



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, RR, OLC, MNDCT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for October 21, 2022.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

KS ("landlord") represented the landlord in this hearing. This hearing commenced at 11:00 a.m., and ended at 1:41 p.m. in order to give both parties a full opportunity to be heard, to present their sworn testimony, to make submissions, and cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

Preliminary Issue – Tenant's Request to Amend Application

The tenant submitted additional evidence on February 10, 2023. Contained in the evidence package of approximately 117 pages, the tenant submitted a copy of a RTB Form #RTB-42T Tenant Request to Amend a Dispute Resolution Application. In the

RTB portal, the Amendment is pages 54 and 55, with further handwritten attachments submitted by the tenant.

I note that in my Interim Decision dated October 24, 2022, I made a specific order: “I order this is not an opportunity for the tenant to amend this current application.”

Furthermore, RTB Rule 4.6 states the following about amendments:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

Residential Tenancy Policy Guideline #23 sets out of the sequence of events that must be followed in amending an application, including the following steps:

The following sequence of events must be followed in amending an application for dispute resolution:

- 1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);***
- 2. the applicant submits this form and a copy of all supporting evidence on the Dispute Access site or to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;***
- 3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;***
- 4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and***
- 5. the arbitrator, at the hearing, considers whether the principles of administrative***

fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.

A party must be prepared to provide proof of service of the Amendment to an Application for Dispute Resolution and supporting evidence for each respondent.

As noted above, I made a specific order that the tenant may not amend their application. Furthermore, the tenant did not follow the proper steps in amending their application, which must be properly submitted online, or submitted in person, and accepted at the RTB or Service BC office, and then processed accordingly. In this case, the amendment form was submitted within a large evidence package, and not accepted and processed by the RTB or Service BC as an amendment. Although I acknowledge the process may have been confusing to the tenant, I did clearly state in my Interim Decision that the tenant may not amend their application.

I further note that RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. As these circumstances do not fall under RTB Rule 4.2, as no amendments were filed in accordance with RTB Rules of Procedure and Policy Guidelines, and as I had made a specific order on October 24, 2022 that the tenant may not amend their application, only the claims referenced in the tenant's original application were to be considered.

Preliminary Issue: Late Evidence

In addition to the amendment request, the tenant submitted additional evidence on February 10, 2023. Although the landlord confirmed receipt of the tenant's original application and evidentiary materials, the landlord took issue with the admittance of the late evidence. The landlord confirmed that they did receive the additional materials, and had briefly reviewed the documents.

The tenant testified that since the adjournment of the hearing on October 21, 2022, they had attempted to reach out to various tenancy advocacy groups, which the tenant provided a list of in the hearing. The tenant testified that they were informed that they were short staffed, and was treated badly by them. The tenant testified that the groups denied the tenant's request for assistance, which caused the tenant to feel a significant amount of stress. The tenant felt discriminated against, and had to prepare their own materials, which the tenant submitted themselves. The tenant testified that they also had Covid 19 in January 2023, and lost their mom to terminal cancer on December 6, 2022.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case I am satisfied that the landlord had an opportunity to review the tenant's evidentiary materials. Although I acknowledge the landlord's concerns about the late evidence, I find that the tenant was faced with many challenges and obstacles when preparing for this hearing, and despite these obstacles, the tenant still made considerable efforts to submit and serve their evidence within the required time period. As both parties confirmed that they wished to proceed with the scheduled hearing, and as the landlord did receive and review the late materials, I exercised my discretion to allow the tenant's late evidence to be admitted for the purposes of this hearing, with the exception of the materials related to the tenant's amendment requested, as noted above.

As the tenant confirmed receipt of the landlord's evidence, and that they were ready to proceed, the hearing continued at 11:52 a.m. to hear the submissions of both parties.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to allow the tenant to reduce their rent?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

I note that the tenant had submitted a considerable amount of written materials for this hearing and testimony, which I did not take lightly. I thank all parties for their patience in awaiting a decision on this matter as it was important that I took the time to carefully

review and consider the evidence before me. While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on December 1, 2018. Monthly rent was set at \$780.00, payable on the first of the month at the time when the tenant filed this application. The tenant submitted a Notice of Rent Increase dated September 23, 2022, for the rent to be increased to \$795.00 effective January 1, 2023. The landlord holds a security deposit of \$375.00 for this tenancy.

