The tenant requested the landlord's right to enter be restricted.

Section 29 of the Act describes the conditions under which a landlord may enter a unit as follows:

> **Landlord's right to enter rental unit restricted**
> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit;
(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 70(1) of the Act states:

Director's orders: landlord's right to enter rental unit

70(1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [landlord's right to enter rental unit restricted].

For the purposes of interpreting sections 29 and 70(1) of the Act, section 1 of the Act defines "rental unit" as "living accommodation rented or intended to be rented to a tenant". Section 1 defines "residential property".

Both parties acknowledged the tenant had an obligation to cut the grass in the unit's yard. Accordingly, I find the area outside the building on the lot, to constitute a "rental unit".

I accept the tenant's credible testimony that, without her consent, the landlord comes onto the lot, has placed padlocks on some parts of the unit and on at least one occasion attempt to enter the rental unit through a window.

Based on the Act and the tenant's evidence, I order that the tenant comply with section 29 as follows (numbering continued from my order above):

7. The landlord shall give the tenant written notice placed in the tenant's mailbox at least 24 hours and not more than 30 days before the entry, of the purpose for entry to the unit (including the yard), which must be reasonable, and the date and the time of the entry, which must be between

8 a.m. and 6 p.m. unless the tenant otherwise agrees in writing. This provision applies to the inspection, repairs and reports referenced earlier.

8. The tenant may appoint an advocate. When the tenant provides the name and contacts to the landlord, the landlord may communicate with the tenant by email to the named advocate.

The tenant requested the landlord compensate the tenant for the amount paid for inspection of the furnace being $136.00.

The *Act* provides specific guidance on the procedure for emergency repairs. Section 33 provides that the tenant may make emergency repairs *only* in certain circumstances: the repairs must be needed, the tenant must make at least two attempts to contact the landlord, and the tenant must give the landlord a reasonable time to make the repairs.

The section describes “emergency repairs” as those repairs that are urgent, necessary for health or safety of anyone or for the presentation or use of residential property and made for certain purposes such as repairing major leaks in pipes or the roof, damage or blocked water or sewer pipes or plumbing fixtures, and so on.

Section 33(1) states as follows:

33 (1) In this section, **"emergency repairs"** means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(**iii) the primary heating system,**

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

Considering all the evidence submitted, I find on a balance of probabilities that the tenant has met the burden of proof with respect to compensation claimed for the expense.

I find the tenant has established there was a situation (the non-functioning furnace and water tank) which was an urgent situation within the meaning of section 33. She had no heat, and it was winter. I find the tenant was warranted in acting on her own after notifying the landlord who refused to take action, although she did not bring an RTB application.

I accept the tenant's credible testimony that she informed the landlord of situation, and they told her to just move out. I find the tenant drew a reasonable conclusion based on the landlord's history of refusal to carry out repairs, that the landlord would not inspect the furnace. I accept the tenant's evidence that when it was very cold, she could not live in the unit without heat and hot water. I accept her testimony that she moved to shelters or transition homes for part of these months to be warm and bathe.

I find the tenant has proven on a balance of probabilities that the landlord was notified in accordance with the *Act*, that the landlord had a duty to test/repair, or that the landlord failed to meet the duty to repair. I find the tenant has incurred a reasonable expense to find out why the furnace was not working. I accept she gave the landlord a copy of the receipt and the landlord refused to reimburse her.

I therefore grant the tenant's claim for reimbursement of this expense in the amount of $136.50 and grant an award in this amount.

Also, the tenant requested the landlord compensate the tenant for the inadequate conditions in the unit leading to suffering, inconvenience, and periodic relocation.

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.

I accept the tenant's credible evidence in all respects.

I find the furnace and hot water tank as well as the mentioned appliances have been inoperable for the months of December 2022, January, February and March 2023. I do not accept as reasonable that the tenant went without a furnace or hot water tank for 4 months during winter.

I accept the tenant's testimony describing their subjective experience of being increasing cold and uncomfortable when the furnace stopped working. I believe the tenant when they testified to serious loss of services which amounted to a substantial interference with their ordinary and lawful enjoyment of the premises.

