Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRT MNDCT FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") filed by the Tenant pursuant to the *Residential Tenancy Act* (the "Act"). The Tenant applied for the following:

- an order to be paid back by the Landlord for the cost of emergency repairs made by the Tenant pursuant to section 33(5);
- a monetary order for compensation owed by the Landlord to the Tenant pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on March 14, 2023 ("Original Hearing"). The Landlord's agent ("JL") and the Tenant attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, I identified issues with service of some of the Tenant's evidence on the Landlord. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision ("Interim Decision") dated March 15, 2023. The Interim Decision stated the Tenant was to re-reserve her evidence on the Landlord and that the Landlord could serve the Tenant by email and submit it to the Residential Tenancy Branch ("RTB"), with any evidence the Landlord considered relevant to respond to the Application and the Tenant's evidence. The RTB served the Notice of Adjourned Hearing and Interim Decision on the parties. The first adjourned hearing ("First Adjourned Hearing") was scheduled for April 17, 2023. JL and the Tenant attended the Second Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The First Adjourned Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision ("Interim Decision") dated March 29, 2023. The Interim Decision stated the parties were not permitted to serve each other, or submit to the RTB, with any additional evidence. The RTB served the Notice of Adjourned Hearing and Interim Decision on the parties. The second adjourned hearing ("Second Adjourned Hearing") was scheduled for April 17, 2023. JL and the Tenant attended the Second Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by registered mail on July 14, 2022. The Tenant submitted a Canada Post receipt and tracking number for service of the NDRP on the Landlord to corroborate her testimony. JL acknowledged the Landlord received the NDRP. Based on the foregoing, I find the NDRP was served on the Landlord by registered mail in accordance with the provisions of section 89 of the Act.

At the Original Hearing, the Tenant stated she served some of her evidence on the Landlord by registered mail on February 8, 2023. The Tenant submitted a Canada Post receipt and tracking number for service of the evidence on the Landlord to corroborate her testimony. JL acknowledged the Landlord received the evidence sent on February 8, 2023. Based on the foregoing, I find the Tenant's evidence was served on the Landlord in accordance with the provisions of section 89 of the Act.

At the Original Hearing, JL stated the Landlord served their evidence on the Tenant by registered mail on February 144, 2023. JL submitted a Canada Post receipt for service of the Landlord's evidence and the Tenant admitted she received that evidence. As such, I find the Landlord served their evidence on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Evidence by Tenant on Landlord

At the Original Hearing, the Tenant stated she served additional evidence on the Landlord by registered mail on February 24, 2023 to respond to the evidence the Landlord served on her. The Tenant stated the evidence package was returned to her with a label indicating that it was sent to the wrong address.

Rules 7.8 of the RoP states:

> **7.8 Adjournment after the dispute resolution hearing begins**
>
> At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. A party or a party's agent may request that a hearing be adjourned. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

Pursuant to the First Interim Decision, I ordered the Tenant to re-serve her additional evidence on the Landlord by email. The Landlord acknowledged receipt of the re-served evidence.

Issues to be Decided

Is the Tenant entitled to:

- recover the cost of emergency repairs made by the Tenant?
- a monetary order for compensation from the Landlord?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below. Furthermore, the parties submitted numerous emails from one to the other and from other parties. I have only referred to emails and communications that I considered the most relevant to making my findings of fact and determinations I have made in my decision.

The Tenant submitted into evidence a copy of the signed tenancy agreement, and addenda, dated April 23, 2020, between the Landlord and Tenant. The parties agreed the tenancy commenced on April 28, 2020, for a fixed term ending April 30, 2021, with rent of $2,000.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of $1,000.00 and a pet damage deposit of $1,000.00 by April 6, 2020.

Based on the foregoing, I find there was a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

JL stated the Landlord received the security and pet damage deposits> JL stated the deposits were dealt with in a previous dispute resolution proceeding at the RTB. JL stated the Landlord was awarded $1,235.00 in liquidated damages resulting from the Tenant ending the fixed term in beach of the tenancy agreement. JL stated the Landlord was ordered to pay the Tenant the balance of the deposits, being $765.00. The Tenant admitted she received the $765.00 from the Landlord.

