Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to retain the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

KC stated that the Landlord's Application for Dispute Resolution and Proceeding Package was sent to the Tenant, by registered mail, on February 14, 2025. The Tenant acknowledged receipt of these documents. I therefore find these documents were served to the Tenant in accordance with section 89 of the Act.

VF stated that the Tenant's Application for Dispute Resolution and Proceeding Package was sent to the Landlord, to a pre-agreed upon email, on March 17, 2025. The Landlord acknowledged that these documents were sent to a pre-agreed upon email address. I therefore find these documents were served to the Landlord in accordance with section 89 of the Act.

Service of Evidence

On February 13, 2025, and April 11, 2025, the Landlord submitted evidence to the Residential Tenancy Branch. KC stated that this evidence was served to the Tenant, by email, on April 10, 2025. The acknowledged receiving this evidence, although the Tenant denies receiving a copy of the tenancy agreement with this evidence. The evidence the Tenant acknowledged receiving was accepted as evidence for these proceedings.

On March 11, 2025, and March 17, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. VF stated that this evidence was served to the Landlord with the Tenant's Proceeding Package. The Landlord acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

As the Tenant submitted a copy of the tenancy agreement to the Residential Tenancy Branch on March 11, 2025, it was accepted as evidence for these proceedings based on that submission, regardless of the fact the Tenant does not acknowledge receiving it in the Landlord's evidence package.

On April 08, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. VF stated that this evidence was not served to the Landlord. As it was not served to the Landlord, it was not accepted as evidence for these proceedings.

On April 17, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. VF stated that this evidence was served to the Landlord, by email, on April 17, 2025. The Landlord acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

Preliminary Matter #1

With the consent of both parties, the Landlord's Application for Dispute Resolution was amended to reflect the correct legal address of the rental unit.

Preliminary Matter #2

Rule 2.8 of the Residential Tenancy Branch Rules of Procedures stipulates that monetary claims cannot exceed $35,000.00.

The monetary claims on the Tenant's Monetary Order Worksheet exceed $35,000.00.

With the consent of both parties, the Tenant's Application for Dispute Resolution was amended to reduce the amount of the claim to $35,000.00, by removing the claim for of $8,400.00 for lost wages and by reducing the claim for "emotional stress and depression" from $8,000.00 to $5,000.00. The adjusted total of the Tenant's claim is $34,866.31.

The Tenant included the return of the security deposit, in the amount of $1,685.00, in the Monetary Order Worksheet. This amount should not be included on the Worksheet, as the Tenant did not include an application for the return of the security deposit in their Application for Dispute Resolution.

The security deposit will either be retained by the Landlord or returned to the Tenant based on the Landlord's Application for Dispute Resolution, in which the Landlord applied to retain the deposit.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent, damage to the unit, and liquidated damages?
Is the Landlord entitled to retain the security deposit?
Is the Tenant entitled to compensation for loss of quiet enjoyment and for losses associated to loss of quiet enjoyment.

Background and Evidence

Although I have considered although accepted evidence and testimony, only evidence that is relevant to my decision is summarized in this decision.

The Tenant stated that:

- the tenancy was for a fixed term, which began on September 01, 2024, and was to end on August 31, 2026
- monthly rent of $4,850.00 was due by the first day of each month
- a security deposit of $2,425.00 was paid on July 02, 2024
- the Tenant regularly reported being disturbed by the construction
- on January 17, 2025, the Tenant's lawyer sent a letter to the Landlord informing the Landlord of the Tenant's intent to vacate due to the Landlord's failure to address the construction disturbances

- after receiving the letter of January 17, 2025, the Landlord did not give the Tenant any indication when the renovations would be completed
- the rental unit was vacated by January 31, 2025
- rent has not been paid for February of 2025
- the Tenant provided a forwarding address, in writing, when the final condition inspection report was completed on January 31, 2025
- the Landlord did not return any portion of the security deposit.
- The Tenant gave the Landlord written authority to withhold $740.00 from the security deposit for various deficiencies with the rental unit.

KC stated that the renovations were completed “this week”, although there may still be scaffolding on site. VF stated that the Tenant does not know if renovations are complete, although there is still scaffolding on site.

The Landlord and the Tenant agree that the Tenant sought a mutual agreement to end the tenancy in November of 2024, but an agreement was not reached.

