



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, RP, PSF, LRE, FFT

Introduction

This hearing was reconvened from a hearing on June 13, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$6,000.00 for monetary loss or other money owed pursuant to section 67;
- an order to reduce rent by \$9,600.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32;
- an order that the Landlord provide services or facilities required by law pursuant to section 27;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1); and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

An interim decision in this matter was issued on June 13, 2023 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Landlord and the Tenant attended the reconvened hearing and gave affirmed testimony.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or money owed?
2. Is the Tenant entitled to a rent reduction?
3. Is the Tenant entitled to an order for repairs or for the Landlord to provide services or facilities?
4. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

5. Is the Tenant entitled to recover the filing fee?

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.

This tenancy commenced on October 1, 2012 and is month-to-month. Rent is \$2,652.00 due on the first day of each month. The Tenant paid a security deposit of \$1,000.00.

The Tenant submits that she has been asking the Landlord to address the mould in the storage space directly below the Tenant's back deck for the last four years. According to the Tenant, the mould was so bad that she could smell it on the deck. The Tenant hired an environmental contractor who performed a mould inspection on May 19, 2022 and issued a report (the "Report"). The Report found there was heavy mould growth in the storage room below the back deck on the OSB sheathing and it appeared that there was water ingress coming into the storage room. The Report stated that the area should be remediated, including removal of the mould impacted materials and repairing the water ingress. The Report recommended that the storage room should not be used until the area is remediated.

The parties had a prior dispute resolution proceeding with a hearing on October 14, 2022. In a decision dated October 14, 2022 (the "October 2022 Decision"), the arbitrator made the following orders:

1. The landlord shall have the back deck, including the area beneath the deck, of the residential property inspected and commence necessary and appropriate repairs in a timely manner so that the back deck and area beneath the back deck is safe, healthy and in compliance with building standards.
2. The tenant must not communicate or otherwise interfere with a contractor who attends the property for purposes of inspecting and/or repairing the deck and storage area.
3. The tenant is responsible for moving any of her personal possessions out of the way should this be required to facilitate repairs.

4. From this point forward, since the tenant may be required to move her personal possessions out of the way, the landlord must give the tenant at least 24 hours of advance notice before a scheduled inspection of the deck area and repair work is set to commence.

The parties had a further hearing on January 5, 2023 regarding the Tenant's applications to dispute a one month notice to end tenancy for cause and a two month notice to end tenancy for landlord's use of property. The Landlord withdrew the two month notice to end tenancy during the hearing. The one month notice was set aside by the arbitrator in a decision dated January 9, 2023 (the "January 2023 Decision").

The Tenant gave the following additional testimony and evidence:

- Following the October 14, 2022 hearing, the Landlord did not start remediating the mould until May 15, 2023. The Landlord had torn a hole into the mouldy storage space on October 22, 2022 and had left it open since. The city inspector found structural rot on the inside and placed a stop work order on the door.
- The Tenant seeks repairs for mould, as well as repairs to the decks, back entrance, and fireplace. The Tenant submitted pictures showing the condition of the decks and support beams. The decks were the Tenant's favourite spaces in the summer, where she could enjoy meals and watch the birds. The Tenant has two decks worth of furniture and plants with no storage unit or decks.
- The Tenant had two braces in the storage room where she was using them to brace up the deck. The Landlord took the braces and used them to brace up the back deck in a different way, which caused the flashing to rip off the chimney and allowed the water to run into the Tenant's bedroom when it rained. The Tenant lost the use of the fireplace, and now has \$200.00 worth of wood which she cannot burn.
- Water has been pooling in the backyard as the Landlord needs to repair the parking cement area to direct the rainwater away from the yard. The city came and did their part, but the Landlord has not done any repairs. On rainy days, the backyard fills up like a lake and the Tenant has to walk through the neighbour's yard to access the Tenant's car in the back alley.
- The Tenant was threatened with eviction when she asked for the repairs. The Tenant submitted that she was harassed with threats, three eviction notices, and temper tantrums in the backyard. The Landlord's eviction reasons turned out to be false.

