



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, MNETC, FFT, MNDCL, FFL**

### 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*;
- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The landlords are referenced in either the singular or plural, or as “the female landlord” and “the male landlord”.

#### Preliminary Issue: Service

This is a continuation of a hearing which began on September 19, 2023. Counsel represented both parties at that hearing.

The hearing was adjourned by my Interim Decision to allow the parties to serve documents and submit written submissions.

At this hearing, both parties acknowledged they had been served with all documents and written submissions. No issues of service were raised by either party.

Accordingly, I find each party served the other in compliance with the Act.

#### *Preliminary Issue - Settlement Discussions*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties many times. Both parties had an opportunity to ask questions, which I answered. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I assisted the parties in efforts to settle the matter which were unsuccessful. The hearing concluded with respect to all outstanding issues between the parties.

Issue(s) to be Decided

Is the tenant entitled to the relief requested including a Monetary Order?

Is the landlord entitled to the relief requested including a Monetary Order?

Background and Evidence

The matter was originally scheduled for one hour. The parties submitted substantial conflicting evidence in two hearings that lasted 2.3 hours. Each party submitted many documents, photographs and reports including multi-page written submissions and timelines in spreadsheet format. Not all this evidence is referenced in my decision. I refer only to evidence I find credible, admissible and relevant to my decision.

*Overview*

This is a cross application by a landlord and tenant. The tenancy is now over.

The tenant claimed compensation primarily for loss of quiet enjoyment.

The landlord seeks compensation for costs related to damages to the unit caused by the tenant.

Each party denied the entitlement of the other to any compensation.

*Tenancy*

The parties agreed the tenancy began June 1, 2020, and ended May 1, 2022 (or April 31, 2022).

Rent was \$1,300.00. The tenant paid a security deposit of \$650.00.

No condition inspection report on moving in or moving out was submitted. No evidence was submitted of any dispute about the return of the security deposit.

The landlord did not issue a Notice which would trigger an application by the tenant for 12 months rent as compensation.

### *Previous Proceedings*

The parties agreed the tenancy ended by RTB Decision of April 22, 2022, under the file number referenced on the first page. In the Decision, the arbitrator found the tenant had not applied to dispute the One Month Notice within the time allowed and accordingly dismissed the tenant's application to dispute the notice. The arbitrator made no findings on the merits.

### *Tenant's Claim*

The tenant claimed loss of quiet enjoyment including exposure of her children to the landlord's actions in the amount of \$17,500.00 based on a foundation claim of 50% reimbursement of rent paid.

In support of her testimony, the tenant submitted a substantial evidence package, including a timeline, written submissions, copies of correspondence between the parties (texts, emails, letters), photographs, several witness statements, and other documents.

In brief, the tenant testified as follows.

1. The tenancy began June 1, 2020. The tenant family is a single parent, and two teenage children.
2. The tenant, previously a paralegal, has her own business with a home office. The tenant family "loved" the rental unit and intended to stay there indefinitely, at least until the children graduated from school.
3. The rental unit is an apartment in a house. The downstairs apartment was occupied by M.M. and C.M.; C.M. submitted a 2-page statement which is referenced later.
4. The tenant described herself as an exemplary tenant who paid rent early (at the request of the landlord) and made every effort to accommodate the landlord. She

described herself as a peaceful person who made best efforts to resolve disputes when they arose.