I accept their description as factual of all aspects of the conditions of the unit while the furnace etc. was not working. I find her testimony reasonable that the unit was uninhabitable during this time, although the tenant moved elsewhere for only part of the period.

I find the tenant paid rent for this 4-month period during which the furnace was not working, and she had no hot water. While she lived in the unit during some of this time, I find the conditions were unpleasant and uncomfortable. I find the unit was unsuitable for occupation as reasonably expected by the tenant. I find the loss of quiet enjoyment extended for the period claimed by the tenant, although the level of discomfort varied from time to time depending on the outside temperature.

I find the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to carry out repairs. I find the landlord did not respond in a timely and effective manner and appeared indifferent to the tenant's discomfort. I find the landlord should have remedied the situation by December 1, 2022 at the latest.

I find the landlord did not meet their obligations under the Act to assure that the unit was adequately heated and supplied with hot water.

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 by failing to act reasonably and expediently to assure the tenant had a functioning primary heating system. I find the tenant notified the landlord of the situation on in November 2022 although I could not ascertain the date.

I find the tenant paid rent for this 4-month period in the amount of **$7,400.00.** 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 period from 4-month period.

I find it is reasonable that the tenant receive compensation in the amount of 30% of the rent paid in this period which I find is $2,200.00.

I grant a monetary award to the tenant in this amount.

Monetary Order

ITEM	AMOUNT
Reimbursement repairs	$136.50
30% compensation of rent of $7,400.00	$2,200.00
TOTAL AWARD TO TENANT	$2,336.50

I grant a Monetary Order to the tenant in the amount of $2,336.50 which she may deduct from rent until compensated in full.

Conclusion

I dismiss the One Month Notice which is of no effect.I find the tenancy shall continue until it is ended in accordance with the agreement and the Act.

I order as follows:

1. The landlord shall provide a functioning furnace and hot water tank as follows.

2. Pursuant to section 62, the landlord shall retain a qualified person to conduct an appropriate investigation into the provision of heat and hot water to the unit and to recommend a plan of work for the continuous reliable adequate supply of heat and hot water to the unit, the work to be completed in one month from the date of this Decision.

3. The qualified person in # 2 shall provide written reports to the parties upon inspection and upon completion of the work certifying heat and hot water are reliable. The written reports may be emailed to the parties at the email address on the first page. They shall take photographs of the before and after of all repairs, copies of the photographs to be provided to the tenant with the reports.

4. Pursuant to section 62, the landlord shall retain a qualified person to carry out an inspection of the general condition of the unit including the condition of the windows/sills and appliances, identify any repairs/replacement needed, develop a schedule for such repairs/replacement, and carry out the work within one month of the date of this Decision.

5. The qualified person in # 2 shall provide written reports to the parties upon inspection and upon completion of the work certifying the identified repairs are carried out. They shall take photographs of the before and after of all work done and appliances fixed/replaced, copies of the photographs to be provided to the tenant.

6. With respect to the provision of reports, as the tenant does not have a computer, I direct the landlord to provide the tenant with hard copies of all reports required above as follows:

    (a) The documents shall be delivered to the tenant’s mailbox.
    (b) Copies of the documents shall be provided to the tenant’s advocate upon the provision of a name and email address from such person.

7. The landlord shall give the tenant written notice placed in the tenant’s mailbox at least 24 hours and not more than 30 days before the entry, of

the purpose for entry to the unit (including the yard), which must be reasonable, and the date and the time of the entry, which must be between 8 a.m. and 6 p.m. unless the tenant otherwise agrees in writing. This provision applies to the inspection, repairs and reports referenced earlier.

8. The tenant may appoint an advocate. When the tenant provides the name and contacts to the landlord, the landlord may communicate with the tenant by email to the named advocate.

I grant a Monetary Award to the tenant in the amount of $2,336.50 which she may deduct from rent until compensated in full.

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: March 20, 2023

Residential Tenancy Branch