The Landlord and the Tenant agree that the Landlord offered to mutually agree to end the tenancy on December 31, 2024, but the offer was not accepted by the Tenant. VF stated that this offer was not accepted by the Tenant because the Tenant did not want to move at that time of year.

The Landlord and the Tenant agree that the Tenant offered to mutually agree to end the tenancy on January 31, 2025, but the offer was not accepted by the Tenant. EJ stated that this offer was not accepted by the Landlord because the offer was contingent on financial compensation.

The Tenant submits that the Landlord “fraudulently misrepresented” the rental unit by failing to disclose the planned renovations prior to entering into a tenancy agreement with the Tenant and, as such, the Tenant had the right to “rescind” the tenancy agreement.

EJ acknowledges that the planned renovations were not disclosed to the Tenant prior to entering into this tenancy agreement. EJ stated that owner of the residential property did not inform the management company of the upcoming renovations. EJ stated that the management company manages the rental unit on behalf of the owner of the residential property. EJ stated that they do not know when the owner of the property became aware of the renovations.

KC stated that the renovations began at the end of July of 2025. VF stated that the Tenant was not aware of the renovations until the condition inspection report was completed on August 29, 2025.

The Tenant submits that given the scope of the planned renovations, which commenced at the end of July of 2025, the owner must have been aware of the upcoming renovations when this tenancy agreement was signed.

The Tenant submits that they would not have entered into this tenancy agreement is they were aware of the planned renovation.

The Landlord is seeking unpaid rent from February of 2025.

The Landlord is seeking liquidated damages in accordance with section 6 of the tenancy agreement.

The Landlord is seeking $740.00 in compensation for cleaning, damage to the walls, and damaged to the blinds. In the Condition Inspection Report completed on January 31, 2025, the Tenant agreed the Landlord could keep $740.00 of the security deposit in compensation for these damages. The Tenant is not disputing that they gave the Landlord written authority to retain this amount from their security deposit.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in the following amounts:

- a full rent refund for the entire tenancy, in the amount of $20,500.00
- emotional distress experienced by the Tenant's daughter in the amount of $5,000.00, which the Tenant refers to as "aggravated damages" in the Application for Dispute Resolution
- emotional distress and depression experienced by the Tenant in the amount of $5,000.00, which the Tenant refers to as "aggravated damages" in the Application for Dispute Resolution.

The Tenant submitted a detailed explanation of the construction disturbances in their written submission, particularly in pages 12 to 15 of the evidence submitted on March 11, 2025. VF stated that this is a fair and accurate representation of the disturbances, and no supplementary information was provided. The Landlord agrees this is a fair representation of the disturbances in the residential property.

The Tenant submitted a detailed explanation of the how the disturbances impacted the quiet enjoyment of the rental unit, particularly in pages 15 to 16 of the evidence submitted on March 11, 2025. VF stated that this is a fair and accurate representation of the impact of the disturbances, and no supplementary information was provided. The Landlord does not dispute this submission.

The Landlord and the Tenant agree that the Tenant has been granted a rent reduction totalling $3,750.00 as compensation for disturbances caused by the renovation.

The Tenant submits that the $3,750.00 in compensation for the daily disturbances experienced. EJ submits that the compensation was adequate.

The Tenant is seeking compensation of $472.50 for cleaning the unit and $1,785.00 for moving fees. The Tenant submitted invoices to show these costs were incurred. The Tenant submits that these costs would not have been incurred if the Landlord had disclosed the upcoming renovations, as the Tenant would not have entered into a tenancy agreement.

The Tenant is seeking compensation of $132.41 for medical costs incurred in China. The Tenant is also seeking compensation for the cost of flying to China on December 19, 2024, and February 02, 2025, both of which were for the purpose of receiving medical treatment. The Tenant submits that medical treatment was the sole purpose of both trips.

The Tenant submits that the Tenant visited their family doctor in BC on December 03, 2025, because of symptoms of depression, which the Tenant associates to their living conditions**.** The Tenant stated that a follow-up appointment could not be booked with that medical practitioner until “sometime” in January of 2025, so the Tenant opted to travel to China for treatment.