5. The tenant said the parties had cordial relations when she moved in. However, very quickly, (September 1, 2020) she began to experience challenges with the landlords' actions and demands. The tenant described the "first phase" of the tenancy from around September 1 until August 23, 2023 (about 12 months) as a period of gradually deteriorating relations with the landlord.
6. The second phase was from about September 1, 2021 (after the incident of August 23, 2021, described later) until the tenancy ended April 31, 2022, a period of the final eight months of the tenancy.
7. The first indication that the tenancy was going to be difficult occurred shortly after the tenant moved in. Her father was visiting from out of town. The landlord informed the tenant by text (a copy of which was submitted) that she had to request permission if she had a visitor for more than a day. The tenant acknowledged the request and said she was not aware of any such rule in BC tenancy law. The tenant said this incident followed a pattern that was to be repeated countless times during the tenancy: the landlord made an unreasonable demand, and the tenant attempt to placate the landlord or did what they said, under increasing pressure to comply.
8. The tenant described a series of events in this first phase during which the landlords became increasingly critical and disapproving of her. She believed she could do nothing right.
9. A triggering event was the landlord's request that she ask one of the downstairs tenants not to smoke marijuana on the property. The tenant declined saying she wanted to keep good relations with the other tenants. After this, the landlord seemed determined to make the tenancy difficult for the tenant and to get her to move out. Relations soured.
10. The tenant submitted substantial evidence of increasingly difficult interactions with the landlord, including the following:

- a. The landlord made repeated and ongoing unannounced visits. As the tenant worked from home, she observed the landlord regularly came to the property unannounced. They often asked to come into her unit for one reason or another without providing the required 24-hour notice. Sometimes the tenant agreed and other times the tenant declined entry as she was working, away or it was otherwise inconvenient for the family.
- b. The landlord started to demand monthly inspections. These inspections were surrounded by considerable correspondence and follow-up demands for trivial matters which were none of the landlord's business, such as their cautions to the tenant to remove the lint from the lint filter in the dryer.
- c. The landlord made increasingly unreasonable and autocratic demands of the tenant. For example, on one occasion, the landlord wanted to meet with the tenant when she was very ill. The tenant asked for a rescheduling of the meeting explaining it was not safe for the landlord to come in. In an email of April 1, 2022, a copy of which was submitted, the landlord said the tenant was using illness as an excuse. They demanded the tenant provide a medical report and stated it is their right to get such a report. The email stated:

You keep saying that you are sick, to better understand your health situation, we asked for the doctor's certificate, you don't have and kept avoiding it.

Well, you can be sick but decide to stay at home; but you use illness as an excuse to refuse the landlord's routine inspection It is my right and your obligation to ask you to provide a valid doctor's certificate.
- d. As a result of the landlord's repeated demands, the tenant finally agreed on this occasion to allow the landlord to inspect the unit although she and the children were sick.
- e. The tenant asked to have a dog. The landlord consented and a copy of their text was submitted. The tenant paid a pet deposit to the landlord as they

requested. Later, the landlord raised the issue of the dog accusing the tenant of violating the terms of the lease and demanding that she leave. The landlord issued a baseless notice to move out. (The landlord submitted many notices to vacate.)

- f. The landlord became increasingly combative and angry with the tenant, over various issues such as parking, and routine maintenance matters. They became “verbally aggressive and abusive”.
  - g. The tenant believed her privacy was routinely being invaded, such as when the landlords would look in her window when she was home working. A home security system’s picture of February 3, 2022, showed the landlords going through the tenant’s mail.
  - h. The tenant estimated the landlord issued “6-8” notices to move out. Some of the notices were not in RTB forms or were unenforceable as issued for various spurious reasons. For example, one of the forms submitted by the tenant is titled “Notice to Quit” dated May 9, 2021, in which the landlords demand the tenant to move out as a fixed term was at an end, an invalid reason for eviction. .Some of the notices were simply texts to the tenant, such as one dated January 24, 2022 , a copy of which was submitted.
  - i. Accordingly, as the tenant was an experienced paralegal, she did not respond to most of the notices. Unfortunately, the tenant was late in applying to dispute one such notice and an Order of Possession was issued against her on two days notice (April 22, 2022).
11. The tenant stated she increasingly became “sick with anxiety”. She asked the landlord to stop badgering her. For example, she submitted a copy of a text dated February 8, 2022 in which she asked the landlords to “stop harassing me”. Nothing worked to stop the landlord from bothering the tenant. Instead, their efforts increased over time as the landlord relentlessly attempted to get her to move out on her own. To the February 8, 2022 text, the landlord dismissed the tenant’s requests, saying:

Stop moaning, you know all too well that you are completely breaching the contract by berating and slandering your landlord for harassment. In effect, you've been harassing your landlord [...]

