DECISION

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

The Landlord files its own application, seeking the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests;
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

This matter was completed over hearings held on September 9, 2024 and November 14, 2024, with interim reasons issued following an adjournment on September 9th.

At the reconvened hearing of November 14, 2024, J.P. attended as the Tenant. The Tenant was represented by an advocate, J.B., who spoke on her behalf.

The Landlord was represented by an advocate, N.G., who spoke on its behalf. The Landlord's principal and agent, I.V., also attended. Three witnesses were called by the Landlord, Z.B., E.K., and M.P., who provided testimony but did not otherwise participate in the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to

s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Dismissal of the Landlord's Claim Compensating for Damage to the Rental Unit

The Landlord's advocate advised that the Tenant vacated the rental unit on September 15, 2024 and that the security deposit and pet damage deposit were returned, such that issues pertaining to damage to the rental unit have been dealt between the hearing of September 9, 2024 and November 14, 2024. I am told the Landlord was no longer pursuing this claim in its application.

I accept that any issues arising from the Landlord's claim for compensation for damage to the rental unit have been dealt with by the parties, such that there is nothing left to adjudicate. Accordingly, this portion of the Landlord's application is dismissed without leave to reapply.

Issues to be Decided

1) Is the Tenant entitled to compensation for loss caused by the Landlord's breach of the *Act*, Regulations, or the tenancy agreement?
2) Is the Landlord entitled to compensation for loss caused by the Tenant's breach of the *Act*, Regulations, or the tenancy agreement?
3) Is either side entitled to their filing fee?

Evidence and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on December 15, 2020.
- Rent is due on the 15th day of each month.
- A security deposit of $1,000.00 and pet damage deposit of $1,000.00 was paid by the Tenant.

I have been provided copies of two written tenancy agreements. The first signed by the parties on November 20, 2020 set rent at $1,800.00 per month, with the term beginning on December 15, 2020. The second was signed by the parties on January 28, 2022 and increased rent to $2,000.00 per month, with a term beginning on February 15, 2022.

At the hearing, there was some dispute on what rent was payable at the end of the tenancy, with the Landlord's advocate asserting it was $2,000.00 and the Tenant indicating it was $2,070.00.

Legal Test Applicable to the Monetary Claims

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of the *Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Is the Tenant entitled to compensation for loss caused by the Landlord's breach of the *Act*, Regulations, or the tenancy agreement?

The Tenant, in her application, seeks $18,145.23 in compensation and describes the claim as follows:

> I'm seeking an order for compensation or abated rent for loss of quiet enjoyment as a result of my landlord systematically disregarding the RTA regulations by way of issuing 4 bad faith notices to end tenancy plus various examples of intentional harassment, in contravention of s. 28 of the RTA and Policy Guideline 6. I am also seeking compensation or abated rent for the loss of storage locker space and overpayment of rent. My claims are outlined in the uploaded summary document.

The Tenant's evidence contains a monetary order worksheet which particularizes the compensation claim as follows:

Claim	Description	Amount
Loss of Quiet Enjoyment	Dec 15, 2022 to Jan 15, 2024	$6,500.00
	Jan 15, 2024 to June 15, 2024	$2,587.50
Loss of Storage Space	Dec 15, 2020 to Feb 15, 2022	$1,068.48
	Feb 15, 2022 to Jan 15, 2024	$1,950.40
	Jan 15, 2024 to June 15, 2024	$438.85
Overpayment of Rent	Feb 15, 2022 to Jan 15, 2024	$4,600.00
	Jan 15, 2024 to June 15, 2024	$1,000.00

a) *Claim Regarding the Loss of Quiet Enjoyment*

The Tenant's advocate indicates that the Tenant had received four notices to end tenancy for landlord's use of the property from the Landlord. The Tenant's evidence contains copies of the following notices:

- A Two-Month Notice to End Tenancy for Landlord's Use signed on January 22, 2022 issued on the basis that the child of the Landlord or their spouse would occupy the rental unit (the "January 2022 Notice").
- A Two-Month Notice to End Tenancy for Landlord's Use signed on December 15, 2022 issued on the basis that the Landlord or their spouse would occupy the rental unit (the "December 2022 Notice").
- A Two-Month Notice to End Tenancy for Landlord's Use signed on May 13, 2023 issued on the basis that the child of the Landlord or their spouse would occupy the rental unit (the "May 2023 Notice").
- A Two-Month Notice to End Tenancy for Landlord's Use signed on September 24, 2023 issued on the basis that the child of the Landlord or their spouse would occupy the rental unit (the "September 2023 Notice").