The Tenant submitted into evidence a Monetary Order Worksheet on Form RTB-37 that set out the details of her monetary claims. I set out a summary of those claims in the following table:

Purpose	Amount
Snaking out Kitchen Drain	$247.80
Move Out Expenses	$1,140.35
Loss of Quiet Enjoyment	$859.65
Total Monetary Claims:	$2,247,.80

The Tenant submitted into evidence a copy of the move-in inspection report dated April 26, 2020 that noted “drain has issue draining”. On page 3 of the move-in inspection report there is a comment “Owner to contact strata about kitchen sink drain issue”. On page 4 of the inspection report under repairs to be completed it was noted “Flapper in second bathroom to be addressed”. The Tenant submitted into evidence a copy of an email to an agent on April 26, 2020, being the day before she was to move into the rental unit, in which she stated she had concerns regarding the kitchen sink not draining properly and needed to be plunged.

The Tenant stated there was a double sink in the kitchen. The Tenant stated one of the sinks had a garburator that did not work and was never repaired or removed during the tenancy. The Tenant stated she was provided with a plunger by the Landlord’s agent at the commencement of the tenancy because of the issue with the kitchen sink draining properly. The Tenant stated she requested repairs be performed on the kitchen drain. The Tenant stated a plumbing technician came and he removed and cleaned the trap, but he did not snake the sanitary line.

The Tenant submitted into evidence a copy of the invoice dated May 5, 2020 for the original service on drain which contained the following natation:

> Arrived being told there was an odor coming from the kitchen + bathroom sink.
> Upon inspection there were no odors detected.
> Removed both p-traps and cleaned lines.
> P-traps and were pretty clean but are now spotless
> Both sinks draining well.

At the bottom of the invoice, under the heading Reason for No Guarantee it stated “No smell detected”. The Tenant submitted into evidence an email dated May 12, 202 from the property manager’s Tenant WebAccess Service that confirmed the Tenant made a service request. That email stated in part:

> Description: When I met with the owner [person’s name] to do the move-in inspection, he advised me that there were drainage issues with the kitchen sink and that a plunger was required at times to unclog the sink. He stated that this was a problem throughout the building and that it had been taken to the strata company.
>
> Since moving into the condo on April 28, 2020, there has been a very strong, toxic odour in the condo. Other residents have told me they have experienced the same problem. The owner had [name of plumbing contractor] attended on May 5, 2020.
> […]
> Odour continues to be very strong, to the point of making me ill on a daily basis. It is also possible that the wax seal in the ensuite bathroom toilet needs to be checked/replaced, as when the toilet is flushed, there is a strong sewer gas odour. This strong toxic odour needs to be checked or eliminated, as it is impossible to be in the condo without being ill.

The Tenant stated she contacted the Landlord when the problems with the drain continued. The Tenant stated she was told by the Landlord that the drains had been serviced and refused to take any further action. The Tenant stated she sent emails and spoke to JL on May 11, 2020 about the need for further repairs to the kitchen drain. JL denied the Tenant spoke to her again about the plumbing. The Tenant submitted another email dated May 27, 2020 in which the Tenant advises the kitchen sinks were not draining.

The Tenant stated she called the operations manager of the plumbing contractor. The Tenant stated the manager then spoke to the plumber who serviced the kitchen drain and he admitted he did not snake the sanitary line. The Tenant submitted an email dated July 2, 2020 from the operations manager of the plumbing contractor. In that email, the manager confirmed that the original plumbing technician did not snake or auger the kitchen sink drain. The Tenant submitted into evidence an email dated June 29, 2020 to JL in which she reported she had a plumbing technician, from the same plumbing contractor used by the Landlord, come and snake the kitchen drain and that the drain was now draining properly.

The Tenant stated her water pipes would gurgle when other residents in the building used their water fixtures. The Tenant stated she investigated the matter further and was told that there were major plumbing issues in the residential building in which the rental unit was located. The Tenant submitted into evidence a copy of the invoice for $247.00 stated she was seeking reimburse for the emergency repairs she incurred for repairing the kitchen drain.

The Tenant stated there were continuing significant odours in the rental unit after the kitchen drain was cleared. The Tenant submitted into evidence a copy of a letter dated July 30, 2020 from two tenants residing in another unit in the residential property. In that letter, the two tenants reported their sink did not drain property and hear a loud glugging sound in their kitchen sink when the garburator above them is in use. Those tenants stated they reported the problem to the builder of the condo and were told the solution was for the two-inch pipes in the parking garage to be replaced with three-inch pipes. Those tenants stated this remediation had not been performed.

The Tenant stated the odours in the rental unit continued. The Tenant stated she gave the Landlord written notice, sent by email on June 29, 2020, advising she would be vacating the rental unit on July 31, 2020. The Tenant submitted into evidence a copy of the email of June 29, 2020 to corroborate her testimony. Nowhere in the email did the Tenant state that, if the Landlord failed to comply with a material term of the tenancy agreement by a date that would give the Landlord a reasonable period of time, then she would end the tenancy effective on a date that was after the date the landlord received the written notice from the Tenant. The Tenant submitted into evidence an invoice for the cost of the move out and requested $1,140.35 to reimburse her for this expense.