12. Matters took a turn for the worse on August 23, 2021. The tenant described what occurred. She had previously agreed the landlords could come into the unit to look into a water leak in a bathroom. The tenant had a business appointment an hour after the scheduled time which she believed would give adequate time for the landlord to do the planned task (caulking of a bathtub).
13. The landlords arrived 45 minutes late although the tenant texted them to remind them of the time of the meeting. The tenant was there with her two daughters and her friend A.M. They were all in the unit. The tenant then said she had a business meeting coming up in 1.25 hours and could they come back another time. The landlords said the job (caulking) would take three hours. During the discussion, the female landlord became increasingly agitated, telling the tenant to "shut up". The landlords started recording the encounter. The tenant asked the landlords to stop yelling at her and to please leave.
14. Suddenly, the female landlord "lunged" at the tenant, yelled at her and called her names such as "crazy bitch" and threatened to evict her. The tenant thought the female landlord was going to hit her. The male landlord physically restrained the female landlord. The tenant requested the landlords to leave and they refused. The tenant's guest A.M. called the police who attended. The landlords finally left. The landlords then agreed to return August 27, 2021.
15. The guest A.M. and the tenant's two daughters were present in the August 27, 2021 incident. All three provided written statements which supported the tenant's version of events.
16. The tenant's daughter M.B. confirmed the tenant's version of events M.B. said after they left the unit, the landlords stood outside the door "knocking and twisting the door handle". She said she suffers from anxiety which was worsened by the "scary experience" and that she had "never seen anything like it before". In her written



submissions, M.B. stated, "Listening to my mom getting called names made me feel so sad and angry".

17. The tenant's daughter B.B confirmed the tenant's version of events. In her written statement, she said,

"I was do scared watching my mom getting yelled at and thinking she was going to get hurt. I've never witnessed anything like that before. My Mom is not a confrontational person. I think this is why I was so scared."

18. The tenant provided details of the police report.

19. The tenant said the incident was a deeply disturbing incident for her as she had been the victim of a violent assault some years earlier. She felt traumatized and assaulted by the landlords. Yet the landlords continued their campaign to belittle the tenant, make her life difficult and get her to move out.

20. Following the August 23, 2021 incident, the landlord increased unreasonable demands on the tenant, causing growing stress and anxiety to the tenant and her daughters. For example, the landlords by then had insisted on monthly inspections and complained in detail in lengthy correspondence about matters which were none of their business. The tenant submitted copies of all correspondence.

21. For example, in an email of November 14, 2021, the landlord complained about "burnt food" on the stove, accumulation of lint in the dryer, garbage build-up, mold from the tenant's failure to turn the fan on, a ceiling which needed repainting, and lack of plates under flower pots.

22. There were many issues and complaints raised by the landlords and the tenant was unable to appease or satisfy them. For example, many emails and texts related to complaints about the tenant's parking. The landlord sent photographs to the tenant with instructions written in bold with accompanying circles. Copies of these photographs were submitted.

