



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRT, MNDCT, RR, RP, PSF, OLC, FFT**

Introduction

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

- 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 to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65.
- 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 requiring the landlord to comply with the *Act* pursuant to section 62.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended. The hearing process was explained, and an opportunity was given to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

Each party provided their email address for delivery of the Decision.

The tenants are referenced in the singular.

Service

The tenant sent documents to the landlord at his home address twice by registered mail. The landlord acknowledged receipt of the first registered mail. The landlord acknowledged receipt of the second registered mail sent February 3, 2023, to his home, but stated he was away at the time. He had a friend open the envelope and relay the contents' information to him. He objected to the admissibility of the evidence.

Further to the tenant's evidence and the landlord's acknowledgement that all the evidence was sent to his home, the only address the tenant's had, I find the tenant served the landlord by registered mail on February 8, 2023, 5 days after the second registered mail.

Preliminary Issue: Settlement Discussions

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If settled, the settlement may be recorded in the form of a Decision or an Order.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter. The landlord agreed to compensate the tenant for:

ITEM	AMOUNT
Well caps, chlorine	40.00
Water test August 2022	99.75
Water test September 2022	199.50
TOTAL	\$339.25

Accordingly, I award the tenant **\$339.25**.

Settlement discussions were unsuccessful with respect to the remaining issues, and the hearing continued to conclusion.

Preliminary Issue – Dismissal of Claims

The parties stated this is their second application. On January 13, 2023, in the application referenced on the first page, the parties agreed the tenant would move out on May 31, 2023.

As the tenancy is almost over, many of the tenant's claims, which apply only to ongoing tenancies, will shortly no longer an issue.

I explained to the parties that I therefore dismiss all claims with leave to reapply except the tenant's application for a Monetary Order and reimbursement of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for damages and compensation as well as reimbursement of the filing fee?

Background and Evidence

Settlement

As stated earlier, the landlord agreed to reimburse the tenant for \$339.25 in expenses which included the costs of water tests in August and September 2022.

Evidence

Both parties provided a substantial amount of conflicting testimony during the lengthy hearing. They each submitted many documents as evidence.

However, in this Decision I will only address the facts and evidence which underpin my findings. I will summarize and address matters which are essential to determine the issues identified above. I will not summarize or address all documentary evidence and testimony

Overview of Claims

This hearing involved an application by the tenant for compensation of **\$7,900.00** from the landlord because of loss of quiet enjoyment and related claims. The tenant claimed lack of drinking water and the landlord's behaviour disturbed their peace, rest and enjoyment. The landlord took no steps to investigate or remediate the sudden unsafe condition of the drinking water in the unit.

The tenant claimed damages for loss of quiet enjoyment for 28 months, being 24 months prior to the filing of the application on January 25, 2023, and for the 4 subsequent months until the hearing.

The landlord claimed the lack of drinking water was not his fault and he did everything reasonable to correct the problem. His actions were normal for a landowner. The tenant's complaints were unreasonable, exaggerated or fabricated. Nothing the tenant complained about warrants compensation. He requested the application be dismissed.

The landlord denied all other claims.

Tenancy

The parties agreed the tenant rented a cabin with running drinking water for \$550.00 month beginning in 2016. The tenant is a family with daughter. The tenant provided deposits which are held by the landlord.

Tenant's Claim

The tenant submitted many pictures and documents including pages of texts with the landlord.

In September 2020, the landlord purchased the acreage with the unit. He tested the well water. He immediately informed the tenant the water was not drinkable. From then on, the landlord behaved in a determined way to get the tenant to move out.

The tenant had a teenager and dogs. They continued to use the well water for laundry and cleaning. They have needed water for everything else since September 2020. One of the tenant's parents lived nearby, but the tenant said they also were concerned about the potability of their water. The parents also

hauled drinking water. The tenant acknowledged the landlord provided boxes of individual bottles of water. However, this was not sufficient for the family's needs.

To get water, the tenant travelled to the nearest store with 18-litre containers twice a month. The distance to the store varied depending on what store was open and whether it had water.

The tenant submitted a copy of a photo of their truck, the bed of which was filled with large water containers to be filled. They picked up and unloaded the containers of water themselves. This was hard work and time consuming. Often the male tenant was away working, and the job fell to the female tenant.

The landlord's efforts were lacklustre and futile to fix the problem. Although he dug two new wells, one was saline, and both were unusable.

The tenant tested the well twice at their own expense as the landlord refused to carry out any more testing. The tenant gave the landlord copies of the receipts. He said he would only reimburse them if they moved out. As stated, at the hearing, the landlord agreed to compensate the tenant for **\$339.25**.

The tenant suggested various solutions to the landlord. They believed the problem was resolvable. The landlord refused to accept their suggestions.

The tenant did not submit any evidence of the cost or time of hauling the water. However, they gave substantial testimony calculating time, distance and effort. They estimated the cost of the water was \$100.00 monthly. In addition, they spent \$100.00 for fuel and time.

The tenant also claimed loss of quiet enjoyment because of the landlord's constant harassment and "stalking" of them.

The landlord repeatedly sent the tenant texts, any time of the day or night. The tenant submitted many pages of these texts as evidence.

The tenant, especially the male tenant, constantly, asked him to leave them alone. This had no effect. The landlord repeatedly asked them when they were moving out, although the tenant had never said they were moving. The texts increased when the landlord issued a Notice to End Tenancy, which was the subject of the January 13, 2023, hearing.

The landlord came to the unit without invitation or announcement. He had various chairs and would sit in the bushes by the cabin and watch the tenant. The tenant submitted photographs of the landlord sitting partially concealed, appearing to face the unit.