The Tenant seeks compensation and rent reductions as follows:

Item	Amount
Mould Testing	\$420.00
Rent Reduction for 6 Evictions between July 2022 and January 2023 ($20\% \times 2,600.00 \times 6$ times)	\$3,120.00
Rent Reduction for Loss of Storage Space from March 2022 to March 2023 ($10\% \times 2,600.00 \times 12$ months)	\$3,120.00
Rent Reduction for Loss of 2 Back Decks from October 2022 to June 2023 ($15\% \times 2,600.00 \times 9$ months)	\$3,120.00
Rent Reduction for Loss of Fireplace/Yard in Rain from November 2022 to June 2023 ($10\% \times 2,600.00 \times 7$ months)	\$1,820.00
Bedding Soaked from Roof ($\$50.00 \times 3$)	\$150.00
Total	\$11,750.00

In response, the Landlord gave the following testimony and evidence:

- The rental unit is the upper suite in the house. The parties had signed a standard residential tenancy agreement with no addendum. Use of the storage room along the back deck was not part of the tenancy agreement. The Tenant does not have exclusive use or control of the storage area, which is primarily used by tenants in the downstairs suite. The Tenant did not have any legal right to this storage area and had put her items in without the Landlord's knowledge or permission.
- Originally, the storage room did not have a door attached to the doorframe and only had dirt floor. A few years ago, the Landlord covered the floor with gravel. The space was never sealed from the elements, is susceptible to moisture, and is only good for storing items such as bikes and tires. The Landlord sent the Tenant an email explaining the nature, use, and limitations of the storage space on May 30, 2022. The Landlord offered the Tenant alternate storage, which the Tenant refused.
- The Landlord denies that there is mould. There is no order from the city to repair mould or any engineering report about mould repair. The Tenant emailed the Landlord on May 28, 2022 about being "poisoned" in the house. The Tenant refers to black mould obsessively. The Report commissioned by the Tenant indicates 0% black mould (*sachybotrys chartarum*) inside and outside. The Landlord refused to pay for the Report after reading the conclusion.
- On July 8, 2022, the Landlord was at the property to mow the lawn as he would every two weeks for the past two years. The Landlord also took pictures of the

deck for repairs. The Landlord was assaulted by the Tenant and her roommate RV, resulting in a hand injury. The Tenant and RV had taken the Landlord's phone. After they threw it back over the fence, the Landlord called the police. The Landlord phoned an hour later to cancel ambulance as they were busy, and went to the hospital for his broken hand. The Landlord was left with permanent damage to his hand.

- The Landlord emailed the Tenant on July 12, 2022 to explain why he was in the yard and forwarded an email from his deck repair contractor to the Tenant. The Tenant then emailed the Landlord's contractor threatening to call the police, so the Landlord's contractor quit the job. The Tenant asked for repairs but was stopping the Landlord every step of the way.
- On September 24, 2022, the Landlord suffered a medical emergency and was hospitalized. The Landlord was unable to attend the hearing on October 14, 2022. MH, a co-owner of the property, helped to attend the hearing and manage the property while the Landlord was hospitalized. On October 15, 2022, MH emailed the Tenant to remove the Tenant's belongings per the arbitrator's decision. The Tenant responded saying that she did not agree with the arbitrator's decision.
- The Tenant withheld \$50.00 from rent for soaked bedding which was why an eviction notice was issued in November 2022. The Tenant could have put her bedding in the laundry.
- The Landlord was discharged from hospital in late October 2022, and immediately hired a contractor to start working on the repairs, despite advice from the Landlord's doctor.
- The Landlord obtained written permission from the Tenant's ex-partner to use the braces. The braces belonged to the Tenant's ex-partner not the Tenant.
- The Tenant called the city with false allegations which caused the city to issue a stop work order. The Tenant's engineer friend alleged the Landlord had cracked the roof by jacking up the porch, but the porch is not attached to the roof. The Tenant alleged that there was seismic shifting and that all four posts were about to collapse. Because of these allegations, the city decided to investigate. The Landlord provided an engineering report to show that the porch was not falling down. The Landlord spoke with DH from the city engineering department, who was fed up with at least four or five complaints about this from the Tenant.
- In December 2022, the city followed up with the work order about specific requirements. The Landlord commissioned an engineering report which determined that the decks are sound and secure, but only need to have a corner replaced and some minor repairs.