The Tenant's advocate advises that the January 2022 Notice was withdrawn by the Landlord after the parties agreed to continue the tenancy with rent being increased from $1,800.00 to $2,000.00. This agreement resulted in the second tenancy agreement being signed by the parties on January 28, 2022.

I am told by the Tenant's advocate that the subsequent notices were all successfully disputed by the Tenant. The Tenant's evidence contains the decisions from the Residential Tenancy Branch with respect to Tenant's applications disputing the various notices to end tenancy. In brief, I have been given the following decisions:

- Decision dated May 8, 2023 where the Tenant successfully disputed the December 2022 Notice.
- Decision dated September 18, 2023 where the Tenant successfully disputed the May 2023 Notice.
- Decision dated January 11, 2024 where the Tenant successfully disputed the September 2023 Notice.

I have noted the file numbers for the previous decisions, in chronological order, on the cover page of this decision.

I have reviewed the previous decisions in which the various notices were cancelled. In the first decision, the arbitrator found the Landlord's evidence unreliable and questioned its credibility, ultimately cancelling the December 2022 Notice as the Landlord failed to demonstrate it was issued in good faith. The arbitrator in the second decision questioned the rationale for the May 2023 Notice, it being issued shortly after the first decision, such that that notice was cancelled due to the Landlord's failure to discharge its evidentiary burden. In the final decision, the arbitrator found that the September 2023 Notice was identical to the May 2023 Notice, such that the issue had been determined in the previous decision.

The Tenant's evidence also contains a copy of two previous decisions dated March 26, 2024 and June 6, 2024, both of which I am told pertain to the Tenant's previous attempts to obtain compensation from the Landlord for loss of quiet enjoyment. The file numbers for these matters are similarly listed on the cover page of this decision in chronological order. Review of these decisions shows that the Tenant's monetary claim was not previously adjudicated, rather being withdrawn or dismissed with leave due to technical and procedural issues.

I am told by the parties that the rental unit, which is a condominium apartment, is currently listed for sale. The Landlord's evidence contains a copy of the listing agreement, which was signed by the Landlord on April 29, 2024.

The Tenant's advocate indicates that the Landlord had its realtor, E.K., attend the rental unit in May 2023, which is when the advocate argues the Landlord formed the intention to sell the rental unit. This was held out by the Tenant as evidence that the notices were never issued in good faith.

The Landlord's evidence contains a written statement from E.K. dated July 9, 2024 whereby he confirms having attended the rental unit on May 13, 2023 to inspect the condition of the rental unit and was unrelated to evaluation of the home for sale. This written statement was largely confirmed by the E.K. in his testimony on cross-examination from the Tenant's advocate.

The Tenant's advocate argued that the multiple notices to end tenancy constituted a significant disruption to the Tenant's use and enjoyment of the rental unit and seeks compensation equivalent to 25% of the rent payable under the applicable period from December 15, 2022 when the second notice was served up to the June 15, 2024. The Tenant's written submissions set out that the total for this amount is $9,087.50.

The Landlord's advocate advised that the December 2022 Notice was issued due to a stroke suffered by the spouse to the Landlord's principal, I.V.. It was argued that the Tenant and her advocate falsified medical records from the principal's spouse that were submitted into evidence by the Landlord for the hearing tied to the decision from May 2023. The Landlord's advocate argued the Tenant used to falsehood to obtain a positive outcome, which led to the subsequent rulings where the two other notices to end tenancy were cancelled.

The Landlord called Z.B. as a witness, who spoke to the overall condition of the principal's spouse after he suffered his stroke. The Landlord's evidence also contains medical records for the principal's spouse, as well as a letter from his physician.

The Tenant's advocate denied falsifying evidence, arguing he simply highlighted portions of the evidence that were already before the arbitrator. The advocate emphasized that the Landlord did not file for review of the decision from May 2023.

Findings on the Claim for Loss of Quiet Enjoyment

Section 28 of the *Act* sets out a tenant's right to the quiet enjoyment of their rental. These include the right 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 as set out under s. 29, and the right to use common areas for reasonable and lawful purposes, free from significant interference. I note that s. 28 of the *Act* is explicit that the enumerated rights set out above are not exclusive.

