# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

RR, RP, MNDCT, FFT

Introduction:

A hearing was convened on August 25, 2020 in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for a rent reduction, for an Order requiring the Landlord to make repairs, and to recover the fee for filing this Application for Dispute Resolution.

There was insufficient time to conclude the hearing on August 25, 2020 so the hearing was adjourned. The hearing was reconvened on October 23, 2020 and was concluded on that date.

The Tenant stated that on July 23, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch on July 17, 2020 and July 23, 2020 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On August 13, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on August 16, 2020. The Tenant stated that he has been away and that he did not receive this evidence until August 20, 2020. As the evidence was served to the Tenant in accordance with section 88 of the *Residential Tenancy Act (Act)* and the Residential Tenancy Branch Rules of Procedure, I accepted it as evidence for these proceedings.

As the Tenant only had five days to consider the evidence he located on August 20, 2020, he was asked if he would like an adjournment for the purposes of providing him

with more time to consider the Landlord's evidence. The Tenant stated that he was prepared to proceed on August 25, 2022, without the need for an adjournment.

On August 24, 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions at both hearings. Each party present at each hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during the proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, however it is only referenced in this decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Is the Tenant entitled to a rent reduction or compensation for deficiencies with the rental unit?
Is there a need to issue an Order requiring the Landlord to make repairs?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that the tenancy began on April 01, 2020; the tenancy is for a fixed term, the fixed term of which ends on March 31, 2023; the Tenant agreed to pay rent of $5,700.00 each month; and the Tenant was not required to pay rent for April of 2020.

The Tenant is seeking an Order requiring the Landlord to repair the elevator. The Tenant is also seeking a rent reduction of $200.00 for each month the elevator was not working properly.

In support of the claim regarding the elevator, the Tenant stated that:

- There is an elevator in the rental unit that provides direct access to his unit from the garage;
- If the elevator is not used, he can access his unit by exiting the garage and accessing the residential complex through the main front entrance;

- On one occasion in April of 2020 the elevator did not function, after which he discovered the back-up battery was missing;
- On March 26, 2020 he paid an elevator company to replace the missing battery, prior to informing the Landlord of the issue;
- He reported the problem with the battery to the Landlord prior to April 29, 2020, by email, although he does not recall the date;
- He did not submit evidence to show that he reported a problem with the battery;
- He paid $300.00 to repair the battery in the elevator, which he recovered by retaining that amount from his rent for May of 2020;
- On May 22, 2020 his son was trapped in the elevator for approximately ½ hour;
- On May 22, 2020 he informed the Agent for the Landlord that his son had been trapped in the elevator;
- The Agent for the Landlord told him to have the elevator repaired and that she would compensate him for that expense;
- Immediately after the incident on May 22, 2020, he contacted an elevator repair company;
- The elevator company came on May 28, 2020, at which time the elevator was partially repaired;
- He paid for the repairs made to the elevator, although he cannot recall how much he paid;
- The Landlord has not compensated him for all the repairs made to the elevator;
- The elevator was never fully repaired, as it still does not have a functioning call button or telephone system;
- There is an interior door leading to the elevator on the second floor of the rental unit, which must close properly before the elevator can be safely used from the second floor;
- He reported a problem with the interior door on the second floor to the Agent for the Landlord on April 30, 2020;
- On June 01, 2020 a contractor came to the rental unit to view the problem with the interior door and a variety of other deficiencies;
- No time was scheduled after June 01, 2020 to repair the interior door;
- The interior door on the second floor has never been repaired;
- He stopped responding to the Agent for the Landlord’s emails as he believed she was not addressing the deficiencies;
- He uses the elevator by taking it from the garage directly to the third floor of his unit;
- He is not able to take the elevator to/from the second floor of the unit, due to the deficiency with the interior door on the second floor;

- On April 30, 2020 he told the Agent for the Landlord that the “call button” in the elevator was not working;
- The Agent for the Landlord gave him permission to have a telephone installed in the elevator;
- He arranged to have a telephone installed, for which he paid $190.00;
- He has not recovered the $190.00 he paid to install the telephone;
- The telephone will not work in the elevator until additional phone lines are installed;
- He believes he told the Agent for the Landlord that the phone was not working after it was installed, but he does not know how or when;
- He wants the elevator properly repaired; and
- He wants a monthly rent reduction of $200.00 for living without a fully functional elevator, which is the essence of his $800.00 elevator claim.