23. The tenant was unable to satisfy the landlord's incessant demands. In one text, a copy of which was submitted, the landlords told the tenant she should start looking for another place to live. The tenant's response was, "What did I do wrong now?" Copies of the texts were submitted.
24. The washer and dryer in the unit sometimes did not work. The tenant submitted considerable correspondence between the parties about the appliances not working. At one point, the tenant reported by text to the landlord, a copy of which was submitted, saying the washer is still not working and she has been without one for 18 days. In an email of February 1, 2022, the tenant asked if the landlord would be replacing the washing machine. The tenant said she only used the appliances in a normal manner.
25. The tenancy ended on May 1, 2022. The tenant brought this application on January 18, 2023. The landlord brought their cross application on February 2, 2023. The tenant claimed the landlord had made no previous claim against her; the landlord's claim for damages is retaliatory and baseless.
26. The tenant responded to the landlords' claim that she is responsible for damages caused by the water leak as follows:
- a. The leak pre-dated the tenancy. The downstairs tenants had told the landlord about the leak two years earlier. This is supported by the written statement of the downstairs tenant which stated, "the leak in the laundry room was unattended for 2 years".
  - b. There is no evidence the tenant is responsible for the leak, the time it took for the landlord to repair the leak, any aspect of the plumbing maintenance, costs to repair or damages. To the best of her knowledge, any water damage to the downstairs apartment made to the downstairs was caused by a broken pipe between the floors of the units which she saw. She had nothing to do with it. Repairing a broken pipe is the landlord's responsibility, not the tenant's.

- c. The landlord did not attend to the matter of the leak in a timely manner two years earlier and blamed the tenant unfairly and without reason.
  - d. At the hearing, the landlord stated the tenant denied the landlord access on August 23, 2021, thereby causing water damage to the flooring, etc. This is unsupported by the evidence. The tenant said she cooperated with the landlord's unreasonable demands in contravention of the Act for repeated inspections throughout the tenancy. The tenant was available at the scheduled time for the landlord to attend on August 23, 2021. The landlord was late. The tenant attempted to amicably reschedule the appointment. The police were finally able to convince the landlord to attend a few days later.
  - e. The damages claimed by the landlord are not related to the leak and are fabricated to pass onto the tenant expenses for which the landlord is responsible. The landlord has submitted no independent documentary evidence that the tenant is responsible for any of the expenses. For example, the landlord is seeking to pass on to the tenant the cost of replacing flooring in the downstairs unit which is past its useful life. All the items claimed by the landlord are old, past their useful life, of undetermined age, and due to be replaced.
  - f. The landlord returned the security deposit at the end of the tenancy, indicating the landlord did not hold the tenant responsible for any damages to the unit. They did not bring a claim for damages against her until she brought an application for loss of quiet enjoyment. The landlord's application is retaliatory, vengeful and false.
27. The tenant responded to the landlords' claim that she is responsible for damages to the washer and dryer as follows. As indicated in substantial submitted correspondence, the appliances periodically did not work throughout the tenancy due to age or normal maintenance breakdowns. The tenant only used the items normally. The landlord is seeking to pass an expense onto the tenant to obtain compensation for new appliances to replace old, non-working ones. The landlord

has submitted no independent documentary evidence that the tenant is responsible for the expenses.

28. The tenant was bewildered and upset by the landlords' actions and their determination to make things difficult for her. They seemed committed to ruining the tenant's peace and quiet. They appeared obsessed with wanting her to move out for no apparent valid reasons. In one text to the landlord, a copy of which was submitted, the tenant said,

I don't know what I did so wrong to make you so angry. All I wanted was to maintain peace and a good standing relationship with you and [downstairs tenant].

29. The downstairs tenant C.M. submitted a 2-page written statement which stated they lived there from May 2016 to October 2021. They always got along with the tenant and her daughters. They left before the tenant moved out on May 1, 2022. At different times, they had a dog and several cats. Extracts from the statement follow:

- a. Upstairs we did have a few tenants come and go, many left due to a bad experience with the landlords. (Police have been called more than once).
- b. [We} always had a good relationship with each of our upstairs neighbours [the tenant and her daughters].
- c. The landlords would show up unannounced many times a week, up to daily and frequently weekends which was our only time to enjoy the property as we had weekly jobs. They even attempted to enter our unit on occasion without proper notice, we eventually insisted, due to our pets and rights as landlords, for proper notice to enter. Instead, they would show up for various reasons and would peek in our windows, sometimes while we were home, sometimes when we were not which we caught on our security cameras.