Once, the female tenant was startled to find the landlord and his friend at the cabin. The landlord explained they were there "to watch the sunset".

The female tenant became increasingly unsettled and uncomfortable as the landlord usually visited or watched from the bushes when the male tenant was away working. The landlord ignored their warnings and requests to stay away and leave them alone.

The landlord also permitted tenants in recreation vehicles to camp on the property, near the cabin. The occupants defecated in the woods. Toilet paper blew around. The tenant refused access to their hydro and well water. The piles of feces were unhealthy, unsightly and harmful to the dogs.

Eventually, regional officials came to the property, and the occupied recreation vehicles left.

The tenant said the landlord issued a One Month Notice. They disputed the Notice but, as stated earlier, they agreed to move out. They gave up hoping they would ever have drinking water or be left in peace.

Landlord's Reply

The landlord acknowledged the tenant did not have drinking water after he purchased the property in September 2020. However, he did everything he could to fix the problem. He provided boxes of bottled water. He dug two new wells. There was nothing else he could do. He denied he would not consider suggestions.

The landlord denied all the tenant's assertions that he harassed them. He said he owned the property which was his "hobby farm". He was entitled to come there and do what he wanted. He denied making concerted efforts to get them to move.

The landlord denied that his texting caused a problem or was considered a nuisance. He acknowledged the one occasion he wanted to see the sun set, but denied he was behaving in any manner out of the ordinary for a property owner in similar circumstances. He stated he had no idea that the female tenant was uncomfortable with his visits.

The landlord said the tenant is not entitled to any compensation. Their expenses and time are exaggerated or unfounded.

Filing Fees

The tenant requested reimbursement of the filing fee for this application as well as the previous application which resulted in a settlement.

Summary of Tenant's Claims

The tenant claimed \$275.00 a month for 28 months for loss of quiet enjoyment, reimbursement of expenses as agreed and reimbursement of the filing fees:

ITEM	AMOUNT
28 months \$275 loss of quiet enjoyment	\$7,700.00
Reimbursement expenses – agreed upon	\$339.25
Filing fees	\$200.00
TOTAL	\$8,239.25

Analysis

Credibility

I find the tenant's submissions to be persuasive, credible, and forthright. The matter-of-fact testimony was supported in all material aspects by many texts, photographs and documents. I accept the tenant's evidence in its totality.

I find the landlord's version of events to be unreliable, self-serving and disingenuous. I do not believe his evidence which I find is self-serving and manipulative.

The landlord's testimony that he can do what he wants as the property is his, ignores common sense, ordinary rules of society, and his obligations as a landlord.

I find the landlord engaged in a tireless effort to get the tenant to move out by failing to provide drinking water and by denying them dignity and privacy by

constantly texting, attending unannounced, and watching them. The landlord's actions amounted in their totality to loss of quiet enjoyment.

I find the tenant's version of events is the account which a practical and informed person would readily recognize as reasonable and reliable.

Therefore, I give the tenant's evidence the greatest weight. Where the parties' version of events differs, I prefer the tenant's version.

Four-Part Test

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met by the applicant based on the balance of probabilities, that is, something is more likely true than not. These tests are based on the above sections of the Act:

- (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent?
- (2) Did the applicant suffer a loss because of this breach?
- (3) Has the amount of the loss been proven?
- (4) Did the applicant do whatever was reasonable in minimizing their loss?

Each element of this test must be proven on a balance of probabilities. If one element of the test is not proven, then the remainder of the test need not be considered. The tenant bears the standard of proof on a balance of probabilities. In other words, what is more likely than not to have happened?

Quiet Enjoyment

The tenant's claim for damages is for compensation for loss of quiet enjoyment. Section 22 of the Act deals with the tenant's right to quiet enjoyment.

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. A breach of quiet enjoyment is substantial interference with the ordinary and lawful enjoyment of the premises.

The Policy Guideline states that 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 disturbance must be frequent and ongoing.

The Arbitrator is tasked with deciding the seriousness of the situation, the extent of the tenant's loss of use, the time of the interference, and the value of the loss to the tenancy.

Findings – Loss of Quiet Enjoyment

Considering the testimony and evidence, the Act, and pursuant to Policy Guideline 6, I find as follows.

The tenant has met the burden of proof that a loss of quiet enjoyment occurred, they quickly notified the landlord of the results of the testing they did, and the landlord failed to respond effectively in a reasonable time. They also informed the landlord that his behaviour was disturbing, to no avail.

The tenant's evidence is credible. The loss of drinking water and the landlord's inexplicable offensive behaviour of repeated texts, appearances and surreptitious watching, cumulatively amount to loss of quiet enjoyment.

The loss of quiet enjoyment extended uninterrupted for 28 months. The landlord failed to remedy the circumstances that in their total.

Policy Guideline 16: Compensation for Damage or Loss allows the award of nominal damages where there has been an infraction of a legal right which cannot be quantified with certainty.

In consideration of the evidence, the Act and the Policy Guideline, I find the tenant is entitled to an award as requested of 20% for the loss of rent for the 28-month period. I find the total rent is \$15,400.00 and 20% is \$3,080.00.

I grant the tenant reimbursement of the filing fee for this matter only.

I grant the tenant a Monetary Order of **\$3,519.25** calculated:

ITEM	AMOUNT
Award	\$3,080.00
Agreement	\$339.25
Filing fee	\$100.00
TOTAL	\$3,519.25

Conclusion

I grant the tenant a Monetary Order in the amount of \$3,519.25. This Monetary Order must be served on the landlord and may be enforced in the Courts of the Province of BC.

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 22, 2023

Residential Tenancy Branch