In response to the claim regarding the elevator, the Agent for the Landlord stated that:

- The Landlord was not aware there was a problem with a battery in the elevator until it was reported to her by email on April 29, 2020;
- The Tenant paid $300.00 to repair the battery in the elevator, which he recovered by retaining that amount from his rent for May of 2020;
- On May 22, 2020 the Tenant told her that his son had been trapped in the elevator earlier that date;
- She told him to have the elevator repaired;
- She understands the elevator was repaired on May 28, 2020;
- She understands that the Tenant paid for the repairs made to the elevator on May 28, 2020;
- She does not know if the Tenant submitted a receipt for any other repairs to the elevator;
- The Landlord will compensate the Tenant for the repairs if a receipt is submitted, presuming he has not yet been compensated;
- On April 30, 2020 the Tenant informed her that the door leading to the second floor elevator was not closing properly;
- She does not know if that door must close properly before the elevator can be used from the second floor;
- On June 01, 2020 she sent a contractor to the rental unit to view the problem with the interior door and a variety of other deficiencies;
- The Tenant stopped responding to her text messages, so she did not arrange to repair the interior door leading to the elevator;

- On April 30, 2020 the Tenant told her that the “call button” in the elevator was not working.
- On May 10, 2020 she gave the Tenant permission to have a telephone installed in the elevator;
- She understands that the Tenant paid $190.00 to install a telephone**;**
- She thought the Tenant had received a rent reduction for the $190.00 he paid to install the telephone, although she accepts his testimony that he has not received that compensation;
- She was not aware that the telephone was not working, until she heard the Tenant’s testimony on August 25, 2020;
- The Landlord is willing to make all necessary repairs to the elevator; and
- The Landlord does not think the rent should be reduced as a result of issues with the elevator.

The Tenant submitted documentation from an elevator company that confirms a telephone was installed on June 15, 2020 and that phone lines must be connected.

The Tenant is seeking an Order requiring the Landlord to repair the garden irrigation system. The Tenant is also seeking a rent reduction of $200.00 for each month the system was not working properly.

In support of the claim regarding the irrigation system, the Tenant stated that:

- When he initially viewed the rental unit, he observed there was a garden irrigation system on the decks, and he presumed it was functioning properly, just as he assumed all of the other plumbing in the unit functioned properly;
- He did not discuss the irrigation system with the Agent for the Landlord when he discussed the terms of the tenancy;
- On April 30, 2020 he informed the Agent for the Landlord that the irrigation system was not working;
- Because the irrigation system is not fully functioning, he must spend time watering the plant on the decks, some of which belong to the Tenant;
- If he does not water the plants they will die, which will impair his privacy and the esthetic value of the unit;
- The irrigation system on the ground level has been repaired, but the system on the other three levels has not been repaired;
- He does not recall when the system was repaired on the ground level; and
- He wants a monthly rent reduction of $200.00 for living without a fully functional irrigation system.

In response to the claim regarding the irrigation system, the Agent for the Landlord stated that:

- When the Tenant initially viewed the rental unit, he would likely have observed parts of an irrigation system on the decks;
- They did not discuss the irrigation system when they discussed the terms of the tenancy;
- On April 30, 2020 the Tenant informed her that the irrigation system was not working;
- The Tenant has an obligation to water the plants;
- The Tenant has the ability to water the plants by hand;
- The Landlord has informed her that they did not use the irrigation system while they were living in the unit and they do not wish to repair the entire system; and
- The irrigation system on the ground level was repaired sometime in May of 2020, but the Landlord does not wish to repair the system on the other levels.

The Tenant is seeking a rent reduction of $1,000.00 for each month of this tenancy, as the HVAC system in the unit is very noisy.

In support of the claim regarding the irrigation system, the Tenant stated that:

- He found a letter in the rental unit that shows the original owner of the rental unit reported to the Strata Council that the HVAC system was loud in 2015;
- The Strata Council did not rectify the noise issue with the HVAC system;
- Some condominium owners have opted to replace the HVAC system to reduce the noise levels;
- The rental unit has an HVAC unit on each floor of the rental unit;
- The noise from the rental unit is excessively loud when the heat is operating;
- The Landlord should have informed him that the HVAC system is excessively loud;
- He does not use the HVAC unit on the main living level and on the master bedroom level, as he finds the noise disturbing;
- He uses the HVAC unit on the other levels, as it does not disturb his children;
- The HVAC system was serviced on two occasions in May of 2020;
- On July 02, 2020 a serviceperson installed some rubber insulating pads, in an attempt to reduce the noise;
- The rubber insulating pads did not reduce the noise level;
- The service person told him that the noise was “inherent with the unit”, that it was a design flaw, and that the noise could not be eliminated;

- As a result of the design flaw, the HVAC system would need to be replaced to rectify the noise issue;
- He does not want the HVAC system replaced, as it would cause a significant disruption;

In response to the claim regarding the HVAC system, the Agent for the Landlord stated that:

- The letter found in the rental unit by the Tenant, in which the original owner of the rental unit reported that the HVAC system was loud, was not written by the Landlord;
- She understands this reported “deficiency” was repaired;
- The Landlord was not the original owner of the rental unit;
- The HVAC system was serviced on two occasions in May of 2020;
- On July 02, 2020 a serviceperson installed some rubber insulating pads, in an attempt to reduce the noise;
- The serviceperson told her that the HVAC system is functioning properly;
- The Tenant was not advised that the HVAC system was excessively loud because the noise did not bother the Landlord when they were living in the unit, nor did their previous tenant express concerns with the noise; and
- She has listened to the noise created by the HVAC system, and she considers it typical of noise created by similar heating systems.

