Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, OLC, DRI, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for the following claims:

1. a monetary claim of $21,550.00 for damage or compensation under the Act;
2. to reduce the rent by $5,860.00 for repairs, services or facilities agreed upon, but not provided;
3. to provide services or facilities required by the tenancy agreement or law;
4. for the Landlord to Comply with the Act or tenancy agreement;
5. to dispute a rent increase from the Landlord; and
6. to recover the $100.00 cost of their Application filing fee.

However, as the Parties agreed that the Tenant moved out on September 10, 2021, the Tenant withdrew the third and fourth claims as being no longer relevant.

The Tenant, her advocate, J.A. ("Advocate"), the Landlord, and an agent/translator for the Landlord, P.S. ("Agent"), appeared at the teleconference hearings and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

Two witnesses for the Tenant, M.H. and A.P., were also present and provided affirmed testimony in the third hearing. The Landlord's Witness, J.S. appeared at the second hearing, but did not testify.

During the hearings, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord acknowledged receipt of the Tenant's Application, Notice of Hearing, amendments, and the documentary evidence prior to the hearing, noting that he had reviewed everything beforehand. The Landlord confirmed that he had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Tenant provided her Advocate's email address in the Application. The Agent provided her email address for service to the Landlord in the first hearing. The Parties confirmed their understanding that the Decisions would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the first hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I also advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. The Tenant had indicated several different matters of dispute on the Application, in addition to those which are no longer relevant. I found the remaining claims were not sufficiently related to all be decided in this proceeding. Further, as we only had an hour for the hearing, I asked the Tenant to identify her most important claim for us to review. The Tenant said her first set of monetary claims were the most significant, therefore, we proceeded to review those claims. The Tenant's other claims are dismissed with leave to reapply, other than the irrelevant third and fourth claims, which are dismissed without leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2003, with an ultimate monthly rent of $600.00, paid bi-weekly. The Parties agreed that the Tenant paid the Landlord a security deposit of $250.00, and no pet damage deposit. The

Landlord confirmed that he still held the security deposit; however, I note that the Tenant was awarded recovery of double the security deposit, plus interest in a decision issued on September 24, 2022.

The Tenant submitted a monetary order worksheet, the contents of which, we reviewed consecutively in the hearings. The monetary order worksheet is as follows:

	CLAIM	DATE RANGE	NO. MTHS	Amount
1	Loss of parking	Nov 1/03 → May 31/16	151	$1,510.00
2	Loss of oven	May 1/14 → July 31/21	87	$4,350.00
3	Illegal rent increase #1	June 1/09 → Aug 31/12	39	$1,950.00
	Illegal rent increase #2	Sept 1/12 → July 31/21	107	$10,700.00
4	Guest fee	June 1/20 → July 5/20	1	$300.00
5	Loss Quiet Enjoyment	May 1/14 → July 31/21	87	$1,740.00
6	Aggravated damages		1	$600.00
		Total monetary claim		**$21,150.00**

#1 LOSS OF PARKING → $1,510.00

The Advocate explained the Tenant's first claim:

> After she signed the tenancy agreement, the parking facility was terminated, because the adjacent tenant requested it. The Landlord said other that the other tenant was paying more for rent, and therefore, he was entitled to priority parking.

In her initial written summary, the Advocate further explained:

> Parking was included as a material term of their tenancy agreement, which was the reason why they chose to rent the unit in the first place. The landlord would not reduce their rent or compensate them for this loss.
>
> Parking was reinstated after [the Tenant's] husband fell ill in 2016. However, when her car broke down in September 2020 and it was not replaced until

> December 2020 the Landlord took her parking away again. The Landlord told her that she could no longer park in the driveway, and became irate with her when she did not comply.
>
> On December 18, 2020, after several arguments between [the Tenant] and her landlord, the landlord's daughter, [P.], called and had a heated conversation with her about parking. During this conversation, she was given an ultimatum to either live with her father's rules or move out. [P.] followed up with a text message to [the Tenant] reiterating that she must no longer park in the driveway and that her rent would be increased following the COVID-19 restrictions.
>
> (At a hearing on April 15, 2021, File # [XXXXXXXXX], the landlord's daughter admitted to [the Arbitrator] that they just realized, after locating [the Tenant's] tenancy agreement, that parking was in fact included in her rent. [P.] assured the Arbitrator that her father would no longer interfere with [the Tenant's] parking.)