The Tenant stated she was seeking $859.00 for loss of quiet enjoyment of the rental unit. I have summarized below the Tenant's testimony she gave in support of her claim for compensation for loss of quiet enjoyment:

1. inconvenience, and loss of use, from not having a kitchen sink that would drain properly from the start of the tenancy until the Tenant arranged for emergency repairs to be performed on June 17, 2020. The Tenant submitted the invoice for the emergency repairs performed on June 17, 2020. In that invoice, it recommended the garburator be removed. It also stated that the Tenant reported gurgling sounds when the garburator in the unit above is used and notes there could be a stack/venting issue;
2. disturbance and health issues resulting from the smell of odours from the time she moved into the rental unit on April 28, 2020 until she vacated it on July 31, 2022. The Tenant submitted an email dated May 14, 2020 in which she reported strong odors overnight and on morning the email was sent. The Tenant submitted into evidence an email dated June 15, 2020 in which the Tenant reported a strong chemical odour in the rental unit;
3. inconvenience, and loss of use, of the garburator that was never repaired during the tenancy. The Tenant submitted into evidence an email June 10, 2020 in which she requested that the garburator be repaired, replaced or removed;
4. disturbance from water constantly running in toilet in main bathroom until it was replaced in the 1st week of May 2020;
5. unsanitary conditions around kitchen sink due to moldy caulking until it was replaced on May 7, 2020. The Tenant submitted into evidence emails from the Tenant WebAccess dated May 7, May 12 and May 27, 2020 regarding the moldy caulking;
6. disturbance from odours emanating from dirty kitchen fan filters until replacements were provided on at the end of May 2020. The Tenant submitted into evidence two emails regarding replacement of the kitchen fan filters as they are dirty and had a strong odour;
7. inconvenience of a moldy shower curtain rod that required cleaning by the Tenant. The Tenant submitted into evidence an email dated May 7, 2020 to an agent regarding this issue together with a photo of the shower rod;
8. inconvenience of non-functioning pop-up stopper in ensuite bathroom. The Tenant submitted an email dated May 12, 2020 in which she made a request to JL for the stopper to be repaired together with a picture of the suction cup provided to pull the stopper open to allow the sink to drain. The Tenant

submitted another email dated May 27, 2020 regarding the repeated failure of the sink stopper to function;

9. inconvenience of odors from dirty kitchen fan filters. The Tenant submitted an email day May 12, 2020 in which the Tenant reminded JL that another agent promised to replace the filters;
10. inconvenience of broken toilet paper dispenser in the ensuite bathroom. The parties agreed this issue was resolved in the second week of May 2020;
11. disturbance from odors when the bathroom when toilet was flushed;
12. noise disturbances from another unit in residential property. The Tenant submitted a copy of an email dated June 19, 2022 regarding noise from the rental unit above her and suggesting a fine should be levied if the other tenant did not follow the strata bylaws; and
13. inconvenience and disturbance resulting from having JL and Landlord's contractors come into the rental unit to perform repairs, particularly during the COVID-19 pandemic.

I have summarized below JL's testimony:

1. JL admitted there were some issues with the rental unit at the commencement of the tenancy;
2. the leaking toilet was replaced in the 1st week of May 2020 and the Tenant agreed with this statement;
3. JL provided the Tenant with new filters for the kitchen fan at the end of May 2020 and the Tenant agreed with this statement;
4. JL stated she came with another agent in the evening of June 9, 2020, stayed for about 45 minutes and they were unable to detect any odours at the time. The Tenant stated that the odours were intermittent;
5. JL stated that it was difficult to find workers and contractors during the COVID-19 pandemic. JL stated the Tenant refused access on some occasions;
6. JL stated the Tenant did not report the need for the curtain rod to be cleaned;
7. JL stated it took two visits to resolve the caulking around the kitchen sink;
8. JL stated the bathroom stopper was fixed in early May. The Tenant sated the stopper stopped working after several weeks and it was never fixed again; JL stated the Landlord and agents did their best to resolve the Tenant's complaints; and
9. JL stated the Tenant was reacting disproportionately to the issues affecting the renal unit.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

> **6.6 The standard of proof and onus 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. 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.

Based on Rule 6.6, the onus to prove her case, on a balance of probabilities, is on the Tenant who has made the claim for compensation.