The Tenant submitted a recording of the noise created by the HVAC system.

The Tenant is seeking an Order requiring the Landlord to replace the wine cooler in the rental unit with a wine cooler that is valued at approximately $2,000.00. The Tenant is also seeking a rent reduction of $100.00 for each month he has been without the wine cooler.

In support of the claim regarding the wine cooler, the Tenant stated that:

- In May of 2020 he informed the Landlord the wine cooler was not working;
- He refused to accept delivery of a new wine cooler when it was delivered to the rental unit;
- He refused to accept the delivery of the new wine cooler because it was not the same quality as the original wine cooler;
- The new wine cooler was of lesser quality because it was a “stand alone” unit, rather than a built in unit;
- Because the new wine cooler was of lesser quality, it would have been louder than the original cooler and it would have been less efficient;

- The price of the new cooler was approximately $500.00;
- The price of the original cooler was approximately $2,000.00; and
- He submitted no proof to corroborate his claim that the cost of the original cooler was $2,000.00, although he provided the Landlord with a link to an appliance company that sells wine coolers.

In response to the claim regarding the wine cooler, the Agent for the Landlord stated that:

- In May of 2020 the Tenant informed the Landlord the wine cooler was not working;
- They had the wine cooler inspected and subsequently determined that the cooler she be replaced;
- The Landlord paid $572.88 for the new cooler, which was to be delivered to the Tenant in early July of 2020;
- The Tenant refused to accept delivery of the new wine cooler when it was delivered to the rental unit;
- The Landlord would have arranged to have the new wine cooler installed in the same place as the original cooler, had the Tenant accepted delivery;
- The original wine cooler was a Marvel brand;
- The Landlord did not purchase the original cooler, so she does not know the original cost; and
- Marvel brand wine coolers range in price between $600.00 and $3,000.00.

The Tenant is seeking an Order requiring the Landlord to replace the curtains in the rental unit. The Tenant is also seeking a rent reduction of $200.00 for each month he has been living with the curtains.

In support of the claim regarding the curtains, the Tenant stated that:

- When the tenancy began the Landlord agreed that that the Tenant could have the curtains professionally cleaned;
- It was “implied” that cleaning the curtains would restore them to their original condition;
- The parties agreed that the Tenant would not be required to pay rent for April of 2020, in part, because he was cleaning the curtains;
- After the curtains were cleaned in April of 2020, he determined they were damaged, “discolored” and in need of replacement;
- Photographs 5.1 and 5.2 in Appendix C of his evidence show the damage to the curtains; and
- The photographs do not show the discoloration to the curtains.

In response to the claim regarding the curtains, the Agent for the Landlord stated that:

- When the tenancy began the Landlord agreed that that the Tenant could have the curtains professionally cleaned;
- The parties agreed that the Tenant would not be required to pay rent for April of 2020, in part, because he was cleaning the curtains;
- She does not agree that the curtains are discolored; and
- The minor damage that can be seen in the Tenant's photographs do not warrant replacing the curtains.

The Tenant is seeking an Order requiring the Landlord to replace the carpet on the stairs. The Tenant is also seeking a rent reduction of $200.00 for each month he has been living with the carpet.

In support of the claim regarding the carpet, the Tenant stated that:

- The carpet on the stairs is frayed, discolored, and in need of replacement;
- The Agent for the Landlord told him that once the carpet was cleaned it would be "restored to proper level"; and
- Photograph 6 in Appendix C of his evidence shows the damaged, discolored carpet after it had been cleaned.

In response to the claim regarding the carpet, the Agent for the Landlord stated that:

- She does not believe the carpet is discolored or in need of replacement;
- She did not tell him that the carpet would in perfect condition after it was cleaned.

The Tenant submitted a copy of the carpet cleaning invoice. He stated that the cleaner made the following notes about the carpet on the invoice prior to cleaning the carpet:

- Water leak stain;
- Cellular browning;
- Coloured spots;
- Filtration soiling;
- (gray edges);
- Rippling;
- Faded; and
- No guarantee on removal.

The Tenant is seeking an Order requiring the Landlord to replace the television. The Tenant is also seeking a rent reduction of $200.00 for each month he has been living without the television.