The Agent responded to the Advocate's testimony, as follows:

> I'll address the addendum first. My Dad's dealings have always been with [the Tenant's husband, [B.] not [the Tenant]. They have always had parking in the driveway. They had two vehicles in the driveway. When we did ask her not to park in the driveway, she continued to park in the driveway. At no time did she have a loss.
>
> Regarding [the Tenant's husband] getting sick in 2016, unfortunately, he passed away. After that one vehicle was not to be parked in the driveway, because it was leaking oil.
>
> When she got rid of that vehicle, she parked the other in the driveway. At no point did she park her vehicle on the street.
>
> This claim is unsubstantiated; it's not true. My parents even loaned him $900.00 to fix his car. He paid it back, but. . .
>
> The rent was $500.00 in 2003. The rent has only increased by $100.00, so I don't see where this loss of parking is coming from.

The Tenant responded:

> The fact that they say that I didn't have – that the loss of is parking is

> unsubstantiated, I'm sorry, but they have misused and basically twisted any of my claims to substantiate their claim that they have done no wrong in the tenancy agreement regarding the parking. But there have been numerous times when people in the neighbourhood have seen our vehicle on side of road.
>
> Leaked oil? Our cars were parked on the road, because they insisted that they did not want the . . . in most cases, we have not been able to park there. There are circumstances that they set down.

The Landlord responded:

> There may have been a time that you parked on the road. If you have an affidavit or a witness saying you parked on the street. I can provide affidavits from neighbours saying you didn't park on the street.
>
> There is no proof other than what [the Tenant] is saying. The Arbitrator found that the Tenants' claims of the Landlord's use and her substantiating the parking was not part of that decision – he did not find the tenant to be right in this case. We acted in good faith.

The Tenant submitted a text she received from the Agent, which was dated "Friday, Dec 18", and said:

> Hi [Tenant]
>
> I just wanted to make sure there was no misunderstanding our conversation this afternoon. Please park your vehicle on the street. No parking in the driveway, rent is due in full on the first day of each month, lastly a rent increase will be issued as per the new COVID requirements.
>
> [Agent]

The Landlord also said that parking was dealt with in a previous hearing. However, the hearing number to which the Landlord directed me mentions parking in relation to a Notice to End Tenancy for Landlord's Use, but I find that it does not address the Tenant's claim that she was denied this service or facility by the Landlord. As such, I find that this claim remains before me for consideration.

#2 LOSS OF OVEN → $4,350.00

The Tenant said that the oven was approximately two to three years old at the start of

the tenancy. The Advocate said:

> At the end of April 2014, there was an inspection from the City, and the Tenant was asked to hide her belongings in a shed for 24 hours, so they would find only one secondary suite. If the cooking facilities were found, they would have to leave the suite. The Tenant was told by the Landlord that they could no longer have a tenant in that suite. This was brought this up at the last hearing – they said they were boarders.

The Advocate referred me to section 27 of the Act, which prohibits a landlord from terminating or restricting a service or facility set out in the tenancy agreement. She continued:

> The tenancy agreement clearly indicates that an oven is included in the rent – see page two of the tenancy agreement. This is a material term– material to the tenant, if for not cooking, she could not live there. The tenancy agreement includes an oven in the rent. There was no order from city to remove it.

In her written summary, the Advocate said:

> At the end of April 2014, the City contacted the landlord to request an inspection after being notified that he had more than one secondary suite on his property. He told [the Tenant] and her husband about the inspection and asked them to hide their oven and belongings in his shed for 24-hour hours so that when bylaw came, they would only find one secondary suite. (He indicated that if cooking facilities were found in their unit, they would have to move). They removed the oven and their belongings as requested and an inspection was conducted on May 1, 2014. After the inspection, the tenants put their belongings back into their unit, but were told by the landlord that they could no longer have an oven. The landlord told them their unit was now only for sleeping and that they are no longer considered to be tenants and instead were “boarders.” (The landlord was avoiding his obligations as a landlord while also complying with the [City’s] bylaws).

In the summary and the hearing, the Advocate said:

> However, he did provide her with an outdoor cooktop, which was an inadequate substitute since most of her cooking was done in an oven and did not depend on

> weather conditions. Therefore, due to a lack of proper cooking facilities and unpredictable weather, [the Tenant] has spent money she would otherwise not have spent, eating out and frequenting drive thru's. She therefore asks that she be compensated for her loss of cooking facilities from May 1, 2014, to September 2, 2021.

The Advocate said: "She did a lot of cooking. It was difficult to go without an oven."

I calculate the number of months in this period to be 89; however, as the Tenant has claimed $50.00 per month for 87 months, that is what I will consider.

The Landlord responded, as follows in the hearing:

> No, we didn't receive an order from the City to remove the suite, but we were advised that if we did not remove it, that every time they came to do an inspection, my Dad would be fined $1,000.00. So, my Dad spoke with [the Tenant's husband, [B.], so everything that he spoke to [B.] about was just the two of them.
>
> They were advised that we had to remove the oven and that they could move. [B.] said they did not want to move and they would live without the oven. That's when he provided them with a gas stove, because they didn't have a barbecue. My parents would give them $20.00 to refill the propane tank
>
> They also provided them with a toaster oven. My parents have asked them to move, but it's hard to find a place with reasonable rent. We could have waited for an order, but we would have paid lots of fines. Or my Mom and Dad would have to legalize the suite and pay extra utilities and garbage removal.