Analysis

Based on the undisputed evidence, I find that:

- the parties entered a fixed term tenancy agreement, the fixed term of which began on September 01, 2024, and was to end on August 31, 2026
- extensive construction began on the exterior envelope of the building just before the tenancy began, which included replacing windows, doors, and exterior siding
- the construction project was not disclosed to the Tenant prior to the Tenant signing the tenancy agreement in June of 2025.

Based on EJ's testimony, I am satisfied that the management company representing the owner of the residential property was not aware of the upcoming renovations when they entered into a tenancy agreement with the Tenant. I find there is no evidence to refute this testimony.

Given the scope of the project, I find it reasonable to conclude that the owner of the property was aware of the upcoming renovation when the Tenant entered into this tenancy agreement in June of 2025. I find it would be illogical to conclude that the owner would not have been aware of such a large project in June of 2025, given that the project commenced in July of 2025.

Regardless of the owner being aware of the upcoming renovations, I find that there is insufficient evidence that the management company knew of the renovations. I therefore cannot conclude that the management company misrepresented the facts when the terms of this tenancy were discussed.

While I accept EJ's testimony that the management company did not know of the planned renovations prior to entering into the tenancy agreement, I find that the owner of the building had a responsibility to provide that information to the management company. The owner of the building is a "landlord", as that term is defined by the Act.

A contract may be declared "void" if one party makes a false statement which affects the other party's decision to enter into a contract. In the absence of evidence of a false statement made by the management company, I cannot conclude that this tenancy agreement should be declared void, especially since the Tenant continued to occupy the unit for months after they became aware of the renovations.

Based on the testimony of the parties and the evidence submitted to the Residential Tenancy Branch, I find that the noise and disruptions created by the construction were significant. I find these noises and inconveniences would disturb many people, and it they were particularly difficult for the Tenant, who worked from home.

Section 28(c) of the Act guarantees a tenant the right to quiet enjoyment of the rental unit, including freedom from unreasonable disturbances. Given the scope and the duration of the construction project, I find that the project breached the Tenant's right to quiet enjoyment.

It is always necessary to balance the Tenant's right to quiet enjoyment with the Landlord's right and responsibility to maintain the premises. I find the Landlord had the right to renovate the rental property. However, I find that the Landlord should have disclosed the planned renovations to the Tenant prior to signing the agreement to protect the Tenant's right to quiet enjoyment.

The owner of the residential property knew an extensive construction project was scheduled to begin and they should have informed the management company of the renovations. I find that the Landlord did not balance the Landlord's right to maintain the property with the Tenant's right to private enjoyment when they did not disclose the planned construction project.

Section 45(3) of the Act permits a tenant to end any type of tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

Residential Tenancy Branch Policy Guideline #8, with which I concur, reads, in part:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the arbitrator will consider the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the arbitrator will consider the true intention of the parties in determining whether or not the clause is material.

A breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. I find that the quiet enjoyment of the rental unit in these circumstances is a material term of the tenancy. Based on the testimony of the Tenant, I find that the Tenant would not have moved into the unit if the Tenant was aware of the scope and duration of the construction project. I find it

reasonable to conclude that few people would be willing to move into the rental unit if they were aware of a renovation of this magnitude had been planned.

Based on the on-going attempts to reach a mutual agreement to end the tenancy, the concerns about the construction disturbances regularly communicated to the Landlord, and the lawyer's letter of January 17, 2025, I find that:

- the Landlord was aware the Tenant believed their right to quiet enjoyment was being beached
- the Landlord knew the Tenant wished to end the tenancy because of that breach.

I find that after receiving the letter of January 17, 2025, the Landlord did not give the Tenant any indication when the renovations would be completed. I therefore find it was reasonable for the Tenant to conclude the renovations were on going.

After considering all the above, I find that the Tenant had the right to end this tenancy on January 31, 2025, pursuant to section 45(3) of the Act and the lawyer's letter of January 17, 2025.

As the Tenant had the right to end the tenancy on January 31, 2025, I find rent was not due for February of 2025, and I dismiss the Landlord's application for unpaid rent from that month. A tenant is not obligated to pay rent after the tenancy has lawfully ended.

Section 6 of the tenancy agreement requires a tenant to pay liquidated damages if the Tenant causes the Landlord to end the tenancy prior to the fixed term or if the Tenant vacates the unit before the end of the fixed term.