Section 44.1 of the *Act* indicates that a landlord must not serve a notice to end tenancy on a tenant unless the applicable requirements or circumstances to the notice applied or are believed to have applied when the notice is given. This portion of the *Act* is noted in the decision of June 6, 2024, which notes this is a new provision of the *Act* having been brought into force on May 16, 2024.

Though s. 44.1 of the *Act* is new, I find that it codifies something that ought to be obvious to landlords given the procedure for ending tenancies set out under Part 4 of the *Act*, as well as the protective purpose of the *Act*, namely that landlords should not issue a notice to end tenancy unless there is just cause for doing so.

There is no dispute that the Landlord served four notices for landlord's use either for occupancy by the landlord, their spouse, or the child of the landlord or their spouse. I note that each of the notices fail to indicate that they were issued on the basis that the Landlord is a family corporation and that a shareholder, or their close family member, intend to occupy the rental unit. Arguably, these notices fail to cite the appliable purpose for ending the tenancy, though I accept that the issue was largely resolved on the basis that the Landlord and the principal and her family were used interchangeably.

The evidence before me is clear and unequivocal. The January 2022 Notice was withdrawn in exchange for the Tenant agreeing to pay $2,000.00 a month in rent. The December 2022 Notice and the May 2023 Notice were cancelled as the Landlord failed to demonstrate they were issued in good faith. Finally, the September 2023 Notice was cancelled as it was found the issue was previously determined.

The Landlord argued the decision cancelling the December 2022 Notice was obtained by fraud. I find that argument to be without merit. It is unclear how the Tenant or her advocate could have falsified evidence submitted by the Landlord. In addition, if they misrepresented the Landlord's evidence in oral submissions, the Landlord was at liberty to have its representative clarify that to the arbitrator. The arbitrator who had the record before them would have been able to see this issue in any event. Ultimately, the Landlord bore the onus of proving the December 2022 Notice was issued in good faith and the arbitrator found it had failed to discharge their evidentiary onus.

The Landlord's argument is largely an attempt to attack a decision in which it was unsuccessful. To be clear, the Landlord could have filed a review application under s. 79(2)(c) of the *Act* alleging the decision was obtained by fraud. It did not do so. The

Landlord could have filed for judicial review arguing the May 2023 decision was patently unreasonable. Again, it did not do so. Rather, the Landlord served the May 2023 Notice mere days after the decision was issued cancelling the December 2022 Notice.

The Tenant argued the Landlord was acting in bad faith. With respect, there is insufficient evidence to make that finding. None of the previous decisions made a positive finding that the Landlord was acting in bad faith. Rather, the notices were cancelled because the Landlord failed to discharge its onus to prove they were issued in good faith. There is a clear distinction between failing to meet an evidentiary burden and being found to have acted with ulterior purpose or bad faith.

There was some argument by the Tenant's advocate that the Landlord formed the intention to sell the rental unit in May 2023, pointing to the attendance of E.K. at the rental unit on May 13, 2023 as proof the Landlord was gearing up to sell the property. With respect, the Landlord did not actually list the rental unit until May 2024, a year after E.K. first attended. The Landlord could hardly be found to be gearing up for sale by waiting a year after the realtor first went to the residential property.

I accept E.K. at his word, that he went there to assist the Landlord's principal as he had some familiarity with the rental unit. I further note that May 13, 2023 appears to be when the May 2023 Notice was served, such that I accept the Landlord likely wanted a witness present for its service on the Tenant. Finally, I accept that E.K. is a friend to the Landlord's principal and her spouse, which is noted in his written statement. In other words, I accept E.K. attended in less than a strictly professional capacity in May 2023 and was not otherwise assisting in listing the property for sale at the time.

Even though I do not agree with the argument the Landlord acted in bad faith, I find the Landlord's conduct with respect to the multiple notices to end tenancy to be without legitimate excuse. The Landlord appears to have taken the view that upon being unsuccessful in ending the tenancy, it could then roll the dice and hope for a different outcome by issuing notices in the immediate aftermath of being told it was unsuccessful. This is supported both from the circumstances before me and an email from the Landlord's principal herself when she served the September 2023 Notice on the Tenant.