The tenant referenced the following issues when they filed their application on June 16, 2022:

MONETARY CLAIM-LOSS OF QUIET ENJOYMENT

The tenant is requesting compensation for loss of quiet enjoyment in the amount of \$16,640.00 (3.5 years x \$760/month). The tenant testified that a lot of the drama and tough living conditions are created by the landlord's avoidance of their obligations.

The tenant listed several ongoing issues that the tenant states the landlord has failed to deal with a satisfactory manner:

- a) Ongoing issue of smoking, which seeps into the tenant's rental unit, "night and day". The tenant describes the smell as "very, very strong", and states that the landlord told the tenant to tape the fixtures, windows, and door. The tenant states that they are especially concerned as they had breast cancer recently, and is a non smoker. The tenant also states that the smoking has negatively affected their asthma, and that they had moved into the building with the expectation that it would be a smoke free environment.
- b) Many extreme disturbances, including "an unbelievable number of police calls" involving the same people, which the tenant feels is due to the landlord's failure to deal with behaviour problems in an effective and timely manner.
- c) Failure of the landlord to evict three neighbours who were violent towards the tenant. The tenant states that these incidents caused the tenant an enormous amount of stress and loss of sleep, causing a negative impact on the tenant's health.
- d) Two years of construction noise that contravened quiet time bylaws.
- e) Monetary Loss of having to purchase a heater/cooler and a 1200 BTU air conditioner (receipts filed).

RENT REDUCTION

The tenant is also requesting a rent reduction as they feel the rent should be adjusted to the tenant's income. The tenant argued that human rights laws literature prescribes that the rent should be 1/3 of the tenant's income. The tenant feels that this is a human rights violation due to the outrageous stress, and lack of rest and sleep lost by the tenant. The tenant further points out that the unit is very expensive to heat and cool, and that the housing is "not the right fit for me". The tenant states that they do not belong in this standard of housing, which the tenant feels has not been maintained by the landlord. The tenant submitted photos showing dirty stairs and railings, as well as dog urine in the stairwell. The tenant states that the landlord has not washed the floors for months.

The tenant argued that another tenant in the building only pays half the amount of rent the tenant does, and should be subsidized based on their income. The tenant requested that rent be adjusted to \$350.00 or \$388.00 per month.

REQUEST FOR THE LANDLORD TO PROVIDE SERVICES AND FACILITIES AS REQUIRED

The tenant requests that the landlord install a source of heat in the bathroom, and states in the winter the temperature was only 19 degrees Celsius. The tenant also believes that there may be a thermostat issue as they had set the thermostat to 22.5 degrees, and the tenant still felt cold. The tenant argued that the *Act* states that the landlord must supply heat, and that it must be a minimum of 21 degrees.

The tenant notes that the rental unit is too cold in the winter, and too hot in the summer. The tenant expressed concern about the safety of using a portable heater, and the additional costs of using heaters and air conditioners. The tenant submits that the inadequate heating and cooling has caused the tenant the added expense of using additional appliances. The tenant notes that this added expense has caused the tenant considerable hardship. The tenant requests that a central cooling system be installed for the top floors, as well as a proper heating source in the bathroom.

REQUEST FOR LANDLORD TO COMPLY WITH ACT

The tenant feels discriminated and retaliated against by the landlord. The tenant notes that a male tenant in the unit beneath their unit would violently hit the wall, shaking the floor and walls of the tenant's unit. The tenant states that this tenant also made false allegations them, and which was believed by the landlord.

The tenant feels that the landlord has a long history of ignoring the tenant's complaints and issues, and instead the landlord has bullied and harassed the tenant through actions such as singling out the tenant out for unit inspections. The tenant feels that the landlord has ignored their complaints, while they normally respond to the complaints of other tenants. The tenant testified that the rules do not apply to everyone.

The tenant states that despite their request to transfer housing, the landlord had only recently given the tenant the opportunity to make this request. The tenant states that this is especially aggravating due to the issues described in this application, including the smoking, problematic tenants which the landlord is too slow to address and evict, the heating and cooling issues, and ongoing harassment and discrimination by the staff.