#3 ILLEGAL RENT INCREASE X 2 → $12,650.00

A. <u>First Rent Increase – June 2009</u>

In the hearing, the Advocate explained this claim, as follows:

> In mid-May 2009, the Landlord told them that they would be increasing the rent to $550.00 on June 1, 2009, because their cost of living had gone up. [The Tenants] feared if they didn't pay, they would be evicted. There was no three months' notice given and it was over the permitted amount of $18.50.

I note from the *Residential Tenancy Act* Regulation that the allowable rent increase in 2009 was 3.7%, which equates to $18.50 per month for a rent of $500.00.

The Advocate continued:

> So, they have calculated from June 1, 2009, to August 31, 2012. That's 39 months for the first rent increase $1,950.00. It's the amount of the increase which was not lawful. The amount should not have been increased by the Landlord without a proper notice on the approved form. $1,950.00 is the total amount of 39 months times the $50.00 increase.

The Agent responded:

> All I can say is that my Dad is saying that he never asked [B.] or anybody for a rent increase. [B.] is the one that offered to pay more, because he knows that the utility bill was going up and all of that, because they didn't want to move. It was verbal and my Dad accepted. Nothing was done in writing.
>
> The tenancy agreement was done in 2003 and was done by my ex-sister-in-law. There's no paper trail since that agreement was signed, because everything was done verbally from [B.]. It's just our word. If [the Tenant] was upset, if it was too much, you've got on the paperwork, she can dispute this if the Tenant thinks the rent is unjustified; they can talk to the Landlord or to the RTB in 30 days.
>
> Every time my Dad has asked them to move, he asked them verbally to move many, many times. I understand that he shouldn't be doing that. He doesn't know the rules and that sort of thing. There was many times that even my brother is here, how many times we have spoken to my father who said 'you have to get them to move'. But he feels for them – [B.'s] been sick. My Dad's always lent them money.

B. <u>Second Rent Increase – September 2012</u>

The Advocate explained this, as follows:

> In mid-August 2012, the Landlord told them that their rent would be increasing to $600.00 starting September 1, 2012, because utilities had increased. They were afraid that they would be evicted if they said anything. It was not on the approved form, not given with three months notice, and it was over the allowable amount.

The Advocate indicated that this claim is for an overpayment of rent from a second illegal rent increase of $100.00 between September 1, 2012, through July 31, 2021. She said this is 107 months x $100.00 over payment above the $500.00 rent set out on the tenancy agreement.

The Agent responded:

> The same comments. My response is the same. We never requested the rent increase; it was something that [B.] did. We didn't have much dealings with [the Tenant], until he passed away. [B.] received the tenancy agreement, and he paid the rent. It's really hard to say that – it's disturbing what is happening now. These illegal rent increases claim is a cash grab, now that she has to moved out. It's been a slap in the face, after assisting a couple who needed assistance.
>
> When we asked [the Tenant] – and offered her a settlement - she stated to me that when I had to give her the [Order of Possession] that she had to leave, that it wasn't about the money. Then I received this the next day. It's all unsubstantiated. She could have mitigated, if she moved somewhere else.

The Landlord's son, S.M., stated:

> All the dealings we've had and with my Dad and [the Tenant and (B.)], it was [B.]. I didn't know [the Tenant's] name for eight years. He dealt with my Dad. They are old school – not the guy to walk up to another woman or even have a conversation. My sister stepped in and handled [the Tenant] directly.

The Agent said:

> I can attest to that. When my Mom and Dad were in India - stuck there because of Covid – [the Tenant] even came to my house to deliver rent. It was cordial until she had a friend come stay with her.

The Advocate said:

> What you're saying was that all of his contacts were verbally and all with her now deceased husband. You did not alter the tenancy agreement that the rent would be increased – nothing in writing. It was not [B.] agreeing to a rent increase.

The Agent said:

> My Dad had said it's better if you guys move, because the cost of things was increasing. [B.] said I'll help you pay for utilities. It was not what my Mom and Dad said. My Dad, yes, he spoke with [B.], but he never asked for any money from them.
>
> And on the second rent increase - $100.00 x 107 months. She was paying $600.00 a month, not $650.00.

#4 GUEST FEE → $300.00

The Advocate explained that in June 2020, the Landlord charged [the Tenant] $300.00 for a guest to stay for a month.