In my view, the Landlord has abused the process for ending tenancies set out under Part 4 of the *Act*, though I find it likely this was due to the Landlord's own unfamiliarity with the process. I would expect that if the Landlord were more savvy or knowledgeable, it would not have kept banging its head against the wall time and again. The cancellation of the May 2023 Notice and the September 2023 Notice were an obvious outcome. The multiple notices, though somewhat egregious, was likely brought about by the principal's frustration with the adverse outcomes while dealing with the stress from her husband's stroke, which I accept occurred based on the medical records in evidence.

In any event, I accept that the multiple notices resulted in a loss of the Tenant's right to quiet enjoyment of her rental unit. The Tenant spent 2023 under a near constant threat of eviction save a few days in May and September, being those days between receipt of the decisions and the Landlord issuing the notices to end tenancy. I find that this constitutes an unreasonable disturbance in contravention of the Tenant's right protected by s. 28 of the *Act*.

The Tenant seeks a 25% reduction in rent as a means of quantifying the loss. Based on the method of calculation put forward by the Tenant, she arguably misplead her claim as she sought compensation for loss under s. 67 of the *Act* rather than a past rent reduction under s. 65 of the *Act* for loss of value to rental unit due to the Landlord's breach. Be that as it may, I find that the amount claimed by the Tenant to be too significant in any event. The Tenant still had use of the rental unit and was mostly inconvenienced by the stress imposed by the Landlord's multiple notices to end tenancy. Simply put, the Tenant still had use of what she had contracted for, being occupancy of the rental unit.

I accept that there was no actual monetary loss to the Tenant within the meaning of s. 67 of the *Act*, or at the very least, no actual monetary loss has been put forward by the Tenant in her evidence. I find under the circumstances the Tenant can be compensated for the breach of s. 28 of the *Act* by means of nominal damages as described in Policy Guideline #16. The Tenant did not specifically plead for aggravated damages, such that I do not consider them, nor do I have jurisdiction to award punitive damages under the *Act*.

On balance, I find that the Tenant should be compensated for nominal damages as it relates to the two notices that were obviously doomed to fail, being the May 2023 Notice and the September 2023 Notice. I do not find the December 2022 Notice was similarly doomed to fail, merely that the Landlord did not demonstrate it was issue in good faith. Upon my reading of the May 2023 decision, the Landlord had an arguable case in seeking to uphold the December 2022 Notice, but simply proved to be unsuccessful.

Given what I consider to be relatively serious disregard to the process for ending a tenancy by use of notices issued under s. 49 of the *Act*, I find that nominal damages on the high end of the range is warranted. Accordingly, I grant the Tenant compensation of $1,000.00 for each of the notices that were abusive of Part 4 of the *Act*, being the May 2023 Notice and the September 2023 Notice. In total, I grant the Tenant $2,000.00 in compensation due to loss of quiet enjoyment of her rental unit ($1,000.00 x 2).

I note that the Tenant's advocate at the hearing made submissions with respect to the Landlord's failure to repair a washing machine in May 2023, a point that is mentioned in the Tenant's written submissions. Further allegations were made at the hearing of harassment and bullying by the Landlord, with these allegations being repeated in the written submissions as well. Final mention is made with respect to the Tenant dealing with health issues throughout 2023, including transplant surgery for two organs in October 2023.

I would emphasize that these submissions were not forcefully advanced by the Tenant at the hearing, with the focus resting on the multiple notices to end tenancy. I note that my review of the correspondence submitted by the Tenant does not appear on its face to show the Landlord was harassing or bullying the Tenant, or that she failed to undertake repairs as alleged.

I wish to explain that I have not considered these points in assessing compensation. The issues were not directly cited as the underlying basis for breach of quiet enjoyment with submissions focusing on the notices to end tenancy. Rather, they appear to have been put forward as aggravating factors. However, as noted above, the Tenant did not specifically plead for aggravated damages in her application, such that I do not consider granting damages on that basis. In any event, the evidence does not support a finding that aggravating factors would apply in any case.

b) *Claim Regarding Loss of Storage Space*

The Tenant's advocate indicates that the original tenancy agreement specified that a storage locker was included with rent. I am told that this storage locker was approximately 25 square feet and was in a common area to the residential property. The Tenant's advocate advises that the Landlord indicated the Tenant could use the locker. A month after the tenancy started, the building manager advised the Tenant and the Landlord that the Tenant could not use the storage locker as it did not belong to the Landlord.