Sections 7 and 67 of the Act state:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
>
> 67 Without limiting the general authority in section 62 (3) *[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.

Residential Tenancy Branch Policy Guideline 16 ("PG 13") provides guidance on claims for damages or loss that has resulted from a party not complying with the Act, the regulations or a tenancy agreement. PG 13 states, in part:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Sections 16, 31(1) and 45(3) of the Act state:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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.

45(3) If a landlord has failed to comply with a material term of the tenancy agreement and *has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

1. Reimbursement for Emergency Repairs

Sections 33(1), 33(3), 33(5) and 33(6) of the Act state:

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.

(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.

(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.

The Tenant stated one of the two sinks had a garburator that did not work. The move-in inspection report noted that there was an issue with the sink draining properly. The Tenant stated she was provided with a plunger because she was told by the Landlord's agent that there were problems with the drain. The Tenant stated she reported in writing that repairs were required to fix the drain. The Tenant stated a plumbing technician came and he removed and cleaned the trap, but he did not snake the sanitary line. The Tenant stated she contacted the Landlord when the problems with the drain continued. The Tenant stated she was told by the Landlord that the problem was repaired.

The Tenant stated she called the operations manager of the plumbing contractor. The Tenant stated the manager then spoke to the plumber who serviced the kitchen sink and the plumber admitted he did not snake the sanitary line. The Tenant stated she again reported in writing that repairs were required to the kitchen drain. The Tenant stated she spoke to JL on at least one occasion regarding requiring repairs to the kitchen sink. JL denied the Tenant spoke to her again about the plumbing. The Tenant stated she then had the same plumbing contractor send a technician who snaked the sanitary line and after this second service, the sink drained normally.

I find the need for the repairs to the kitchen drain were urgent, necessary for the use of the rental unit and were made for the purpose of repairing blocked sewer pipes or plumbing fixtures. Although there was a double sink in the kitchen, one sink was not serviceable because the Landlord refused or neglected to fix or remove the garburator and the other sink would not drain properly. I further find that the first repairs performed on the kitchen sink performed by the original plumber who serviced the drain were deficient. This finding is supported by the fact that the second servicing, which entailed snaking the sanitary lines which ultimately resolved the drainage issue.

Although JL denies the Tenant spoke to her by phone regarding the need for further repairs to the kitchen drain, I prefer the testimony of the Tenant. Firstly, the Tenant sent several emails requesting the sink be fixed again and one of those emails advised JL that the original plumber did not snake the sink. Secondly, the Tenant was very diligent

to document all her requests for repairs to the Landlord or to JL. Thirdly, it was apparent to me that the Tenant was detailed and assertive during the hearing. I cannot imagine the Tenant would have sent written requests for repairs to the kitchen drain without also making at least one follow-up call by telephone to JL to verbally check the status of her request for repairs.

I do not find any of the exclusions listed in section 33(6) of the Act that disqualify the Tenant from being reimbursed for the emergency repairs she arranged to be performed on the kitchen sink. Based on the foregoing, I order the Landlord to reimburse the Tenant for $247.80 for the cost of the emergency repairs to the kitchen sink pursuant to section 33(5) of the Act.

2. Reimbursement for Moving Expenses

Section 45(3) of the Act states:

> 45(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Tenant sent JL an email, dated June 29, 2022, in which she told her that she was vacating the rental unit on July 31, 2020. I have reviewed that email carefully and find it did not make any reference to a breach of a material term of the tenancy agreement nor did it provide the Landlord with a reasonable opportunity to correct the breach or that, in the event of failure of the Landlord to do so, the Tenant would be vacating the rental unit. As such, I find the Tenant did not comply with essential requirements for a notice to end a fixed term tenancy required by section 45 (3) of the Act. Based on the foregoing, I find the Tenant has not proven, on a balance of probabilities, that she is entitled to compensation from the Landlord for her moving expenses. As such, I dismiss this part of the Tenant's claim for compensation.

3. Compensation for Loss of Quiet Enjoyment

I find that some of the elements of loss claimed by the Tenant relating to loss of quiet enjoyment also encompass loss of amenities of the rental unit. As loss of quiet enjoyment and loss of amenities are often intrinsically related to each other, I will

consider loss of amenities of the rental unit as part of the Tenant's claim for loss of quiet enjoyment.

Residential Tenancy Policy Guideline 6 ("PG 6") provides guidance on a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. PG 6 states in part:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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 landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

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.

> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Pursuant to section 28(b) of the Act, a tenant is entitled to freedom from unreasonable disturbance. Section 67 states that, if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director has the authority to determine the amount of, and order that party to pay, compensation to the other party. PG 6 makes it clear that there must be substantial interference with the ordinary and lawful enjoyment of the premises. The Landlord must be aware of the interference or unreasonable disturbance to be able to take reasonable steps to correct these. However, temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. It is only when there is frequent and ongoing interference or unreasonable disturbances that may form a basis for a claim of a breach of the entitlement to quiet enjoyment. Based on the foregoing, I must determine whether the disturbance suffered by the Tenant, was unreasonable in all the circumstances and, if so, the amount of compensation the Tenant is entitled to because of the Landlord's failure to comply with section 28(b) of the Act.

The Tenant provided testimony about several noise disturbances and provided several emails in which the disturbances were report to JL. The Tenant provided another email in which another resident reported a single noise disturbance. However, the Tenant did not provide any other evidence or call any witnesses to corroborate her testimony. As noted in PG 6, temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. As such, I find the Tenant has not proven, on a balance of probabilities, that her quiet enjoyment was disturbed to the degree contemplated by PG 6. Based on the foregoing, I find the Tenant is not entitled to any compensation for noise disturbances from other rental units in the building.

On the other hand, based on the testimony and evidence of the parties, I find the Tenant has proven, on a balance of probabilities, that the Landlord breached the Tenant's right to be free from unreasonable interference or disturbance of her right to quiet enjoyment. I find the disturbance of the Tenant's loss of quiet enjoyment and loss of amenities were primarily the result of a kitchen sink that did not drain property until she had emergency repairs performed on June 17, 2020, odours from the kitchen fan filters, noise from a toilet but most importantly, odors that persisted throughout the tenancy. I also note the Tenant testified that her pet was also affected by the odours. it

is hard to imagine how providing the Tenant, at the commencement of the tenancy, with a plunger to keep the kitchen sink drain running would constitute a repair.

I also find it troublesome that the Landlord refused or neglected to remove or replace the garburator in the second sink when it was recommended by the second plumbing technician. In addition, the Tenant provided testimony and evidence regarding serious issues regarding the sanitary plumbing in the residential building. Although the Landlord attempted to address the issue of odours in the rental unit, I nevertheless find the Tenant was significantly impacted by odors during the entire tenancy. I also find the Landlord did not provide all the amenities the Tenant expected when she agreed to rent the rental. I also find that the failure of the first plumber to properly address the drainage issues with the sink and the Landlord's failure to replace or remove the garburator significantly exacerbated the loss of the Tenant's quiet enjoyment of the rental unit.

The Tenant only resided in the rental unit for three months with rent of $2,000.00 month. I find a reasonable amount of compensation for the Tenant is $350.00 for May 2020. I find a reasonable amount of compensation for the Tenant is $300.00 for June 2020 as the toilet, toilet paper roll dispenser was replaced in the previous month. I find a reasonable amount of compensation for the Tenant is $250.00 for July 2020 as the kitchen drainage issue was resolved in the previous month but the odors in the rental unit persisted throughout the tenancy. As such, I find the Tenant is entitled to total compensation of $900.00.

The Tenant claimed $2,000.00 in the Application for compensation. The Monetary Order Worksheet provided by the Tenant stated that, of the $2,000.00, she was seeking $1,140.35 for moving expenses and $859.65 for loss of quiet enjoyment. I have dismissed the Tenant's claim of $1,450.35 for the moving expenses as she did not give a proper written notice under section 45(3) of the Act to end the fixed term tenancy. As such, I can only award the Tenant a maximum of $859.65 for disturbance of her quiet enjoyment and the associated loss of amenities of the rental unit. Based on the forgoing, I order the Landlord to pay the Tenant $859.65 compensation for loss of her quiet enjoyment and loss of amenities of the rental unit.

4. Filing Fee of Application

As the Tenant has been substantially successful in the Application, I order the Landlord to pay the Tenant $100.00 for reimbursement of the filing fee of the Application pursuant to section 72 of the Act.

Conclusion

The Tenant is granted a Monetary Order for $1,207.45 calculated as follows:

Item	Amount
Reimbursement for emergency repairs paid by Tenant	$247.80
Monetary Compensation for loss of quiet enjoyment and loss of amenities	$859.65
Reimbursement of Tenant's filing fee for Application	$100.00
TOTAL	**$1,207.45**

The Tenant is provided with this Order on the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court as an Order of that Court.

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: May 18, 2023

Residential Tenancy Branch