- d. They [the landlord] continued getting mail to our address so they would frequently go through our mailbox.
  - e. [We] felt we had no sense of privacy, peace or enjoyment to our leased property and brought it up many times to no avail.
  - f. The landlords frequently complained about minor things they did not like, and at one point even stole a Christmas decoration of ours we had stored under the stairs. They also took lumber from under our deck without permission to use for projects.
  - g. They complained about the damage to the blinds from our cats, we had purchased the blinds ourselves. They refused to replace the ceiling fan the blew apart and burnt out, telling us it was for decoration only. [We] replaced it at [our] own expense.
  - h. When we had problems in the house, including a leak in our laundry room which went unattended for 2 years, we found they would come into the property and inspect everywhere – even when this had nothing to do with the issue. They went through our closets, and allowed their dog into our house which would upset our pets. They left the door opened, which meant our pets were at risk. They would do minimal and improper repairs to the point where we ended up taking on most repairs ourselves, out of pocket, as opposed to getting them involved.
  - i. [When in the garden, we] were interrupted and our cats scared off when they would show up unannounced with their small dog. On at least two occasions they allowed their dog to defecate on the front lawn and did not pick it up or inform us, being that we cut the lawn this was a nuisance to us.
  - j. We were very neighbourly and friendly together [with tenant and her daughters]. We did not have any issues or disputes,
30. In summary, the tenant stated the landlord engaged in intimidation; they threatened and harassed her. They falsely claimed rights under the Act and

pressured the tenant to provide unreasonable access and a medical report. The tenant has experienced extensive loss of quiet enjoyment undermining her right to privacy and peace.

#### *Landlord's Claim*

In support of their testimony, the landlords submitted a substantial evidence package, including a timeline, written submissions, copies of correspondence between the parties (texts, emails, letters), photographs, videos, police report, and other documents.

The landlord's claims were extensively reviewed and discussed at the hearing. The landlord claimed compensation for the following:

ITEM		AMOUNT
<i>June 1, 2020 – tenancy started</i>		
February 12, 2022	Replacement Washer and Dryer	\$2,580.43
February 16, 2022	Hot water tank replacement and installation	\$1,423.43
<i>May 1, 2022 – tenancy ended</i>		
June 21, 2022	Furnace replacement	\$5,052.55
February 13, 2023	Replacement flooring in downstairs unit	\$5,822.40
<b>TOTAL</b>		<b>\$14,878.81</b>

The landlord testified as follows:

1. The tenant was an irresponsible difficult tenant and assertions to the contrary are false. The tenant is not entitled to a claim for loss of quiet enjoyment.
2. The landlord listed the dates they entered the rental unit. They stated that the tenant authorized all entries. During the tenancy period, the landlords visited the premises five times in total; each visit out of necessity and with the express permission of the tenant.
3. Aside from these visits, the landlords have rarely contacted the tenant, unless necessary. The landlords would reach out to the tenant only when the tenant has breached certain terms in the lease. For example, when the landlords found out that the tenant was parked illegally, they would reach out to the tenant in the least intrusive manner (sending emails and posting notices without direct confrontation).
4. The tenant exaggerated or lied about all claimed difficulties between the parties. The landlord remained civil and respectful during most interactions with the tenant. The landlord acknowledged "periods of tense interactions" with the tenant.
5. The tenant is responsible for the water leak. The landlord posited various narratives: the tenant knew about the leak and did not report it; the tenant caused the leak; the tenant obstructed repair of the leak; and the tenant's actions or failure to act caused considerable damage as claimed by the landlord.

*August 23, 2021*

6. The tenant lied about the events of the meeting on August 23, 2021. The tenant unfairly denied the landlords access to the bathroom or did not allow them to stay long enough to carry out repairs. They denied the female landlord "lunged" at the tenant or swore at her. All witnesses claiming to the contrary are lying.