The Tenant, in her written submissions, indicates that the rental unit is small and that the loss of the storage locker meant she had to store her extra belongings in a den, which she intended to use as her at home office. The Tenant's written submissions indicate she seeks $3,457.73 in compensation based on the loss of 4.24% of the square footage of the rental unit.

I note that the original tenancy agreement lists that storage is included in rent. When the tenancy agreement was updated in 2022, storage was no longer included in rent.

The Tenant's evidence contains an email exchange between the Landlord and Tenant, where the Tenant notified the Landlord on January 22, 2021 that she found a notice on the storage locker indicating it belonged to someone else. The Tenant's evidence also contains emails between the Landlord's principal and the building manager dated from January and February 2021. The Landlord was notified by the building manager on February 1, 2021 that the storage locker was not assigned to the Landlord's rental unit.

Findings on the Tenant's Claim for Loss of the Storage Locker

Though I accept the tenancy agreement originally included a storage locker, I have a difficult time accepting the Tenant can now advance the claim for a rent reduction in any amount. The Tenant knew with certainty in February 2021 that she could not use the storage locker upon being notified to that effect by the Landlord. There is no evidence

that the Tenant raised issue with the loss of the storage locker at that time or afterwards until filing this application in June 2024.

I note that the tenancy agreement was renegotiated in January 2022. I have been given correspondence surrounding that renegotiation, none of which even mentions the loss of the storage locker. In other words, the tenancy agreement was renegotiated with a rent increase and no mention was made of the loss of the locker even though the topic of rent was discussed.

I find under the circumstances that the doctrine of estoppel bars the Tenant's claim for compensation for loss of the storage locker. Estoppel arises when a person with a formal right represents those rights will be compromised or varied, looking at whether their conduct would reasonably lead the other party to rely upon the representation (*Guevara v Louie*, 2020 BCSC 380 at para 63).

In my view, the Tenant conduct was unequivocal that she accepted variation of the tenancy agreement when it was discovered the Landlord could not deliver on the storage locker. The Tenant, rather than advancing the issue at the time, either informally with the Landlord or filing a claim with the Residential Tenancy Branch, continued to pay rent in full without complaint for approximately three and half years. Further, she went so far as to renegotiate the tenancy agreement in 2022, with the renegotiated agreement omitting reference to the storage being included in rent. I find that the Landlord would reasonably rely upon the Tenant's conduct over the course of the tenancy and that to permit the Tenant to go back on that conduct now would be detrimental to the Landlord.

I find that the Tenant's claim for compensation related to the storage locker is estopped. Accordingly, it is dismissed in its entirety, without leave to reapply.

c) ***Claim Regarding Overpayment of Rent***

The Tenant's advocate argues that the tenancy agreement signed in 2022 was obtained by the Landlord via coercion. As noted above, the original tenancy agreement set monthly rent at $1,800.00, with rent being increased to $2,000.00 a month beginning on February 15, 2022 when the second tenancy agreement was signed in late January 2022. The renegotiation of the tenancy agreement took place within the context of the Landlord serving the January 2022 Notice.

The Tenant's written submissions indicate that the Tenant seeks the $200.00 rent increase from February 15, 2022 to date.

The Tenant's evidence contains copies of email correspondence between her and the Landlord's principal from January 2022. The January 2022 Notice appears to have been served by the Landlord on January 22, 2022. In the interest of ensuring completeness of the exchange, I will reproduce the relevant emails below.

On January 24, 2022, the Tenant sent the following response to the Landlord's principal:

> Hello [Landlord's principal],
>
> I acknowledge receipt of your email with notice to vacate for landlord's use of property. I'll take this opportunity to clarify that based on the service date of January 22, and our lease date of December 15, since two full months' notice is required by law, the effective service date is February 15, and therefore the vacancy date will be April 15, 2022.
>
> I have very much enjoyed living here as a tenant and wish to remain here if at all possible. So I would like to offer you a rental increase to $1,950/month if we can sign a new one-year tenancy agreement. I believe this reflects market value based on similar units for rent at this time, taking into account size, location, age of building, pet policy, storage and building amenities such as concierge and fitness rooms. As part of this offer, I would be glad to waive the one month rent compensation required to be paid to tenants when they are served with a notice to vacate.
>
> Please let me know your thoughts, as I'm hoping we can arrive at a compromise that is mutually beneficial.
>
> I do need to say, respectfully of course, that I have had friends in the past who were served with fraudulent notices to vacate for landlord's use of property. In those cases, the landlord's family occupied the premises for only a couple of months following which the property was rented out again to the public. My friend was successful in suing for 12 months' rent as compensation, since the landlord acted in bad faith. The notice itself points out this tenant right as follows:
>
> > 5. YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION
> >
> > After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months' rent payable under your current tenancy agreement.
>
> To be clear, I'm not at all accusing you of anything fraudulent. You've been a great landlord and as you know, I truly wish to stay in the unit. But at the same time, I do need to be vigilant about protecting my rights, just because I hear so many stories out there of landlords evicting tenants in the hopes of getting more rent from a new tenant. So, to be honest with you, I have become friends with people living in another unit on my floor. After I move out, I will follow up with them on a regular basis to ensure it is really your children living in the unit. If it happens that your children do not continuously reside in the unit for at least 12