In support of the claim regarding the television, the Tenant stated that:

- The television was provided with the rental unit, which was mounted on the wall;
- The television is part of a hard-wired entertainment system;
- The television has a large black spot on the screen;
- He reported the problem with the television to the Landlord in May of 2020;
- The Landlord offered to remove the television from the wall; and
- The Landlord never offered to replace the television.

In response to the claim regarding the television, the Agent for the Landlord stated that:

- The home was not rented as a furnished unit;
- The television was mounted on the wall of the rental unit and the Tenant was not told that he could not use it;
- In May of 2020 the Tenant told the Landlord the television did not work properly;
- The Landlord offered to remove the television from the wall; and
- The Landlord never offered to replace the television.

The Tenant is seeking a rent reduction of $400.00 because the water fountain in the garden does not work.

In support of the claim for the water fountain the Tenant stated that:

- When he viewed the rental unit, he observed the water fountain in the garden and assumed it would work;
- The Agent for the Landlord told him the fountain worked;
- Photographs 8.1 and 8.2 in Appendix C show the water fountain;
- In May of 2020 he told the Landlord the fountain was not working; and
- The fountain has never been repaired.

In response to the claim for the water fountain the Agent for the Landlord stated that:

- The water fountain did not work when the Landlord lived in the rental unit;
- The water fountain did not work when the Tenant viewed the rental unit prior to the start of the tenancy;
- She never told the Tenant that the water fountain worked; and
- The Landlord does not wish to repair the fountain.

The Tenant is seeking a monthly rent reduction of $200.00 because after he agreed to pay rent of $5,700.00, he found the unit advertised for $5,500.00. The Tenant submits this is an “unfair trade practise”.

The Tenant is seeking compensation of $200.00 because he paid this amount to third parties to dismantle and move the Landlord's furniture.

In support of the $200.00 claim the Tenant stated that:

- The Landlord promised to remove all of his furniture from the rental unit by the end of February of 2020;
- He was given access to the unit in March of 2020, to facilitate cleaning of the unit;
- To facilitate cleaning, he had some of the Landlord's property moved outside, where it was covered by a tarp;
- The Landlord's property was moved outside on, or about, March 20, 2020;
- To facilitate cleaning, he had some of the Landlord's property dismantled and moved to a different area of the rental unit; and
- The rest of the Landlord's property was moved sometime in March of 2020.

In response to the $200.00 claim the Agent for the Landlord stated that:

- The Landlord had furniture in the rental unit prior to the start of the tenancy;
- The Tenant agreed to sell some of the Landlord's furniture for the Landlord;
- The sale of the Landlord's furniture was to occur in March of 2020;
- The Landlord agreed that any unsold furniture would be removed from the rental unit prior to the start of the tenancy, which was April 01, 2020;
- There was never a promise to remove the Landlord's furniture by the end of February of 2020;
- Due to the COVID-19 pandemic, the Tenant wanted to move his property into the unit prior to April 01, 2020; and
- The Landlord arranged to have movers attend the unit on March 25, 2020;
- When the movers arrived, they found the Landlord's property outside of the rental unit.

A printout of electronic communications between the Landlord and the Tenant are provided at page 64 of the Landlord's evidence. The particularly relevant entries are:

- March 20, 2020 – Tenant writes he is in a rush to move some property into the unit a week early;
- March 21, 2020 – Landlord writes he is arranging to have any remaining furniture picked up by Wednesday or Thursday;
- March 21, 2020 – Tenant writes that he understood the furniture would be removed by March 22, 2020; that he has already paid $100.00 to have some of the Landlord's furniture dismantled; and that he wants the Landlord's furniture moved by 3:00 pm on March 22, 2020;

- March 21, 2020 – Landlord writes that the best he can do is to move the furniture on Wednesday;
- March 21, 2020- Tenant writes he can ask his movers to move it on March 22, 2020;
- March 23, 2020 – Landlord writes that the furniture will be moved on Wednesday; and
- March 24, 2020 – Landlord writes that his movers arrived to find his furniture outside.

The Tenant is seeking compensation of $420.00 for time his assistant spent coordinating with tradespeople and dealing with issues related to the deficiencies with this tenancy. He stated that he did not provide a detailed accounting of her time, but it is a "good estimate" of time spent.

Analysis:

Section 27(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

As the elevator provides a primary means of accessing the rental unit, I find it reasonable to conclude that the Landlord does not have the right to terminate or restrict the use of the elevator.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find it reasonable to conclude that this requires the Landlord to keep the elevator in good running condition, including maintaining an emergency call system in the event the elevator malfunctions while someone is inside it.