- There was flooding in the backyard due to neighbours building a house. The city came and repaired the situation.
- The Landlord obtained building permits in June 2023 and construction has begun. The Tenant still had not removed her belongings from storage despite the Landlord's requests in May 2023. The Landlord has been corresponding with the Compliance and Enforcement Unit about the situation. Construction was delayed for a week at the Landlord's cost due to the Tenant refusing to clear the area.
- The Landlord had previously offered a two-year fixed term lease in April 2022 while informing the Tenant of his intent to sell the property. The Landlord had made the offer to provide the Tenant with stability, but the Tenant did not accept it. There were no complaints for many years in the tenancy. Suddenly a torrent of complaints came after the parties' conversation about the possible sale. The Tenant's motive is financial compensation, as the Tenant has calculated what the Landlord makes from the property. The Tenant's motive is rent reduction and demanding money for repairs. The Tenant has prevented the Landlord from making timely repairs through excessive interference and false allegations. The amounts sought by the Tenant are disproportionate.

The Tenant denied that the items left in storage were hers, except for four tires. The Tenant stated that the Landlord emailed the Compliance and Enforcement Unit while knowing that the Tenant was out of town, and writes emails as if the Tenant is delaying the Landlord's projects. The Tenant stated that the Landlord's evidence is a bunch of evidence written after the fact, while the Tenant had filed this dispute a long time ago.

The Tenant submitted that the Landlord had assaulted her roommate, RV, on July 8, 2022. The Tenant referred to a statement from RV dated August 3, 2022. According to this statement, the Landlord had grabbed RV by the hair during an altercation that occurred when the Landlord was trying to pass the Tenant and RV into the Tenant's yard.

Analysis

1. Is the Tenant entitled to compensation for monetary loss or money owed?

Section 67 of the Act states that 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.

The Tenant seeks to be reimbursed for the cost of mould testing and compensation for bedding soaked from the roof leak.

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find the storage room is a common area on the property that has been historically used by both upstairs and downstairs tenants, including the Tenant. I accept the Report did not find any the indoor or outdoor air samples to be abnormal. However, I find the Report concludes that the storage area required mould remediation and water ingress repair. I find the Landlord had an obligation under section 32(1) of the Act to investigate and remedy this situation, but did not do so after being notified by the Tenant. Therefore, I find the Landlord is liable to pay for the cost of the Report under section 67 of the Act. However, I find the Tenant did not submit any invoice or receipt to prove the cost of the Report. Pursuant to section 67 of the Act, I award the Tenant nominal damages of \$100.00 for the cost of the Report.

I find the Tenant has not provided sufficient evidence that she had suffered a loss of \$150.00 for wet bedding due to a roof leak. I find the Tenant did not explain why the bedding could not be simply laundered. I find the Tenant did not submit any evidence to prove the value of this claim. I dismiss the Tenant's claim under this part without leave to re-apply.

2. Is the Tenant entitled to a rent reduction?

Pursuant to section 65(1)(f) of the Act, if an arbitrator finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the arbitrator may make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Under section 28 of the Act, a tenant is entitled to quiet enjoyment, including, but not limited to:

- a. reasonable privacy;
- b. freedom from unreasonable disturbance;
- c. exclusive possession, subject to the landlord's right of entry under the section 29 of the Act; and
- d. use of common areas for reasonable and lawful purposes, free from significant interference.

According to Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment (“Policy Guideline 6”), 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.

Policy Guideline 6 further states that 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.