ADDITIONAL ISSUES RAISED

In addition to the above issues referenced in the tenant's original application, the tenant raised further issues that have not been addressed by the landlord. The tenant testified that there was a sound in the wall that they do not believe is from a drainage pipe. The tenant testified that the sound keeps them up at night. The tenant testified that the noise transfer was significant in the building, and the tenant would often be disturbed by disputes between other tenant sin the building.

The tenant also testified that there were numerous repair issues that the landlord has not addressed, including the installation of a grab bar, oven door issues, vandalism that is not repaired in a timely manner, dumping on the property, removal of furniture from the common areas by the landlord, concerns about adequate security in the building, a messy garbage and compost area, improper cleaning and disinfecting of laundry machines, coffee being thrown at the tenant's door, automatic lights set at too slow a setting, and lack of acknowledgement form landlord about the tenant's concerns and complaints.

LANDLORD'S RESPONSE TO TENANT'S CLAIMS

In response to the tenant's claims, the landlord stated the following:

1)The landlord feels that they have adequately addressed the tenant's concerns about the cigarette and cannabis smoke. The landlord states that they had attended the property 15 times since July 2022, and have not observed any smell or smoke on the tenant's floor. The landlord states that they had performed an in-suite inspection of the suspected unit, and there is no indication that the tenant in that suite was smoking

inside their suite. The landlord testified that without being able to identify the specific tenant or unit where the smoke is originating from, the landlord is unable to adequately address the issue.

The landlord denies harassment or discrimination of the tenant, and testified that the multiple inspections were in response to the tenant's complaints in order to investigate them.

2)The landlord states that they had evicted the violent tenant, which was a very lengthy process, which often takes many months.

The landlord testified in the hearing that they were in the process of addressing issues with another tenant, which the landlord testified involved multiple warnings as required. The landlord notes that that they have been successful in evicting one of the problematic tenants, which shows that the landlord had made efforts to address problematic tenants.

3)The landlord notes that as noted on the written tenancy agreement, the tenant is responsible for their own utilities, as well as the purchase of heating or cooling appliances. The landlord also argued that the Act does not outline specific requirements for building maintenance standards, such as the correct temperature for heating of a building.

4)The landlord disputes the tenant's request for a rent reduction. The landlord notes that the tenant is not residing in a subsidized unit, although there are currently 12 units in the building which are currently subsidized. The landlord notes that there are 60 other tenants who are also not subsidized, and as such, their rent is not calculated based on the tenant's income. The landlord testified that the tenant's rental unit is a "low end market unit" where rent is a set amount, and does not change based on income.

5)The landlord states that they are a non-profit housing agency that provides affordable housing. The landlord disputes breaching any section of the *Act*, and feels that they have dealt with the tenant's written complaints to the best of their ability. The landlord does note that they have informed the tenant that many of their complaint letters are "in-actionable" for reasons such as in ability to follow up due to lack of unit numbers or names.

6) The landlord states that the building is built to code. The landlord testified that they were in the process of sorting out issues such as installation of the grab bar. The landlord further notes that they do not endorse problematic behaviour by tenants in the

building, including dumping and vandalism by tenants. The landlord testified that cleaning and regular maintenance is performed by a third party. The landlord acknowledged that staffing issues have affected the landlord's ability to address issues in a more timely manner.

7) The landlord testified that they have been working with the tenant to find them new and suitable housing. The landlord notes that the tenant had only selected one building as a preference for their housing application, which may have affected their ability to find subsidized housing in a timely manner.

The landlord attached additional documents, including a detailed log of their visits to the tenant's floor to investigate cigarette and cannabis odour, response letters sent to the tenant, and complaint letters submitted by the tenant.

Analysis

As noted above, this decision will only address the claims referenced in the tenant's original application.

Tenant's Request for a Rent Reduction

I accept the evidence and testimony of the landlord that the tenant's rent is set out in the tenancy agreement, and the amount of rent is not reflective of the tenant's income. As I do not have authority to grant the tenant any subsidies, or change the tenant's rent to reflect their income, I dismiss the tenant's request for a rent reduction without leave to reapply.

Request for the Landlord to Provide Services and Facilities as Required by the Act

I have considered the tenant's concerns about the heating and cooling issues in their rental unit. I recognize the discomfort and stress experienced by the tenant, and the fact that the tenant purchased heating and cooling appliances to cope with their discomfort as much as possible.