On the basis of the Tenant's evidence and in the absence of any evidence to the contrary, I find that the telephone that was installed in the elevator for the purposes of being used in the event of emergencies is not yet functioning. I therefore order the Landlord to take any steps necessary to ensure the telephone in the elevator is functional, as soon as is reasonably possible.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the door handle on the door leading to the elevator on the second floor of the rental unit must be repaired in order for the elevator to be safely used. I therefore order the Landlord to repair the door handle on the door leading to the elevator on the second floor as soon as is reasonably possible.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, 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 the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

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 the premises.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the unit would impair the occupant's ability to enjoy the unit.

While I accept that the elevator malfunctioned on two occasions since the start of this tenancy, I find that the Landlord responded appropriately in response to those reported issues. The evidence shows that on both occasions that Landlord clearly indicated a willingness to repair the elevator on those two occasions and to pay for the costs of those repairs. I therefore find that the two incidents constitute a temporary inconvenience, for which compensation is not warranted.

On the basis of the undisputed evidence, I find that on April 30, 2020 the Tenant informed the Landlord that the emergency call button in the elevator did not work.

I find that the Tenant has submitted insufficient evidence to establish that the elevator cannot be used simply because the emergency telephone does not function. In reaching this conclusion I was heavily influenced by the Tenant's testimony that he uses the elevator by taking it from the garage to the third floor of his rental unit.

Although the evidence shows that the Tenant is able to use the elevator, I find it is reasonable to conclude that using the elevator without a method of alerting others in the case of an emergency would disturb a reasonable tenant. I find that to be particularly true in these circumstances, where the Tenant's son was trapped inside the elevator on one occasion.

On the basis of the undisputed evidence, I find that on May 10, 2020 the Landlord authorized the Tenant to have an emergency telephone installed in the elevator. As this authorization came within ten days of the issue being reported, I find that the Landlord responded appropriately to this issue.

On the basis of the undisputed evidence, I find that the Tenant arranged to have an emergency telephone, installed in the elevator and that it was installed on June 15, 2020. Although this constitutes a delay of over one month, I find it reasonable to conclude that the delay was not the fault of the Landlord, given that the Landlord was not making the arrangements for the installation.

As the Landlord responded reasonably to the issue with the emergency telephone and the elevator was being used without the emergency telephone, I find that the issue with the telephone prior to one being installed on June 15, 2020 constitutes a temporary inconvenience, for which compensation is not warranted.

On the basis of the testimony of the Tenant and the documentation from the elevator company, I find that the emergency telephone is currently not functioning, as a telephone line must by installed.

I find that the Tenant has established insufficient evidence to establish that he informed the Landlord that the telephone was not functioning after it was installed on June 15, 2020 until such time as he served this Application for Dispute Resolution. In reaching this conclusion I was influenced by the Tenant testimony that he "believes" he told the

Agent for the Landlord that the phone was not working after it was installed, but he does not know how or when.

Although the Agent for the Landlord testified that she was not aware the newly installed telephone was not working until she heard the Tenant's testimony at the hearing on August 25, 2020, I find that she knew, or should have known, the telephone was not working when she was served with the Application for Dispute Resolution on July 23, 2020.

Given the on-going issues with the elevator, I find the Landlord should have taken over the repairs of the elevator on July 23, 2020 when the Landlord was informed the emergency telephone was not functioning. As the Landlord did not take immediate steps to remedy that issue on July 23, 2020, I find the Tenant is entitled to compensation for the loss of quiet enjoyment related to that emergency equipment not functioning.

Determining the amount of compensation due to a tenant as a result of a deficiency with a rental unit is highly subjective. To determine the amount of compensation due, I must consider the seriousness of the situation; the degree to which the Tenant has been unable to use the unit or has been deprived of the right to quiet enjoyment; and the length of time the situation has existed.

I find that the Tenant is entitled to compensation for loss of quiet enjoyment related to the elevator telephone for the period between July 23, 2020 and July 31, 2020, in the amount of $15.00, and thereafter at a rate of $60.00 per month. I therefore award compensation of $195.00 for the period between July 23, 200 and October 30, 2020. Given that the elevator is being used without the added security of the emergency telephone, I find this amount to be reasonable.

As the Tenant has established insufficient evidence to show that he informed the Landlord that the emergency telephone was not functioning between June 15, 2020 and July 23, 2020, I decline to grant compensation for that period. There can be no reasonable expectation for repairs if the Landlord is not clearly informed of the need for repairs.

I hereby authorize the Tenant to reduce the monthly rent for November of 2020 by $60.00 if the telephone in the elevator is not fully functional by November 01, 2020 and to reduce each subsequent monthly rent payment by $60.00 if the telephone is not fully functional by the first day of each subsequent month.