A breach of the entitlement to quiet enjoyment may form the basis of a claim for compensation. 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 will address each of the rent reduction claims by the Tenant as follows: (a) evictions, (b) loss of storage space and decks, (c) loss of fireplace, and (d) yard during rain.

a. Evictions

I find the Landlord issued a one month notice to end tenancy for cause due to the parties’ physical altercation in July 2022. I find this notice was set aside by the arbitrator in the January 2023 Decision due to insufficient and conflicting evidence. I find the Landlord issued a two month notice to end tenancy for landlord’s use of property that was withdrawn. I find the Tenant acknowledged having withheld \$50.00 from rent in November 2023 which caused the Landlord to issue a 10 day notice for unpaid rent or utilities.

I accept that the Landlord did not end up evicting the Tenant through any of these notices. However, I do not find the evidence to demonstrate that the notices to end tenancy issued by the Landlord were purely vindictive or vexatious, such that they constituted an abuse of process or harassment by the Landlord. Generally speaking, it is not a breach of the Act, the regulations, or tenancy agreement for a landlord to issue notices to end tenancy permitted by the Act. I find the Tenant has not proven substantial

interference amounting to a loss of quiet enjoyment warranting compensation based on the eviction notices. I dismiss the Tenant's claim for a rent reduction under this part without leave to re-apply.

b. Loss of Storage Space and Decks

I accept the Landlord's evidence that he suffered a personal medical emergency and that despite his situation, had made reasonable attempts to repair the storage area and decks as ordered in the October 2022 Decision.

However, I find the Tenant was still unable to use the storage room and decks for many months due to the need for repairs, resulting in a loss of quiet enjoyment and reduction in the value of the tenancy for the Tenant. Nevertheless, considering the relative importance of these facilities to the Tenant's use of the rental unit as living accommodation, the fact that the storage is a shared facility, and the Tenant's seasonal use of the decks, I find the percentages claimed by the Tenant to be excessive. I fix the reduction in value of the tenancy for each facility at approximately 5% of the figure used by the Tenant for the monthly rent, or 5% of \$2,600.00.

Furthermore, based on the parties' email correspondence in October 2022, I find the Tenant did not cooperate with the Landlord to remove her belongings from the storage area as ordered by the arbitrator in the October 2022 Decision. I do not find the Landlord was required to remediate mould from the Tenant's belongings. Therefore, pursuant to section 65(1)(f) of the Act, I grant the Tenant a 5% rent reduction for loss of the storage area from March to October 2022 only, or $5\% \times \$2,600.00 \times 8 \text{ months} = \$1,040.00$.

I find there is insufficient evidence to prove the city had issued a stop work order due to false complaints by the Tenant. I find the Landlord did not submit any statement or evidence from the city, or a copy of the engineering report. I am unable to conclude that the Tenant had intentionally delayed the Landlord's efforts to repair the decks. Therefore, pursuant to section 65(1)(f) of the Act, I grant the Tenant a 5% rent reduction for loss of use of the decks from October 2022 to June 2023, or $5\% \times \$2,600.00 \times 9 \text{ months} = \$1,170.00$.

c. Loss of Fireplace

I accept the Tenant can no longer use the fireplace due to issues with the roof and chimney flashing, although I find there is insufficient evidence to prove that this situation was caused by the actions of the Landlord. I find MH acknowledged in emails sent in

November 2022 that the chimney is not in good working order. I accept that the roof and chimney are in poor condition due to age. I find the Landlord had already performed other roof repairs where possible. I find it is unclear whether it is feasible for the chimney to be repaired so that the Tenant can resume using the fireplace. I find the Tenant acknowledged that having the fireplace was a “luxury”. Under these circumstances, I do not find an ongoing rent reduction to be appropriate for the loss of this facility. Pursuant to section 65(1)(f) of the Act, I grant the Tenant a one-time rent reduction of \$200.00 for loss of the fireplace.

d. Yard During Rain

I find the Tenant has not provided sufficient evidence to explain how the condition of the parking cement is inadequate or how it causes the backyard to flood. I find the parties agreed that the city came and did some repairs. I find the Tenant has not provided evidence to demonstrate that she had suffered more than temporary discomfort or inconvenience that was sufficiently serious to amount to a loss of quiet enjoyment. I dismiss the Tenant’s claim for a rent reduction under this part without leave to re-apply.