Although I accept the landlord's response that the building is built to code, I also acknowledge that that heating and cooling issues can adversely affect the tenant's enjoyment of the suite. Based on the evidence provided, it appears that due to the nature and size of the rental unit, and uncontrollable fluctuations in the weather, the landlord has limited options to address the tenant's concerns.

I do note the municipal bylaws which apply to the location of the rental unit states the following about heating:

Heating Systems

7. (1) Every rental unit shall be provided with adequate heating facilities that are maintained in good order.

(2) Heating facilities provided in a rental unit shall be capable of maintaining a minimum indoor air temperature in the rental unit of at least 21oC (70 oF).

(3) The heating equipment shall be turned on in order to maintain the required temperature defined in subsection (2) upon the request of any occupant of a rental unit.

(4) Portable room heaters or cooking facilities must not be used as a primary source of heat in a rental unit.

As noted in the tenant's testimony and evidence, there is a possibility that the heating system in the rental unit does not comply with municipal bylaws. Although enforcement of municipal bylaws is done by the municipality, and is not within the jurisdiction of the RTB, I do not the following sections of the *Act* that may be of relevance:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Emergency repairs

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, issues with the primary heating system is considered an emergency repair. I also note that the landlord has an obligation to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I note that in this application the tenant has not made a specific claim under sections 32 or 33 of the *Act* for repairs, nor has the tenant provided evidence that they have communicated with the municipal bylaw office for enforcement of any bylaw infractions. Furthermore, the tenant has not provided sufficient evidence to support that the tenant has followed the steps above for a claim related to emergency repairs. For these reasons, the tenant's claim related to repairs of the heating and cooling system is dismissed with leave to reapply.

Tenant's Request for Compensation, and Complaints about Loss of Quiet Enjoyment, Discrimination, Human Right's Violations, and Landlord's Failure to Adequately Address Issues

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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.

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claims on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the losses incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In response to the tenant’s claims for loss of quiet enjoyment, the number of outstanding issues raised in this application is quite troubling. The tenant made a specific request for monetary compensation in the amount of \$760.00 per month for 3.5 years, totalling \$16,640.00.

As noted in RTB Policy Guideline #16:

“In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party’s non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.”

As noted above, the onus is on the tenant to support the actual value of the loss claimed, and furthermore, the amount must not include any punitive element. In review of the detailed evidence and testimony before me, it is obvious to me that the extent of the issues described by tenant exceed the authority delegated to me by the Director of the Residential Tenancy Branch, and in particular the tenant’s complaints about harassment, discrimination, and human rights violations by the landlord. As concerning as these complaints are, I do not have the delegated authority to address these complaints.

With respect to the tenant's complaints about Human Rights Code violations by the landlord, although the *Residential Tenancy Act* does allow tenants to file an application in relation to disputes between landlords and tenants, and matters that pertain to their right to enjoy their rental unit, human rights code violation complaints do not fall under the jurisdiction of the RTB. The British Columbia Human Rights Tribunal exists to hear these complaints, and I decline to make any findings in relation to any allegations of Human Rights Code violations that took place during this tenancy.

I also note that much of the tenant's application references the conduct, and specifically the noncompliance of landlord in addressing ongoing issues such as failure to investigate reported issues, failure to evict problematic tenants in a timely manner, failure to maintain the building in a hygienic state that meets health and safety standards, inappropriate handling of the tenant's complaints, and failure to accommodate the tenant's reasonable requests for placement in more a more suitable housing unit. The Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a)contravened a provision of this Act or the regulations,
- (b)failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c)given false or misleading information in a dispute resolution proceeding or an investigation.

The landlord's agent attended the hearing and provided written evidence for this hearing disputing all of the tenant's claims. In this case, I find the majority of the issues raised by the tenant cannot be adequately addressed without further investigation, and the possible compliance and enforcement measures if applicable. I note that the Director has not delegated to me the authority to perform investigations or impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is also separate from the dispute resolution process, and as noted above, applicants cannot claim for compensation containing a punitive element.

As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section. The tenant may obtain ore information about the Compliance and Enforcement Unit (CEU) through the link below, or by contacting the RTB, and pursue the appropriate remedies through this process if they wish to do so.