The Agent said:

> The guest fee was for a gentleman who threatened my father in the past. [The Tenant] came to us and said he was in dire straights and had nowhere to go. My Dad said no. She said there will be no conflict with my Dad and that they would be willing to pay extra. They offered the $300.00 a month – but only for a month. [The Tenant] offered the money. My Dad said she came to his front door and asked.
>
> Secondly, when he did not leave after a month, that is when I spoke with [the Tenant] that he has to go - he can't stay here - he threatened my Dad in the past. If he didn't leave, I would have to evict her.
>
> So that guest fee was part of a settlement we offered, but [the Tenant] and [the Advocate] decided not to accept that.

However, at the end of her testimony, the Agent said: "I will give that back to her happily, but she offered it and turned it back on my father."

#5 LOSS OF QUIET ENJOYMENT → $1,740.00

The Advocate explained this claim:

> The Landlord has interfered with [the Tenant's] entitlement to quite enjoyment of

> the rental unit. She suffered multiple eviction attempts. On January 24, 2021, she was served with a Two Month Notice saying the unit would be occupied by the Landlord's child. She disputed it and the Two Month Notice was cancelled. Arbitrator [T.] found that the Two Month Notice was not issued in good faith.

The Advocate noted the arbitrator's comments about the Landlord's reason for the eviction. She noted that this Arbitrator said:

> I find it more likely than not that the need based on a surgery is a pretext. Recovery from a surgery is more short-term, and beyond that the landlord did not establish a more longterm focus to share their designs on who would occupy the unit. With this consideration, the long-term tenancy here factors in as well. I find the tenant has clearly established that this is their home and has been for quite some time. I give this fact more weight than the landlord's need for the unit, focused only on surgery with no evidence of needed long-term care.

The Advocate said that the Landlord had no valid reason for issuing the Two Month Notice.

The Advocate noted a second eviction attempt by the Landlord when he served another Two Month Notice on April 28, 2021, saying that the rental unit would be occupied by the Landlord's spouse. The Tenant again challenged the validity of this Two Month Notice. However, while awaiting the hearing, the Landlord served the Tenant with a notice to end tenancy for cause, and applied for an early termination of the tenancy, pursuant to section 56 of the Act. However, the Tenant disputed this application, as well, and again, the respective arbitrator dismissed this claim without leave to reapply.

In a letter to the Landlord dated July 31, 2021, the Advocate wrote on behalf of the Tenant regarding the Landlord's alleged harassment of her. This letter states:

> Dear [Landlord],
>
> **Re: Harassment of [Tenant]**
>
> I have been notified by your tenant, [S.D.], that on July 27, 2021, approximately 3 hours after your urgent application for an early termination of tenancy and an Order of Possession was heard and dismissed by Arbitrator [M.] (File # XXXXXXXXX), you proceeded to harass and intimidate her by trying to coerce her to move out.

> During a conversation with [the Tenant] and your daughter, [P.], you threatened to remove [the Tenant's] belongings from the rental property and put them on the road. You also threatened to take away the outdoor propane cooktop (which apparently you have already done) that was provided to her after you removed her oven in 2014. Several other matters were discussed in this conversation, but I will not address them at this time.
>
> [The Tenant] has reported that you yelled at her during this conversation and that she is therefore not comfortable speaking with you at this time.
>
> As there is an upcoming hearing scheduled for September 2, 2021 (File # XXXXXXXXX), if there were any matter you would like to discuss, please feel free to contact me in the interim at [telephone number].
>
> Regards,
> [J.A.]
> Tenancy Advocate

The Advocate also noted that the Landlord has required the Tenant to tolerate multiple inspections. She said a notice for an inspection for pest control implied that the Tenant had a mouse problem; however, the Tenant said that she had not seen a mouse in the 18 years she lived there. She said that this was just another allegation attempting to get her out. She said the pest control company returned; there was no evidence of pests being found.

The Advocate said that when the Tenant's cooking facilities were initially removed from the rental unit, she was no longer able to invite friend over, as she was too embarrassed to tell them she has to cook outside. The Advocate said the Tenant was the only occupant on the property who couldn't enjoy cooking at home or having people over for Christmas. Then the Landlord removed the outdoor cooktop.

In the hearing the Agent's response was: "I can confirm that some of the information is correct for the timeline, but I cannot explain further." Still, the Agent added comments in her written submissions that followed the third hearing. These comments included the following:

> The eviction notices were not given in bad faith. In order for [the Tenant] to move she stated that she had to receive an order from the residential tenancy branch other than that there was no way she was going to leave. Therefore, we offered her compensation so that we did not have to hire a lawyer and she refused after

> speaking to her advocate. There was a rodent issue arising from her not keeping the cook top clean, there was grease and fat all over the cooktop. This is why [A.] Pest was brought in in order to eradicate the rodent problem. The tenant does have a hoarding issue as the [A.] pest work order clearly stated that it was difficult to inspect the suite due to all the uncleanliness and clutter.
>
> In order for the tenant to understand the severity of my mother's health, I had to request her Family Doctor to be present for the hearing on September 2nd. The arbitrator agreed that the suite was to be used for my mother and decision was made accordingly. Order of Possession was issued, and the tenant had 48 hrs to move. [The Tenant] asked for additional time and it was given to her.
> . . .
> The cooktop was discussed with the tenant due to the rodent issue. She stated that she would purchase a barbeque. The following day, the tenant asked my dad where he wanted the cooktop. She personally removed it from the patio, not my father. I believe this was done to make my father look bad.