On the basis of the undisputed evidence, I find that on April 30, 2020 the Tenant informed the Landlord that the door handle of the door leading to the elevator on the second floor did not function properly and that the handle has not yet been repaired. On the basis of the undisputed evidence, I find that the Tenant does not take the elevator to the second floor of his rental unit due to the faulty door. Rather, the Tenant takes the elevator to the third floor of his rental unit and walks down one floor.

I find that taking the elevator to an alternate floor is a significant inconvenience that breaches the Tenant's right to the quiet enjoyment of the rental unit. I therefore award the Tenant compensation of $360.00 for the period between May 01, 2020 and October 30, 2020 for loss of quiet enjoyment related to the faulty door. I hereby authorize the Tenant to reduce the monthly rent for November of 2020 by $60.00 if the door leading to the elevator is not fully functional by November 01, 2020 and to reduce each subsequent monthly rent payment by $60.00 if the door is not fully functional by the first day of each subsequent month.

As the Landlord has not claimed compensation for any of expenses incurred to repair the elevator, that issue is not being considered at these proceedings. In the event the Landlord does not reimburse the Tenant or elevator repairs approved by the Landlord, the Tenant retains the right to file another Application for Dispute Resolution claiming compensation for those costs.

I find that when the Tenant viewed this rental unit there was evidence of a garden irrigation system on the exterior decks. As the Agent for the Landlord did not specifically inform the Tenant the system was not working, I find it reasonable for the Tenant to conclude that the system was functional and that he would have use of it during the tenancy.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

I find that the Tenant has submitted insufficient evidence to establish that a garden irrigation system is essential to his use of the rental unit as living accommodation. As many rental units are provided without irrigation systems, it is clear that they are not essential to the use of a rental unit.

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 I must consider the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. 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.

In these circumstances, the parties did not even discuss the irrigation system prior to the start of the tenancy. As the parties did not discuss the system, I cannot conclude that either party considered it to be a material term of the tenancy. I find that the Tenant has submitted insufficient evidence to establish that the garden irrigation system is a material term of the tenancy agreement.

As the Tenant has failed to establish that the garden irrigation system was a material term of the tenancy agreement or that it is essential to the use of the unit as living accommodation, I find that the Landlord is not prevented from terminating or restricting the use of the system, pursuant to section 27(1) of the *Act.* As the Landlord is not prevented from terminating or restricting the use of the system, I dismiss the Tenant's application for an Order requiring the Landlord to repair the system.

Section 27(2) of the *Act* permits a landlord to terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. As the irrigation system did not work at the start of the tenancy, I find providing written notice of the Landlord's intent to terminate or restrict the use of the irrigation system is not practical.

On the basis of the undisputed evidence, I find that the issue with the irrigation system was reported on April 30, 2020 and that the system on the ground level deck was repaired sometime in May of 2020. I find that the irrigation system on the ground level was repaired within a reasonable time of the deficiency being reported to the Landlord and I therefore find that the Tenant is not entitled to a rent reduction as a result of the irrigation system not working on the ground level.

In the event that Landlord does not intend to repair the irrigation system on the remaining three decks of the rental unit, I find that the Landlord is obligated to reduce the rent by an amount that is equivalent to the reduction in the value of the tenancy agreement. Although determining the reduced valued of the tenancy agreement is

highly subjective, I find it reasonable to conclude that the absence of an irrigation system on those three decks reduces the value of the tenancy agreement by $50.00 per month. This award takes into consideration the time and effort it takes to water plants; the inconvenience of having someone water plants if you are away; and the recognition that plants typically require little watering for at least 6 months of the year.

I therefore find that the Tenant is entitled to a rent reduction of $300.00 for the period between May 01, 2020 and October 30, 2020 for being without an irrigation system on three decks. I hereby authorize the Tenant to reduce the monthly rent for November of 2020 by $50.00 if the irrigation system is not repaired by November 01, 2020 and to reduce each subsequent monthly rent payment by $50.00, until such time as the irrigation system on all three decks is restored to its original level of functionality.

I find that the Tenant has submitted insufficient evidence to establish that the noise from the HVAC system is unreasonable. As the Tenant has failed to establish that the noise from the HAC system is unreasonable, I find that the Tenant is not entitled to compensation related to the HVAC system.

In concluding that the Tenant has submitted insufficient evidence to establish that the noise from the HVAC system is unreasonable, I was influenced, in part, by the Agent for the Landlord's testimony that the serviceperson told her that the HVAC system is functioning properly. I find that this testimony is corroborated by the Tenant's testimony, who stated that the serviceperson told him that the Noise was "inherent with the unit" and that it could not be eliminated. Although the Tenant alleges that the serviceperson characterized this as a design flaw, I am satisfied that the HVAC system is functioning as was intended.