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement/enforcement-process>

Although I fully recognize the tenant's immense struggles, stress, and inability to enjoy their home, and the numerous issues described by the tenant in their application and during the hearing, I find that the tenant has not sufficiently supported the amount claimed in this application, which amounts to an almost 100% refund of the tenant's rent for 3.5 years. As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award.

While the tenant did provide copies of their utility bills and referenced receipts for heater/cooler and air conditioner, the tenant still bears the burden to support that the system is not functioning properly, that the landlord has failed to perform the necessary repairs as required, and then support the resulting loss. The tenant also has a duty to mitigate the losses claimed. As noted above, the tenant has not made a specific claim under sections 32 or 33 of the *Act* for repairs, nor has the tenant provided evidence that they have communicated with the municipal bylaw office for enforcement of any bylaw infractions. Although the tenant did undertake efforts to record the temperature in the rental unit, the tenant has not provided any reports by a licensed contractor to support that the system is not functioning properly, or in compliance with legal requirements. I also found that the tenant did not provide sufficient evidence to support that the tenant has followed the steps above for a claim related to emergency repairs. I find that at this time, the tenant has not established the losses associated with an inadequate heating or cooling system. For these reasons, any monetary claims related to the heating and cooling system are dismissed with leave to reapply.

In regard to the remaining monetary claim of \$760.00 per month, I find that the tenant failed to support how they had calculated the total amount claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the losses the tenant is seeking in this application. On this basis I dismiss the tenant's monetary claims for loss of quiet enjoyment without leave to reapply.

Additional Issues, and Request for the Landlord to Comply with the Act

With respect to the tenant's other concerns, I note that pursuant to section 32 of the *Act*, the landlord does have an obligation to maintain the residential property in a state of decoration that complies with health and safety standards, having regard to the age, character and location of the rental unit.

I find that the landlord has provided a reasonable explanation for why they have been unable to satisfy the tenant's requests for a cleaner and more pleasant environment. As noted in section 32 of the *Act*, the landlord's obligations must take in consideration the character and location of the rental unit. In this case, I find that given the location and

type of housing this rental unit is located in, and given the fact that there are over 60 rental units in this building, I find that the landlord has provided an explanation for why the landlord has struggled to maintain the common areas of the building. As the tenant has pointed out, the cleaning can be much improved. Given the explanation by the landlord, I am not convinced that the state of the building reflects the landlord's deliberate or negligent actions to contravene the *Act*.

The tenant also expressed significant concern about the cigarette and marijuana smoke that the tenant can smell from their rental unit, and which has significantly disturbed the tenant. While the landlord's response is that they have fully investigated the matter, and that the tenant has not properly identified the source of the smoke, the tenant feels that this issue has not been adequately addressed by the landlord. In light of the landlord's response that they have fully and adequately addressed this issue, I do not have the delegated authority to investigate the matter further to ensure that the landlord is indeed compliant and adhering to their obligations as required.

Based on the disputed evidence and testimony before me, I find that the landlord has rebutted the tenant's testimony and evidence with their own evidence to show that they have fully investigated the reported issues to the best of their ability. The landlord provide a detailed log of the multiple attempts to identify the source of the smoke.

Although I have no doubts that the tenant has experienced a significant reduction in their ability to enjoy their home due to smoke that has seeped into their rental unit, as this is a multi-tenanted building, I find that the landlord is faced with the difficult challenge of identifying which specific unit or tenant the smoke is coming from. Considering the fact that there are possibly over 60 occupants or tenants in the building, the landlord is limited in their ability to pursue the matter further unless they can identify the specific source of the smoke. I find that the landlord has provided sufficient evidence to support that they have made multiple attempts to identify the source.

Apart from any contraventions of the *Act* that can be identified by further investigation into the landlord's non-compliance, I do not find that the landlord has contravened the *Act* or legislation. For this reason, I dismiss the tenant's application for the landlord to comply with the *Act*.

Conclusion

As noted in this decision, I do not have the delegated authority to investigate issues, impose penalties for non-compliance, nor do I have jurisdiction to hear human rights violation complaints. These issues must be addressed through the appropriate avenues by the tenant.

I dismiss the tenant's claims related to repairs of the heating and cooling system, and associated compensation, with leave to reapply.

The remainder of the tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 23, 2023

Residential Tenancy Branch