The Tenant has claimed that the Landlord's behaviour dated back 87 months or 7.25 years to approximately the time that the Landlord removed the Tenant's oven, and required her to cook on an outside cooktop.

#6 AGGRAVATED DAMAGES → $600.00

The remainder of the issues were addressed by the Parties in written submissions only. In her submissions, the Advocate referred to RTB Policy Guideline #16, "Compensation for Damage or Loss" ("PG #16"), noting that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not straightforward. The Advocate quoted PG #16, as follows:

> "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money, or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

PG #16 also states:

D. AMOUNT OF COMPENSATION

> In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation, or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

The Advocate quoted *Sahota v. Director of Residential Tenancy Branch, et al*. 2010 BCSC 750, saying that Madam Justice Gerow noted:

> [47] Aggravated damages are a compensatory award that takes account of intangible injuries to the plaintiff, such as distress and humiliation, caused by a defendant's insulting behaviour. Aggravated damages are to compensate the plaintiff for such things as anguish, grief, humiliation, wounded pride, and damaged self-confidence or self esteem suffered as a result of the defendant's conduct: *Vorvis v. ICBC*, [1989] 1 S.C.R. 1085

The Advocate explained in the hearing how this applies to the Tenant's situation:

> In [the Tenant's] case, the landlord acted very high-handedly by trying to evict her with multiple eviction notices (which were not issued in good faith) under the guise that he required the unit for his own use, while simultaneously claiming that she was jeopardizing the safety of all occupants and the landlord.
>
> These ongoing eviction notices had an enormous stressor in her life, which caused her to be overwhelmed with anxiety and distress at the thought of losing her 18-year-long home, causing her to have difficulty eating, sleeping, and concentrating.
>
> Since the first hearing in April 2021, she was served with two more notices which caused her to be in a state of panic and anxiety at all times. Consequently, she was living out of boxes since January 2021 and was in constant fear that her landlord would succeed at fraudulently evicting her. She had difficulty focussing on her job during this time and had to take time off work because of it.

> The landlord even tried to evict [the Tenant] by way of an expedited hearing, claiming she was a hoarder and a risk to all occupants of the home (which was simply not true). His retaliation against her has caused her a lot of grief, despair, and anxiety. She could not enjoy her home or her time out with friends since most of her time and energy was spent disputing and being distracted by the ongoing eviction notices and hearing preparation, all of which consumed her thoughts and daily living.
>
> In addition to all of this, the landlord threatened to put her belongings out on the street and further humiliated her by removing her outdoor cooktop, which was the only source of cooking she had left after her oven was removed in 2014.
>
> The landlord's relentless harassment became progressively more aggressive and took a toll on [the Tenant] who felt that his constant bullying and intimidation would eventually provoke her to move just so the harassment would end.
>
> The tenant is asking to be compensated for the equivalent of $600.00, one month's rent.

In her written submissions, the Advocate summarized, as follows:

> The landlord has harassed, bullied, coerced, and intimidated [the Tenant] and her husband into believing that they would have to move if they did not accept his "rules." For fear of being homeless, they complied with his requests but after [the Tenant's] husband passed away she eventually stood up to him after being served with her first eviction notice in 18 years. She successfully fought the first two eviction attempts by proving that they were not issued in good faith. Through this process, she learned that her landlord was imposing unconscionable terms on her and her husband and that he was in contravention of the Act. Policy Guideline #8 says:
>
> > …a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.
> >
> > Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.
> >
> > A test for determining unconscionability is whether the term is so onesided as to oppress or unfairly surprise the other party. Such a term may be a

> clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party."
>
> According to the above, the landlord contravened the Act by imposing unconscionable terms on [the Tenant] and her husband that were so one-sided and oppressive (for his financial gain), and that took advantage of their ignorance and need for housing. And, because Policy Guideline #8 states that "terms that are unconscionable are not enforceable," it implies that he must respect the terms of the original tenancy agreement, which state that "If a change is not agreed to in writing, is not initialled by the landlord and tenant or is not reasonable, it is not enforceable."

The Landlord's Agent responded in writing to the Advocate's submissions, as follows:

> My father was not high handed in asking the tenant to move. All the notices to end tenancy were issued in good faith, the tenant did not want to move as she was only paying $600/month.
>
> If anything, this caused a lot of emotional distress to my mother and father, who could not use their own home for my mother's recovery.
>
> At no time did my father threaten to put the tenant's belongings on the street or bully her.