In concluding that the Tenant has submitted insufficient evidence to establish that the noise from the HVAC system is unreasonable, I was influenced, in part, by the absence of any evidence from a qualified professional that corroborates the Tenant's submission that the system is excessively loud or that refutes the Agent for the Landlord's testimony that it is typical of noise created by similar heating systems.

In considering the claim regarding the HVAC system, I listened to the audio recording of the noise created by the HVAC system, and I do not find it to be unreasonably loud.

In concluding that the Tenant has submitted insufficient evidence to establish that the noise from the HVAC system is unreasonable, I was influenced, in part by the Tenant's testimony that the noise from the HVAC does not disturb his children. In my view, the

fact that the noise does not disturb all of the occupants of the rental unit supports my conclusion that the noise is not unreasonably loud.

In considering the claim regarding the HVAC system, I have placed no weight on the Tenant's submission that the Landlord should have advised him of the noise created by the HVAC system. Given the absence of evidence that the noise level is unreasonable, that the noise did not bother the Landlord when the Landlord was living in the unit, and that the previous tenant did not report a concern with the noise level, I find it was not necessary for the Landlord to have raised this issue prior to the start of this tenancy.

In considering the claim regarding the HVAC system, I have placed no weight on the undisputed evidence that in 2015 the original owner of the rental unit reported to the Strata Council that the HVAC system was loud. Even if the system was loud in 2015, it does not establish that the system is currently unreasonably loud.

On the basis of the undisputed evidence, I find that there was a wine cooler in the rental unit when the tenancy began; in May of 2020 the Tenant informed the Landlord the wine cooler was not working; the Landlord arranged to have a replacement cooler delivered to the rental unit; and that Tenant refused to accept delivery of the wine cooler.

I find that the Tenant failed to establish the value of the wine cooler that was in the rental unit at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates the Tenant's submission that the original wine cooler had a value of $2,000.00. As the Tenant has not established the value of the wine cooler that was originally provided with the rental unit, I find that the Tenant has failed to establish that he is entitled to a replacement cooler that is valued at $2,000.00. I therefore dismiss the Tenant's application for an Order requiring the Landlord to provide the Tenant with a wine cooler valued at $2,000.00

As there was a wine cooler in the rental unit when the tenancy, I find that the Landlord remains obligated to provide the Tenant with a functional wine cooler. I therefore Order the Landlord to install a functional wine cooler in the unit, no later than December 15, 2020.

I find that the Landlord acted reasonably when the Landlord arranged to have a wine cooler delivered to the rental unit in early July of 2020. I therefore find that the Tenant is not entitled to compensation for living without a wine cooler for May and June of 2020.

As the Tenant has failed to establish that he should have been provided with a better quality cooler than the one offered by the Landlord, I find that the Tenant did not act reasonably when he refused to accept the wine cooler that the Landlord arranged to have delivered to the rental unit in early July of 2020. As the Tenant did not act reasonably when he refused to accept delivery of the wine cooler, I find that he is not entitled to compensation for being without a wine cooler for any period between July 01, 2020 and December 15, 2020. In the event the Landlord does not take reasonable steps to install a wine cooler prior to December 15, 2020, the Tenant retains the right to file another claim for loss of quiet enjoyment.

I find that the Tenant has submitted insufficient evidence to establish that the curtains in the rental unit require replacing. I find that the Landlord submitted no independent documentary evidence that corroborates his claim that the curtains are discolored or that refutes the Agent for the Landlord's testimony that they are not discolored. Although the Landlord's photographs demonstrate that there is minor damage to the curtains, I do not find that they establish that the curtains require replacing.

As the Tenant has submitted insufficient evidence to establish that the curtains in the rental unit require replacing, I dismiss the Tenant's application for an Order requiring the Landlord to replace the curtains and his application for a rent reduction in regard to the curtains.

I find that the Tenant has submitted insufficient evidence to establish that the carpet on the stairs in the rental unit require replacing. Although the Landlord's photograph demonstrates that the carpet is somewhat worn, I find that the photograph shows they are in reasonable condition and do not require replacing.

In adjudicating the claim for the carpets, I placed little weight on the invoice from the carpet cleaner. Although there are notes about the condition of the carpet prior to cleaning the carpet, those notes do not establish that the carpet was not in reasonably good condition after the cleaning.

In adjudicating the claim for the carpets, I placed little weight on the Tenant's testimony that Agent for the Landlord told him that once the carpet was cleaned it would be "restored to proper level". I placed little weight on this testimony because there is no suggestion that the Tenant was promised they would be restored to a pristine condition and the evidence shows that the carpet is in reasonably good condition.