> months following April 15, then I will have no choice but to pursue legal action against you for 12 months' compensation ($21,600). I'm very sorry for this, but please understand my situation…the cost and hassle and stress of moving again only one year after I moved in is just too much for me to bear at this time.
>
> But I do truly hope you will consider my offer to raise the rent in exchange for a new one year lease!!!

I have redacted personal identifying information from the reproduction above. Further reproductions below will similarly redact personal identifying information.

The Landlord sent two emails to the Tenant on January 25, 2022. The first took issue with the Tenant's assessment of the effective date of the January 2022 Notice. The second was a response to the Tenant's offer in the email listed above, and stated the following:

> [Tenant],
> When I reply to you I didn't read your email to the end. Now I did.
> You don't need to threaten me. We can talk like decent people.
> I do like you as a tenant. I do understand your position.
> We can come to the common ground.
> If you accept rent $2000 a month a market price for that unit. We'll sign a new contract and I can find another place for my son.
> Please advise.

The Tenant responded to the Landlord's principal on the same day, saying the following:

> Hi [Landlord's principal],
>
> Yes, $2000/month is a fair price. I would be happy to rent the unit for that price under a new contract. Thank you for being understanding.
>
> I'm having a medical procedure next Tuesday, So I would need to sign and bring new cheques by Monday as I won't be back until possibly end of Feb. Please let me know if this works for you?

The second tenancy agreement was signed on January 28, 2022.

> *Findings on the Claim for Overpayment of Rent*

The Tenant alleges the Landlord coerced her to agree to the updated tenancy agreement signed in January 2022. With respect, there is absolutely no evidence to support that finding.

To be clear, the test for coercion or duress is high. In *Lei v Crawford*, 2011 ONSC 349 (cited in *Jestadt v Performing Arts Lodge Vancouver*, 2012 BCSC 1337; app'd by the Court of Appeal in *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183), it is described as follows:

> [7] Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner. See: *Brooks v. Alker* (1975), 1975 CanLII 423 (ON SC), 9 O.R. (2d) 409 (H.C.J.); *Underwood v. Cox* (1912), 1912 CanLII 582 (ON SCDC), 26 O.L.R. 303 (C.A.); *Burris v. Rhind* (1899), 1899 CanLII 87 (SCC), 29 S.C.R. 498; *Piper v. Harris Mfg. Co.* (1888), 15 O.A.R. 642.

The correspondence reproduced above does not indicate that the Landlord coerced the Tenant in any way when the tenancy agreement was renegotiated. Further, the entire point of the rent increase was raised by the Tenant herself when she offered rent of $1,950.00 in her email of January 24, 2022. The Landlord countered, which the Tenant accepted in exchange for the Landlord withdrawing the January 2022 Notice. The Tenant went so far as to call the counteroffer of $2,000.00 for monthly rent "fair".

I note that the new tenancy agreement set a fixed term ending February 14, 2023. In other words, the new agreement provided certainty to the Tenant that she would not receive another notice to end tenancy for landlord's use with an effective date sooner that the end of the fixed term given s. 49(2) of the *Act*.

To be clear, the Tenant had other options available to her. She could have disputed the January 2022 Notice. She did not do so, instead choosing to reach a compromise where she had the security of knowing her tenancy would continue for at the least another year while the Landlord obtained more rent. In all respects, the renegotiation was settlement.