#7 OVERPAYMENT OF RENT → $400.00

In her written submissions, the Advocate noted that the Tenant was required by another arbitrator's decision to vacate the residential property by September 9, 2021. The Tenant was allowed by the Landlord to return to the rental unit on September 10, 2021, to complete the cleaning. Given how early in the month that the Tenant vacated the rental unit, she requests to be reimbursed for the rent she paid for the remaining 20 days of the month of September.

The Landlord's response to this claim is that the Tenant has already asserted this claim in a separate file, in which both Parties issued claims against each other. However, the Tenant's claim in that proceeding was for reimbursement of her security deposit, which is different from the claim made here.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

#1 LOSS OF PARKING → $1,510.00

Section 1 of the Act includes a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. "[P]arking spaces and related facilities" are included within this definition. Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Policy Guideline #22, "Termination or Restriction of a Service or Facility" ("PG #22"), explains the legislative framework, as follows:

> Under section 27 of the RTA and section 21 of the MHPTA 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.

> A landlord may restrict or terminate a service or facility other than one referred to above, if the landlord:
>
> - gives the tenant 30 days written notice in the approved form, and
> - reduces the rent to compensate the tenant for loss of the service or facility.

The Tenant said that parking was material to the tenancy; however, she did not indicate that this was set out in the tenancy agreement as a material term.

PG #22 defines “a material term” as follows:

> 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. Even if a service or facility is not essential to the tenant’s use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

In the case before me, I find that the Tenant has not presented evidence as to why parking was “material” to this tenancy, and why parking in the driveway and not on the street was essential to her use of the rental unit. As such, I find that although parking was a term of the tenancy agreement, parking was not “a material term” to the tenancy agreement, as set out in PG #22.

However, there is no evidence before me that the Landlord gave the Tenant 30 days written notice in the approved form of the termination of this service or facility. Further, there is no evidence before me that the Landlord reduced the rent to compensate the Tenant for loss of the service or facility.

The Tenant has claimed the loss of parking for 151 months of the tenancy. I note that the Landlord did not deny that they were initially unaware that parking was included in the rent. This and the Parties’ testimony indicates that parking was a controversial issue between the Parties, contrary to the Landlord’s denial that the Tenant was ever deprived of this facility. In addition, the Agent’s text to the Tenant requiring her to park on the street supports the Tenant’s claims in this regard.

The Tenant has claimed compensation for a lack of parking from November 1, 2003, through May 31, 2016, or 151 months. The Tenant has claimed $10.00 a month for the lack of parking during this period. I note the Tenant did not claim compensation for parking after May 2016, which I find represents the period of times in which the Landlord allowed the Tenant to park in the driveway. As the Landlord did not provide the Tenant with compensation for the denial of this service, I find the Tenant's claim for $10.00 per month that she was unable to park in the driveway is reasonable in all of the circumstances.

Based on the evidence before me, overall, I find the Tenant has provided sufficient evidence to meet her burden of proof on a balance of probabilities. I, therefore, **award the Tenant** with **$1,510.00** for this claim, pursuant to sections 27 and 67 of the Act.

#2 LOSS OF OVEN → $4,350.00

Again, I turn to sections 1 and 27 of the Act. Pursuant to the definitions in section 1, a "service or facility" includes "appliances and furnishings". The Tenants were provided with an oven at the start of the tenancy. In clause 3 on page two of the tenancy agreement, it states that "Stove and Oven" are included in the rent. This appliance is not identified as a "material term" of the tenancy agreement, as agreed to by both Parties. However, again, there is no indication that the Landlord provided the Tenant with any compensation for the loss of this appliance; further, I agree with the Tenant that replacing the oven/stove in the kitchen with an outdoor cooktop outside the unit is not an equivalent replacement.

I find that the Tenant has met the burden of proof of the first step in the Test, that the Landlord has violated the tenancy agreement by removing this service or facility and labelling the Tenant a "boarder", rather than a "tenant" without even reducing the rent. The Tenant testified that she cooks most of her meals in an oven, and therefore, that this was a major inconvenience for her. The Tenant indicated that she incurred extra expense eating and ordering out more than she would have normally. I find that it is inevitable that the Tenant experienced a loss, as a result of the removal of the oven.

However, the third Step in the Test is to establish the value of the claim. The Tenant has claimed $50.00 a month for 87 months for a total of $4,350.00. However, the Tenant did not direct me to any receipts from eating out or getting take-out food, since she no longer had the ability to cook in the oven – the appliance that was part of the rent. However, I find it more likely than not that it would cost at least $25.00 per time the Tenant ate or took out food, and therefore, I find that the Tenant's claim of $50.00 per

month is not unreasonable. I find that this claim is likely on the low side, and therefore, I find that the Tenant complied with the fourth step of minimizing or mitigating her claim.