As the Tenant has submitted insufficient evidence to establish that the carpet in the rental unit requires replacing, I dismiss the Tenant's application for an Order requiring the Landlord to replace the carpet and his application for a rent reduction in regard to the carpet.

On the basis of the undisputed evidence, I find that a television, which was mounted on the wall, was in the unit at the start of the tenancy. As the television was left in the unit, I find that it was a service or facility provided with the tenancy and that there was a reasonable expectation it would function properly.

As there is no evidence that the television is a material term of the tenancy agreement or that it is essential to the use of the unit as living accommodation, I find that the Landlord is not prevented from terminating or restricting the use of the television, pursuant to section 27(1) of the *Act.* As the Landlord is not prevented from terminating or restricting the use of the television, I dismiss the Tenant's application for an Order requiring the Landlord to repair the television.

Section 27(2) of the *Act* permits a landlord to terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. As the Landlord has not intentionally terminated or restricted the use of the television, I find it is not practical for the Landlord to have given notice that the Tenant would not have full use of the television.

In the event that Landlord does not intend to repair or replace the television, I find that the Landlord is obligated to reduce the rent by an amount that is equivalent to the reduction in the value of the tenancy agreement. Although determining the reduced valued of the tenancy agreement is highly subjective, I find it reasonable to conclude that the absence of a television reduces the value of the tenancy agreement by $20.00 per month. This award takes into consideration the fact the Tenant can purchase a replacement television.

I therefore find that the Tenant is entitled to a rent reduction of $120.00 for the period between May 01, 2020 and October 30, 2020 for being without a television. I hereby authorize the Tenant to reduce the monthly rent for November of 2020 by $20.00 if the television is not repaired/replaced by November 01, 2020, and to reduce each

subsequent monthly rent payment by $20.00, until such time as the television is repaired or replaced.

I find that the Tenant has submitted insufficient evidence to establish that he was promised a water fountain as a term of this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates his testimony that the Agent for the Landlord told him the water fountain was working prior to the start of the tenancy or that refutes the Agent for the Landlord's testimony that he was never told the fountain was functional. In the absence of evidence that establishes he was promised a functional water fountain, I dismiss the Tenant's application for compensation relating the to water fountain.

In deciding the issue of the water fountain, I was heavily influenced by my conclusion that it is not entirely clear the rock feature is a water fountain. Rather, it could simply be a rock feature in a rock garden, that simply has a hole in the top. There is no obvious pond around the feature.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay monthly rent of $5,700.00. As the Tenant agreed to pay rent in that amount, I find that he remains obligated to pay that amount. I do not have authority to determine whether the Landlord has engaged in unfair trade practices, even if the Landlord advertised the rental unit for less than $5,700.00.

I find that the Tenant submitted insufficient evidence to establish that the Landlord promised to have his furniture moved out of the rental unit by the end of February of 2020. In reaching this conclusion I was heavily influenced by the fact it is disputed by the Agent for the Landlord and there is no evidence to corroborate the Tenant's testimony.

On the basis of the electronic communications exchanged by the Landlord and the Tenant, I find that the Landlord agreed to have his furniture dismantled and moved by Wednesday, March 25, 2020. I find this entirely reasonable, given that the tenancy did not begin until April 01, 2020.

As the evidence shows that the Landlord agreed to have his furniture moved by March 25, 2020 and the Tenant moved the Landlord's property prior to March 25, 2020, I find that the Landlord is not obligated to compensate the Tenant for the costs of his decision to move the Landlord's property prior to March 25, 2020.

It is readily apparent that the Tenant assumed responsibility for many of the repairs in the rental unit. I find that the Tenant was under no legal obligation to coordinate these repairs and if he did not wish to do so, he could have demanded that the Landlord assume responsibility for coordinating the repairs. As the Tenant was not obligated to coordinate the repairs and he could have avoided that responsibility/expense by refusing to do so, I find he is not entitled to compensation for any costs he incurred by having a third party coordinate the repairs on his behalf. I dismiss the Tenant's claim of $420.00 for money he paid to his assistant.

Although I recognize that in more urgent situations, such as when the elevator while his son was inside the elevator, would have required an immediate response on behalf of the Tenant, I find that no compensation is warranted for this limited amount of time.

As the Tenant did not specifically apply to recover the costs of repairing the elevator or the irrigation system, I have not addressed those issues in this decision. In the event the Landlord does not pay for those repairs after being provided with receipts and a formal request for payment, the Tenant retains the right to file another Application for Dispute Resolution in which he applies to recover those costs.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $1,075.00, which includes $975.00 for various deficiencies with the unit and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this monetary Order through Small Claims Court, the Tenant has the right to settle this monetary claim by withholding rent in the amount of $1,075.00, pursuant to section 72(2) of the *Act*.

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: October 24, 2020

Residential Tenancy Branch