The contents of the Tenant's email from January 24th do not indicate she was somehow unknowing of her rights, both noting the effective date of the January 2022 Notice was incorrect and highlighting the risk to the Landlord should it not put the rental unit to purpose. Given the Tenant did dispute the other notices, I accept she likely knew she could file an application to dispute the January 2022 Notice. This is not a situation where a landlord exerted pressure on an unknowing tenant to obtain the rent increase.

I find that the rent increase contained in the 2022 tenancy agreement was the result of negotiations between the Landlord and Tenant. It comprised a settlement of the issue of whether the January 2022 Notice would be enforced. Given the context of the negotiations, I cannot say there was anything approaching coercion of the Tenant's will to otherwise invalidate the compromise.

Accordingly, I find that the Tenant has failed establish the rent increase of $200.00 was obtained unlawfully, arising as it did from a renegotiation whereby the Tenant and Landlord both received benefit from the updated tenancy agreement. The Tenant's claim for compensation on this ground is, therefore, dismissed without leave to reapply.

Summary

On the Tenant's application, I grant her $2,000.00 in compensation for loss of quiet enjoyment, but otherwise dismiss all other aspects of her claim, without leave to reapply.

2) Is the Landlord entitled to compensation for loss caused by the Tenant's breach of the Act, Regulations, or the tenancy agreement?

The Landlord, in its application, seeks compensation of $31,690.00, describing the claim as follows:

> The tenant engaged in obstruction during the sale of the property which resulted in an offer collapsing. Buyers did a property inspection on June 17th. The tenant filed a dispute against the landlord the same day - June 17th - and her agent sent an email to the landlords realtor demanding the landlord put $18,145.23 in trust in order for her to accept a 2 months notice from the buyer. Tenant said she will dispute a 2 months notice given by the buyer in the event of the sale if LL does not pay.

As is noted above, the Landlord listed the rental unit for sale beginning on May 1, 2024 as confirmed by a listing agreement put into evidence by the Landlord. That listing agreement shows the rental unit was listed for sale at a price of $818,000.00.

The Landlord called E.K. as a witness, who indicated he is the listing agent for the Landlord. I am told by him that on June 14, 2024, the Landlord accepted an offer to sell the rental unit for $765,000.00 conditioned on an inspection of the rental unit and providing strata documents to the buyers. E.K. further testified that the buyers had asked for vacant possession of the rental unit upon completion of the contract.

The Landlord's evidence contains a copy of the contract for purchase and sale that is partially redacted. However, the purchase contract provided to me confirms the conditions of the sale as well as the requirement that vacant possession be delivered on the date of possession, calling this a fundamental term of the contract.

E.K. testified that he received an email from the Tenant's advocate on June 19, 2024. A copy of that email was put into evidence by the Landlord and the Tenant. In the interest of completeness, the email states the following:

> I am assisting [the Tenant], tenant of the subject property, with her application to the Residential Tenancy Branch for compensation for loss of quiet enjoyment and other losses resulting from the unlawful actions of her landlord / your client, [I.V.] of [the Landlord], Vendor of the subject property. In this regard, I am acting in my personal capacity as a friend of [the Tenant], and not in my capacity as a Barrister and Solicitor.
>
> Please find enclosed for service upon you notice of [the Tenant] filing for an upcoming RTB hearing for the purpose of claiming compensation from the landlord. We will forward the registration number and date of the hearing immediately upon our receipt thereof.
>
> I understand from [the Tenant] that there is currently an offer on the property subject to conditions to be waived by the buyer. Please be advised that in the event the landlord serves [the Tenant] with a Two Month Notice to End Tenancy For Landlord's Use of Property on behalf of the buyer, [the Tenant] will have no choice but to dispute that notice by way of filing an application with the RTB in order to preserve her rights against the landlord, pending a hearing in this matter and payment, if applicable, by the landlord to [the Tenant] as mandated by the final RTB decision.
>
> Please forward this letter and attachments to the buyer's realtor prior to subject removal, so that full disclosure is provided to the buyer and the buyer is sufficiently informed of the legal dispute between the landlord and the tenant, including the possibility that the buyer will not be able to move into the property until the dispute is resolved.
>
> With that said, [the Tenant] does not wish to unnecessarily interfere with the conveyance process beyond that which is necessary to preserve her rights against the landlord. She is therefore amenable to accepting the Two Month Notice and vacating the property within the statutory mandated timeframe, but only on the condition that the landlord, immediately upon [the Tenant's] receipt of the Two Month Notice, deposit the full amount of the claim, being $18,145.23, by way of bank draft, with her lawyer / notary public, in trust, on that lawyer's or notary public's written irrevocable undertaking to [the Tenant] to 1) hold those funds in trust pending a final determination by the RTB of [the Tenant's] claims against the landlord and 2) pay forthwith the full amount ordered by the RTB, if applicable, directly to [the Tenant] as final compensation for her claims.