7. The landlord denied they were more than 15 minutes late for the scheduled meeting on August 23, 2021. In their written submissions, they stated:

The landlord found that there was a serious water leak in the property from upper-level unit (where [tenant] lives) to the downstairs unit, causing extensive damage to the roof and walls downstairs. By the time when the landlord arrived within the agreed date, it was only 10 minutes later because the landlord went the Rona on the way to by a repair part. The tenant (name) prevented the landlord from entering the unit for repairing. So, the landlord felt helpless and called the police.

8. In their written submissions, the landlord stated:

The water leak occurred well before the landlords first discovered the issue on August 23, 2023. However, the tenant failed to report this leak, when it would have been clear that there was a leak coming from her bathroom. Despite learning of the severity of the leak, the tenant continued to obstruct the landlords from caulking the bathtub. The tenant's delay exacerbated the problem and directly led to the damage of the structural integrity of the Property.

The landlords respectfully submit that the water damage was substantially caused by the tenant's wilful neglect and obstruction. Accordingly, the tenants must bear the entire cost of repair.

9. The landlord submitted photographs and video evidence showing damage from a water leak with captions such as, "The leak seeped out of the [tenant's] bathtub into the living room, causing severe water seepage to the floor under the carpet".

10. The landlord stated as follows in excerpts from their written submissions:

(a) When the landlords discovered the leak on August 23, 2023, they were firm and adamant and urged the tenant to provide access to perform repairs. Despite the landlords' pleas, the tenant remained steadfast in her rejection. The landlords knew that a physical altercation would be highly likely had they forced



their way into the rental property. To prevent involving the police and possible criminal proceedings, they decided to wait a few days.

- (b) The tenant has provided contradictory statements in relation to when she found out about the water leak. She claims that she knew the leak was discovered by the downstairs tenants for 2 years already but then says that she did not know there was a leak.
- (c) Regardless of whether the tenant knew about the leak for 2 years or only when she was notified on August 23, 2023 should not be an excuse for refusing repairs. The obstruction and/or concealment by the tenant caused the destructive leak.
- (d) There is incontrovertible evidence that the leak was due to a crack in the tenant's bathtub. Photos and videos of the leak have been provided to the RTB and the tenant.
- (e) There is no written report by [the insurer]. The landlords were verbally informed by [the insurer] that due to the late reporting and being refused access by the tenant to inspect her bathroom, they were not able to approve the claim.

#### *Washer and Dryer*

11. During the tenancy, the tenant damaged the washer and dryer. As a result, they had to be replaced February 12, 2022 at a cost of \$2,580.43, a receipt for which was submitted; the receipt is silent regarding the reasons for replacement. The landlord estimated the washer and dryer were replaced in 2015 but did not produce any evidence of the age of the items. The landlord did not submit written evidence supporting their claim the tenant damaged the items.

#### *Hot Water Tank*

12. During the tenancy, the tenant damaged the hot water tank. The damage probably occurred from the water leak for which the tenant is responsible. As a result, they had to be replaced at a cost of \$1,423.43, a receipt for which was submitted; the

receipt is silent regarding the reasons for replacement. The landlord did not know the age of the item and produced no evidence of its remaining life. The landlord did not submit written evidence supporting their claim the tenant damaged the hot water tank but surmised it was from the water damage for which the tenant was responsible.

#### *Furnace*

13. After the tenant moved out, the landlord replaced the furnace at a cost of \$5,052.55 and submitted a copy of the receipt the receipt is silent regarding the reasons for replacement. The landlord did not know the age of the item and produced no evidence of its remaining life. The landlord did not submit written evidence supporting their claim the tenant damaged furnace but surmised it was from the water damage for which the tenant was responsible.

#### *Flooring*

14. After the tenant moved out on May 1, 2022, the landlord replaced the flooring in the downstairs unit at a cost of \$5,822.40. The landlord submitted a receipt dated February 13, 2023, nine months after the tenant moved out the receipt is silent regarding the reasons for replacement.. The landlord did not know the age of the item and produced no evidence of its remaining life. The landlord did not submit written evidence supporting their claim the tenant damaged the flooring but surmised it was from the water damage for which the tenant was responsible.