Based on the evidence before me overall on this matter, I find that the Tenant has provided sufficient evidence to meet her burden of proof on a balance of probabilities. I, therefore, **award the Tenant** with **$4,350.00** from the Landlord for this claim, pursuant to sections 27 and 67 of the Act.

#3 ILLEGAL RENT INCREASE X 2 → $12,650.00

Policy Guideline 37 ("PG #37") addresses rent increases permitted under the Act. PG #37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months prior to the increase coming into effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the Act, including section 43 (1), which states that a landlord may impose a rent increase only up to the amount:

> (a) calculated in accordance with the regulations,
> (b) ordered by the director on an application under subsection (3), or
> (c) agreed to by the tenant in writing.

PG #37 also says:

> Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

As set out in section 6 of the Schedule to the Regulation:

> (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.
>
> (4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

Section 22 of the Regulation states:

> **Annual rent increase**

22 (1) In this section, **"inflation rate"** means the 12 month average percent change in the all-items Consumer Price Index for British Columbia ending in the July that is most recently available for the calendar year for which a rent increase takes effect.

(2) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or before December 31, 2018, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate + 2%.

(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows:

percentage amount = inflation rate

Section 43 (5) of the Act states:

43 (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

PG #37 states:

If a landlord collects an unlawful rent increase, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected. In those circumstances, the landlord may issue a new three month Notice of Rent Increase, as the original notice did not result in an increased rent.

The Agent said that the Landlord did not ask for the rent increases and that the Tenants offered to pay more rent. This is contrary to what the Tenant said. As such, I have a “he said/she said” problem before me. However, the Tenant’s evidence is that they were afraid of being evicted, so they agreed to the rent increase without complaining. This is consistent with the Agent’s testimony that their father repeatedly told her and her brother, “You have to get them to move.” As such, I find that the Tenants were right in being fearful of eviction.

Further, the Agent’s evidence is that the Landlord helped the Tenants financially at times, which is consistent with the Tenants not being in a position to offer to pay a rent

increase above the legal limit. Based on the evidence before me overall in these matters, I find that it is more likely than not that the Landlord asked the Tenants for the rent increase, and not the other way around.

A. First Rent Increase – June 2009

The allowable rent increase for 2009 was 3.7%. The Landlord was allowed to increase the rent in 2009 by 3.7% of $500.00, or $18.50 per month to $518.50. Accordingly, when the Landlord increased the rent to $550.00, he overcharged the Tenants by $31.50 a month from June 2009 to August 2012, or for 39 months.

Based on the evidence before me, I find that it was reasonable for the Landlord to have imposed rent increases starting on the anniversary of the start of the tenancy, and every year on that date, thereafter; however, the Landlord did not follow this rule. Rather, I find that he imposed a rent increase when his costs for the residential property grew.

Further, the Landlord failed to give the Tenant three months' written notice in the approved form on either occasion; he also increased the rent beyond what is allowed by the Regulation. As a result, I find that the rent increases in this tenancy were invalid and I cancel them pursuant to section 7 of the Act. I find that the Landlord must reimburse the Tenant for the amount charged in the illegal rent increase. The first increase was $50.00 for 39 months or $1,950.00. I, therefore, **award the Tenant** with **$1,950.00** from the Landlord pursuant to sections 7 and 67 of the Act.

A. Second Rent Increase – September 2012

The allowable rent increase for 2012 was 4.3%. Given that I have found the first rent increase to have been illegal, I find that in (November) of 2012 the Landlord was allowed to increase the $500.00 rent by 4.3% or by $21.50 per month. However, in 2012, the Landlord raised the rent to $600.00 or $78.50 more per month than was allowed. This rent increase lasted from September 2012 through to August 31, 2021, or for nine years or 108 months.

For the reasons set out above, I find that this rent increase was also invalid and I cancel it pursuant to section 7 of the Act. I find that the Landlord must reimburse the Tenant for the amount charged in the illegal rent increase. The second increase was $100.00 for 108 months or $10,800.00. I, therefore, **award the Tenant** with **$10,800.00** from the Landlord pursuant to sections 7 and 67 of the Act.

#4 GUEST FEE → $300.00

As the Agent offered to reimburse the Tenant for this claim, I **award the Tenant** with **$300.00** from the Landlord, pursuant to section 67 of the Act.

#5 LOSS OF QUIET ENJOYMENT → $1,740.00

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

RTB Policy Guideline #6, "Entitlement to Quiet Enjoyment" ("PG #6"), stipulates that "In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

PG #6 goes on:

> **Compensation for Damage or Loss**
>
> 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 RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.
>
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

From the evidence before me, I find that the Landlord disturbed the Tenant by removing her ability to cook in the rental unit, and then her ability to cook at all.