Section 5 of the Act stipulates that landlords and tenants may not avoid or contract out of this Act or the regulations, and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

Pursuant to section 5 of the Act, I find that section 6 of the tenancy agreement has no effect if the Tenant has the legal right to end the tenancy. As the Tenant had the legal right to end this tenancy on January 31, 2025, section 6 of the tenancy agreement has no effect, and I dismiss the Landlord's claim for liquidated damages.

Section 38(4) of the Act permits a landlord to keep an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

As the Tenant signed the Condition Inspection Report on January 31, 2025, to indicate the Landlord could keep $740.00 from the security deposit in compensation for damages, I find that the Landlord has the right to keep this amount, pursuant to section 38(4) of the Act.

As the Landlord had the right to keep $740.00 from the Tenant's security deposit, pursuant to section 38(4) of the Act, I find that the Landlord did not need to apply to keep this amount.

As the Landlord has not established a right to keep the remainder of the Tenant's security deposit, I find that the Landlord must return the remaining $1,685.00, plus $40.19 in interest.

I find that the Landlord has failed to establish this merit of their Application for Dispute Resolution, and I dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

Residential Tenancy Branch Policy Guideline #6, with which I concur, stipulates that a breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the Act. In determining the amount by which the value of the tenancy has been reduced, the policy guideline suggests that I 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.

Compensation for a breach of quiet enjoyment is highly subjective. After considering the duration of these disturbances, the nature of these disturbances, and the impact it has had on the occupants, one of whom works from home, I find the disturbances reduced the value of this tenancy by 40%. I therefore find that the Tenant is entitled to a monthly rent reduction of $1,940.00 for the duration of the tenancy. As this tenancy lasted for 5 months, I find the Tenant is entitled to compensation of $9,700.00.

Based on the undisputed evidence, I find that the Tenant already received a rent reduction of $3,750.00 and that additional compensation of $5,950.00 is due.

I dismiss the Tenant's application for a full refund, as I find the claim is excessive. Although the Tenant experienced significant disruptions, the Tenant had the ability to live in the unit with freedom from noise disturbances during non-work hours.

I find the rent reduction is reasonable compensation for the disturbances experienced, and I dismiss the claim for “aggravated damages”. Aggravated damages are typically awarded when the “wronged” party cannot be fully compensated for damage or loss. In these circumstances, I find that the Tenant can be reasonably compensated by the rent reduction awarded, and by compensation them for other tangible losses.

I find that the Tenant would not have incurred moving and cleaning costs if the planned renovations had been disclosed prior to the start of the tenancy, as I find it highly likely the Tenant would not have entered into this tenancy agreement. I find the Tenant would not have incurred these costs if their right to quiet enjoyment had not been breached. I therefore find that these costs flowed from the breach of their quiet enjoyment of the rental unit, and that the Tenant is entitled to compensation for moving costs of $1,785.00 and cleaning costs of $472.50.

Even if I concluded that the Tenant was experiencing symptoms of depression that were directly related to the tenancy, I would not conclude that the Tenant was not entitled to compensation for the expense of receiving that treatment in China. I therefore dismiss the claim for the cost of the treatment and the cost of travelling to China.

In reaching this conclusion, I was heavily influenced by:

- the evidence that the Tenant received treatment from their family doctor on December 03, 2024
- there is no documentary evidence to corroborate the Tenant’s submission that the Tenant could not get a follow-up appointment with their family doctor until January of 2025
- there is no evidence to show that the Tenant’s medical condition was so urgent that a trip to China for treatment was justified
- there is no evidence to show that the Tenant could not have received urgent medical care, if necessary, by visiting an emergency room.

I find that the Tenant’s Application for Dispute Resolution has some merit, and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed in its entirety, without leave to reapply.

I grant the Tenant a Monetary Order, pursuant to section 67 of the Act, in the amount of $10,032.69 under the following terms:

Monetary Issue	Granted Amount
a rent reduction as compensation for a breach of quiet enjoyment	$5,950.00
compensation for cleaning costs	$472.50
compensation for moving costs	$1,785.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	$100.00
partial return of security deposit/interest	$1,725.19
Total Amount	**$10,032.69**

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with this Order as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than $35,000.00. Monetary Orders that are more than $35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: April 28, 2025

Residential Tenancy Branch