#### *Reports and Receipts*

15. The landlord submitted many documents and receipts. For example, the landlord submitted an "Initial Site Report" dated February 16, 2022 (before the tenancy ended May 1, 2022) stating the cause was "a leaking shower fixture" in the rental unit and "accumulated water penetrated downstairs roof and damaged some furniture".

16. In summary, the landlord stated they have been “severely prejudiced and suffered additional time and expense as a result of the tenant’s acts and omissions”. The tenant showed “contempt/despise landlord and threaten to landlord”.

17. The tenant damaged various items and components of the unit and the landlords are entitled to compensation in the total amount of **\$14,878.81**, corrected and reduced during considerable discussion during the hearing from the amount of \$25,730.00 as stated in their application.

### Analysis

The following are addressed:

1. Standard of Proof
2. Four-part test
3. Landlord and tenant obligations
4. Credibility
5. Landlord’s Claims
6. Tenant’s Claims
7. Findings
8. Summary

#### *1. Standard of Proof*

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to each party to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

## *2. Four-part Test*

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the party proven the amount or value of their damage or loss?
4. Has the party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act. Section 7 requires the non-complying party to compensate the other for resulting damage or loss. The party claiming compensation must do whatever is reasonable to minimize the damage. Section 67 states that I may determine the amount of the damage or loss and order that the other party pay compensation.

## *3. Landlord's and Tenant's Obligations*

Under the Act, the landlord is responsible for regular repairs and maintenance. These obligations are discussed in *RTB Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*. The landlord's obligations normally include maintenance and upkeep of the major systems in the unit, such as heating and plumbing.

Under section 32(2) of the Act, tenants must maintain reasonable health, cleanliness, and sanitary standards in their rental unit. These obligations are discussed in the Policy Guideline.

For example, tenants are generally responsible for the following on moving out:

- reasonable maintenance of carpets;
- removal of garbage from the rental unit;
- replacing light bulbs and standard fuses; and
- routine yard maintenance, such as cutting grass and clearing snow, if the tenant has exclusive use of the yard

The tenant is not responsible for reasonable wear and tear to the rental unit or site. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has reasonably used the premises.

The tenant is required to pay for repairs where damages are caused, either deliberately or because of neglect, by the tenant or guests. Tenants are responsible for damage beyond reasonable wear and tear, such as an excessive number of nail holes in a wall.

#### *4. Credibility*

Given the conflicting testimony, much of this case hinges on a determination of credibility.

In assessing the tenant's credibility, I found the tenant sincere and believable. She provided matter of fact, convincing, well documented evidence. The tenant's supported testimony is a matter of fact and credible account of what has taken place between the parties. Her version of events is the account which a practical and informed person would readily recognize as reasonable and reliable. The parties' correspondence supports the tenant's narrative in all respects. Their version of events is well supported by the evidence. I accept the tenant's narrative of events as the most believable and the most likely to be reliable.

I find the landlord's version of events is not what a practical and informed person would readily recognize as likely to have occurred. This includes all events of the tenancy the tenant claimed were disturbing and problematic. For example, I believe the tenant's supported account of what took place on August 23, 2021.

It is not credible that the tenant caused the water damage and should pay for all the claimed repairs. The landlord's claims appear motivate by revenge. The landlord submitted no reliable documentary evidence to support any of their assertions. Their claims the tenant is responsible for the expenses defies common sense.

Accordingly, I give the tenant's evidence the greatest weight. Where their evidence differs, I prefer the tenant's version of what took place.

#### *5. Landlord's Claims*

I find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to any of their claims. The landlord has failed to establish the tenant is in any way responsible for water leaking and resultant damage.

The landlord has not established any of the criteria under the 4-part test with respect to all claims. They have not established that the loss occurred during the tenancy, any damage or loss was caused by the tenant, the amount of compensation requested, or mitigation.