2. Is the Tenant entitled to an order for repairs or for the Landlord to provide services or facilities?

The Tenant seeks to be able to use the storage unit, back decks, and fireplace.

I find the arbitrator in the October 2022 Decision already ordered the Landlord to repair the storage area and decks. I find the parties agreed that the Landlord is working on these repairs. Therefore, I do not find it is necessary to issue further orders at this time.

As noted above, I find it is unclear whether it is feasible for the Landlord to restore the Tenant’s use of the fireplace. Therefore, I decline to order repairs, but have granted a one-time rent reduction above for the loss of this facility.

I find the Tenant’s claim for the Landlord to provide services for facilities to be in essence the same as the Tenant’s claim for the Landlord to make repairs. Furthermore, I do not find the Landlord can be said to have “terminated” or “restricted” an essential or material service or facility under section 27(1) of the Act. I do not find the storage area, decks, or fireplace to be essential to the Tenant’s use of the rental unit as living accommodation. I also do not find that the Landlord was required to provide these facilities pursuant to any material terms of the parties’ tenancy agreement. I dismiss the Tenant’s claim for the Landlord to provide services or facilities under section 27 of the Act without leave to re-apply.

4. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

The Tenant seeks 24 hours' notice before the Landlord or the Landlord's agent comes to the rental unit so the Tenant can plan not to be present to avoid being harassed.

Pursuant to section 70(1) of the Act, an arbitrator may suspend or set conditions on a landlord's right to enter the rental unit under section 29 of the Act.

Section 29(1) of the Act states that 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.

Section 29(2) of the Act provides that a landlord may inspect a rental unit monthly in accordance with section 29(1)(b) of the Act.

In this application, the Tenant seeks an order regarding notice of the Landlord's entry onto the residential property rather than into the rental unit.

As noted in Residential Tenancy Policy Guideline 7. Locks and Access, the Act does not require that notice be given for entry onto residential property. However, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering notices of entry to the premises.

Additionally, as mentioned in the January 2023 Decision, the arbitrator in the October 2022 Decision already ordered the Landlord to give 24 hours' notice for the purpose of facilitating deck repairs. Likewise, I do not find it is necessary or appropriate to issue any order imposing further restrictions on the Landlord at this time. The Tenant's claim

under this part is dismissed without leave to re-apply. The Landlord is reminded to comply with the orders in the October 2022 Decision as well as the above guidelines regarding entry.

5. Is the Tenant entitled to recover the filing fee?

The Tenant has been partially successful in this application. I grant the Tenant reimbursement of the filing fee under section 72(1) of the Act.

Conclusion

Pursuant to sections 65(1)(f), 67, and 72(1) of the Act, I grant the Tenant a Monetary Order in the amount of **\$2,610.00**, calculated as follows:

Item	Amount
Nominal Damages for Mould Report	\$100.00
Retroactive Rent Reduction for Loss of Storage Area from March to October 2022 ($5\% \times \$2,600.00 \times 8$ months)	\$1,040.00
Retroactive Rent Reduction for Loss of Decks from October 2022 to June 2023 ($5\% \times \$2,600.00 \times 9$ months)	\$1,170.00
One-time Rent Reduction for Loss of Fireplace	\$200.00
Filing Fee	\$100.00
Total	\$2,610.00

This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

Pursuant to section 72(2)(a) of the Act, the Tenant is authorized to deduct \$2,610.00 from **August 2023** rent payable to the Landlord in full satisfaction of the Monetary Order granted.

The balance of the compensation and rent reductions sought by the Tenant, as well as the remaining claims made by the Tenant in this application, are dismissed without leave to re-apply.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection

(1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that this decision was issued more than 30 days after the close of the proceedings.

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: July 23, 2023

Residential Tenancy Branch