Further, I find that the Landlord repeatedly served the Tenant with eviction notices, (which the Tenant contested), in the apparent hope that one arbitrator would grant them an order of possession. The Landlord's claim that all eviction notices were issued in good faith is inconsistent with two arbitrators' findings. The Landlord indicated that they had offered the Tenant cash to move out, so that they did not have to employ a lawyer to get her out. I find it clear that the Landlords wanted the Tenant out, but not for reasons that were acceptable under the Act, until September 2021.

The Landlord asserted that it was the Tenant who offered to remove the cooktop from outside and to replace it with a barbecue. The Landlord said that this was because of a rodent problem that arose. However, this is in contrast to the Tenant's evidence that there were no rodents, and therefore, I find it unlikely that the Tenant would offer to replace her only means of cooking food with a barbecue - something that would add to her costs. I do not find the Landlord's evidence in this regard to be consistent with what I find to be more reliable evidence before me from the Tenant. In addition to the eviction notices, I find that removing the outdoor cooktop is an unmistakeable example of a landlord harassing a tenant to the point of reducing her quiet enjoyment of the residential property.

The Tenant has claimed that the Landlord's behaviour dated back 87 months or 7.25 years to approximately the time that the Landlord removed the Tenant's oven, and required her to cook on an outside cooktop. However, I find that the harassment was not limited to the cooking situation, but to the repeated attempts to evict the Tenant without a good faith intention, in addition to the manner in which the Tenant was treated by the Landlord and his family. As the Agent stated above: "Every time my Dad has asked them to move, he asked them verbally to move many, many times. I understand that he shouldn't be doing that. He doesn't know the rules and that sort of thing." [emphasis added]. Ignorance of the law does not excuse violating the law.

I find the Tenant's claim of $20.00 per month compensation for 87 months of a loss of quiet enjoyment of the rental unit is extremely reasonable on the Tenant's part. I find that she has proven on more than a balance of probabilities that this compensation is owed to her by the Landlord. I, therefore, **award the Tenant** with **$1,740.00** from the Landlord pursuant to sections 28 and 67 of the Act.

#6 AGGRAVATED DAMAGES → $600.00

As noted above, aggravated damages "may be awarded in situations where the

wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services." Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

While the Tenant applied for aggravated damages, in this set of circumstances, I do not find that an award of aggravated damages would be appropriate. I find that the issues for which the Tenant is claiming aggravated damages are closely related to those she claimed as loss of quiet enjoyment. I find that the Tenant was compensated for as much as she requested in that claim, and therefore, that the issues were able to be addressed in that manner. As such, I **dismiss the Tenant's claim for aggravated damages** without leave to reapply, pursuant to section 62 of the Act.

#7 OVERPAYMENT OF RENT → $400.00

Pursuant to the Act, a tenant is required to pay rent for the month in which they occupy a rental unit. If a tenant occupies a rental unit for a portion of the month, it is highly unlikely that the landlord will be able to rent it to someone else for the remainder of the month. However, in this case, the Landlord did not intend to re-rent the rental unit, but rather, they wanted to use it as a place of recovery for the Landlord's spouse further to her surgery.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Neither the Tenant nor her Advocate referred me to an authority allowing a Tenant to reclaim rent paid in a month after having been legally evicted. Given these considerations, I decline to award the Tenant with recovery of these funds. Rather, I **dismiss this claim** without leave to reapply, pursuant to section 62 of the Act.

Summary

The Tenant has been awarded the following amounts:

# 1	$ 1,510.00	Parking
# 2	4,350.00	Oven
# 3A	1,950.00	First illegal rent increase
B	10,800.00	Second illegal rent increase
# 4	300.00	Guest Fee
# 5	1,740.00	Loss of Quiet Enjoyment
# 6	0.00	Aggravated Damages
# 7	0.00	Overpayment of Rent
Total	**$20,650.00**	

Given the Tenant's relative success in her claims, I also award her with recovery of the **$100.00** Application filing fee from the Landlord pursuant to section 72 of the Act. I, therefore, grant the Tenant a **Monetary Order** from the Landlord for **$20,750.00** pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in most of her claims reviewed, as she provided sufficient evidence to prove them on a balance of probabilities. Two of the Tenant's initial claims were irrelevant, because the tenancy had ended, as noted above, therefore, those claims are dismissed without leave to reapply. The remaining claims that were not covered in the hearing are dismissed with leave to reapply.

The Tenant has been awarded **$20,650.00** for her claims, in addition to being awarded recovery of her **$100.00** Application filing fee from the Landlord.

The Tenant is granted a **Monetary Order** from the Landlord of **$20,750.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77 (2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1)(d).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 19, 2022

Residential Tenancy Branch