The landlord submitted sparse and unconvincing evidence about the condition of the unit (particularly any present leaking) when the tenant moved in as compared with the condition when she moved out. There is no independent supporting evidence the tenant caused the water leak, delayed reporting, failed to cooperate with the landlord to do repairs, or in any way acted or failed to act in a manner that contravened a tenant's obligations.

I find that the landlord is seeking to pass expenses onto a tenant for which the landlord is responsible under the Act. I find the landlord has failed to prove the tenant is in any way responsible for the damages claimed or the amount of any such damages.

Accordingly, the landlord's claims are dismissed without leave to reapply.

#### *6. Tenant's Claims*

Both parties described a deteriorating tenancy relationship which began shortly after the tenant moved in and worsened from the altercation on August 23, 2021, eight months before the end of the tenancy. I accept the tenant's evidence of loss of quiet enjoyment beginning two months after she moved in, continuing for 12 months, and then sharply worsening for the final eight months of the tenancy.

Each party blamed the other. Considering all the evidence, I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment from

the cumulative effect of the landlord's actions, described in detail earlier. As stated, I accept the tenant's version of events in its entirety.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states the tenant is entitled to quiet enjoyment including rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*], and use of common areas for reasonable and lawful purposes, free from significant interference.

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. The Guideline defines a breach of the entitlement to quiet enjoyment as *substantial interference with the ordinary and lawful enjoyment of the premises*.

The Policy Guideline states this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline further states that 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 and enter the premises.

In determining the amount by which the value of the tenancy has been reduced, the Guideline provides that an 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.

The landlord's actions on August 23, 2021 as described by the tenant and accepted by me, were indefensible. The landlord's behaviour was aggressive, unreasonable and threatening, a pattern which began shortly after the tenant moved in and continued unabated, then increasing, for the final eight months of the tenancy amount. This

behaviour over eight months amounts to a serious undermining of the tenant's right to quiet enjoyment. The landlord's behaviour was a substantial interference with the ordinary and lawful enjoyment of the premises.

The landlord sought to blame the tenant for the incident on August 23, 2021, as well as the many other disturbances described by the tenant. I do not accept their explanation that the tenant was responsible in any way. A review of the correspondence between the parties, shows that the landlord was well aware of an interference or unreasonable disturbance but failed to take reasonable steps to deal effectively with the issue. Instead, they harassed and disturbed the tenant more and more, such as by issuing baseless notices to evict. I accept the tenant's evidence as credible that she felt hounded and attacked.

I find the landlord did not remedy the breach during the tenancy although being informed by the tenant many times of the effect of their actions on her and her daughters.

I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment based on the cumulative facts and circumstances as I understand them. I find the loss of quiet enjoyment corresponded to the two periods identified by the tenant – the 12-month period beginning two months after the tenancy began, and the final eight months.

In determining the amount by which the value of the tenancy has been reduced, the Guideline provides that an 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. In view of all circumstances, I award the tenant a reduction of rent of 20% for 12 months and for 40% for the final eight months of the tenancy as follows, as well as reimbursement of the filing fee:

ITEM	AMOUNT
12 months (September 1, 2020, to September 1, 2021) – 12 x \$1,300.00 = \$15,600.00 x 20% =	\$3,120.00
September 1, 2021, to end of tenancy, April 31, 2021 (8 x \$1,300.00 x 40% =	\$4,160.00



Filing fee	\$100.00
<b>TOTAL</b>	<b>\$7,380.00</b>

I grant the tenant a Monetary Order of **\$7,380.00**.

As the landlord did not issue a notice which could trigger an application for 12 months rent as compensation, I dismiss the tenant's claim under that heading without leave to reapply.

#### Conclusion

I grant the tenant a Monetary Order of **\$7,380.00**. This Monetary Order must be served on the landlord. The Order may be filed and enforced in the Courts of the Province of BC.

The landlord's claims are 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: February 14, 2024

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Residential Tenancy Branch