E.K. testified that upon receipt of this email from the Tenant's advocate, he contacted the buyers' realtor to advise that the Landlord may not be able to able to deliver vacant possession. I am told by him that the buyers backed out of the purchase refusing to lift conditions. E.K. says he delivered the strata documents to the buyers' realtor within the relevant deadline. I am further told by E.K. that the rental unit is in a new build, such that the sale did not collapse because of the condition inspection, though he emphasized that he was never given a copy of the condition inspection report.

E.K. emphasized that he had never received a similar email in his 20 years of experience. He tells me that his managing broker was cc'd to the email sent by the Tenant's advocate, such that he had to deal with some personal embarrassment with his superior at work as a result.

I am told by E.K. that the listing price was reduced to $788,000.00 and that it still has not sold. The Landlord's evidence contains a copy of the amendment to the listing agreement, showing the price was dropped on June 23, 2024.

Findings

In the interest of being abundantly clear, I find the contents of the June 19, 2024, email sent by the Tenant's advocate to be indefensible. The Tenant is linking her claim for compensation to her continued occupancy of the rental unit. I note that the two issues are not linked in any way as the Tenant was within her rights to advance her monetary claim regardless of whether the tenancy continued or not, the only limit being the limitation period imposed by s. 60 of the *Act*.

The Tenant had no legal right to demand any money be put into trust pending resolution of her monetary claim. The dispute process before the Residential Tenancy Branch does not contemplate any such security within the dispute process.

In effect, the Tenant threatens to exercise her right to dispute any notice to end tenancy issued at the request of the buyers to obtain the funds as security on a claim she had not even served on the Landlord. Not only did the Landlord's realtor have a professional obligation to disclose this to the buyers' realtor, but the advocate also specifically asked he do so to warn the buyers' may not be able to move into the rental unit pending resolution of the dispute.

It is no surprise to me that the buyers, seeking vacant possession, would back out of the deal upon receiving that notice from the Landlord's realtor. Once more, even if they had not, there would have been a risk of damages to the Landlord for breach of contract should possession not have been turned over upon completion of the sale.

The Tenant has a right to dispute a notice to end tenancy for landlord's use, including a notice issued at the purchaser's request. However, that right does not extend to threatening to dispute a notice that had not yet been served upon demand for payment of funds into trust when there is no lawful justification to demand such payment.

I would emphasize that there is a clear distinction between the previous notices to end tenancy and a prospective notice to end tenancy issued at the buyers' request, both substantively and procedurally. If the Tenant had disputed a buyers' notice to end tenancy, the buyers would have to demonstrate their good faith intention to occupy the rental unit, not the Landlord. Again, no such notice to end tenancy had ever been

served as the Tenant's advocate reached out prior to it being issued, which appears to have scuttled the sale.

Despite my otherwise dim view of the conduct of the Tenant and her advocate, I decline to grant the Landlord compensation as I do not have jurisdiction to grant the relief sought. To be clear, my ability to grant compensation under s. 67 of the *Act* is premised on a finding that the Tenant breached the *Act*, Regulations, or tenancy agreement. In this instance, there is no provision of the *Act*, Regulations, or the tenancy agreement that would apply. The Landlord's claim is tort based, an area for which I have no jurisdiction under the *Act*.

3) Is either side entitled to their filing fee?

Neither side faced any substantial success on their applications given the amounts claimed. Accordingly, I dismiss both claims under s. 72(1) of the *Act* for return of their filing fees, without leave to reapply.

Conclusion

I grant the Tenant compensation of $2,000.00 on her application, though otherwise dismiss the remainder of her application without leave to reapply.

The Landlord's application is dismissed, in its entirety, without leave to reapply.

I order under s. 67 of the *Act* that the Landlord pay **$2,000.00** to the Tenant. It is the Tenant's obligation to serve the monetary order on the Landlord, which may be enforced by her at the BC Provincial Court should the Landlord fail to comply with the order.

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

Dated: November 15, 2024

Residential Tenancy Branch