Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant BB submitted application file *****5019 and tenant CT submitted file *****5039. Both applications list respondent landlord RJ.

I left the teleconference connection open until 11:53 A.M. to enable landlord RJ to call into this teleconference hearing scheduled for 11:00 A.M. Landlord RJ did not attend the hearing. Tenant BB and advocate MD (the advocate) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The advocate represented tenants BB and CT. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that tenant BB, the advocate and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – withdrawal of application *****5039

At the outset of the hearing the advocate withdrew application *****5039 entirely.

Pursuant to my authority under section 64(3)(c) of the Act, I accepted the withdrawal of application *****5039 in its entirety.

Preliminary Issue – service of application *****5019

Tenant BB mailed on June 17, 2022 the notice of hearing and the evidence (the materials) to landlord RJ’s address for service recorded on the tenancy agreement. The tracking number is recorded on the cover page of this decision.

Based on the tenant BB’s convincing testimony and the tracking number, I find the tenant BB served landlord RJ in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail, landlord RJ is deemed to have received the materials on June 22, 2022, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – amendment of application *****5019

At the outset of the hearing tenant BB advised she is only seeking a monetary order for a retroactive rent reduction and aggravated damages.

Pursuant to my authority under section 64(3)(c) of the Act, I accepted the withdrawal of all the claims of application *****5019 except the monetary claims for a retroactive rent reduction and aggravated damages.

Tenant BB requested to amend application *****5019 to include respondent landlord Empire Developments LTD (the company). Tenant BB affirmed that landlord RJ is the only director of the company and that the company owns the rental unit. Tenant BB is

seeking a monetary order against landlord RJ and the company because it would be easier to collect any amount against both landlord RJ and the company.

The tenancy agreement, submitted into evidence, indicates the landlord is RJ. Tenant BB submitted the land title search indicating the rental unit is owned by the company and the British Columbia Company Summary indicating that RJ is the only director of the company.

The Act defines landlord as:

> the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
> (i)permits occupation of the rental unit under a tenancy agreement, or
> (ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based on the tenancy agreement, I find that RJ is the landlord. Thus, I dismiss tenant BB's request to amend this application to include the company as respondent.

Issues to be Decided

Is tenant BB entitled to:

- a monetary order?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of tenant BB's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is tenant BB's obligation to present the evidence to substantiate the application.

Tenant BB affirmed the tenancy started in December 2017. Monthly rent is $1,375.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $600.00 and pet damage deposit of $600.00. The landlord currently holds in trust the deposits in the amount of $1,200.00.

The tenancy agreement indicates that water is included in rent, and that electricity is not

included in rent.

Tenant BB stated she never paid an extra bill to have hot water.

On April 17, 2022 the parties texted:

> Tenant: We don't have any hot water this AM.
> Landlord: Should be working in 20 minutes. I am not paying for you guys hot water usage. Whatever the bill is you [redacted for privacy, other tenants] have to split the bill or there won't be any hot water.
> Landlord: If no payment today the hot water will be off tomorrow. $464.89 owing for hydro. You need to pay for the hydro otherwise you guys won't have any hot water. The hot water thank is what you guys use. If you don't pay you won't have any hot water. […]
> Landlord: **If you don't pay you will be getting no hot water and you will be kicked out of the apartment. [Landlord's agent] is waiting for you to pick up the money. The rent will also be going up in June.**
>
> (emphasis added)

On May 21, 2022 landlord RJ texted tenant BB:

> Landlord: Everyone is paid and up to date except yourself. I think it's around $465.00 for two months. You guys really use a lot of hot water every month. The hot water will be shut off if isn't paid this week and if you need to see the invoice from hydro we are fine with that.

Tenant BB's reply on May 24, 2022 states: "Hi [landlord] a legal advocate will be contacting you about this matter of the hot water."

Tenant BB testified that the landlord shut off the hot water on May 26, 2022 and only reconnected it on June 17, 2022.

The advocate emailed landlord RJ on May 27, 2022:

> **It is a breach of a tenant's rights under the RTA, and also a violation of Vancouver's Standards of Maintenance Bylaw No. 5462 at 16.1 (2), to cut off hot water. Please restore it immediately or the tenants reserve the right, with no further notice, to file for dispute resolution before the RTB, requesting an order and compensation, and/or to file a complaint with the City of Vancouver.**

> If you are in any doubt as to your obligations in this matter, please call or email the Residential Tenancy Branch at [redacted for privacy] or by email at [redacted for privacy] or contact the City of Vancouver at [redacted for privacy].
>
> (emphasis added)

The parties texted on May 30, 2022:

> Tenant: Could you please tell me when the hot water will be turned back on. RTB has left messages on both numbers plus [advocate] has left messages.
> Landlord: **You guys don't have hot water because you didn't pay your bill.** Call [agent] and let her know that you have the money for hydro. You guys are lucky because you got away without paying for many years. **You owe $465 dollars. [neighbour] has already paid so you are ruining it for her. This is the last warning I'm giving you guys or I will find new tenants. You should have been happy that someone else was paying for it.**
> Landlord: I haven't increased your rent either. Every year home owner can put the rent up. You guys are getting a great deal otherwise your rent would be $1,800-1950.00.
>
> (emphasis added)

The advocate sent a letter to landlord RJ on May 30, 2022:

> Per my email, when you shut off the hot water on the morning of May 27, you violated your tenants' rights under both the Residential Tenancy Act (RTA) and the City's standards of maintenance Bylaw. Your claim that the tenants are responsible to pay for water, which is included in their tenancy agreements, is not sustainable.
> RTA section 14 provides that:
> 14 (1)A tenancy agreement may not be amended to change or remove a standard term.
> (2)A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.
> RTA section 27 sets out may not terminate or restrict an essential service:
> Terminating or restricting services or facilities
> 27 (1)A landlord must not terminate or restrict a service or facility if
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b)providing the service or facility is a material term of the tenancy agreement.
> […]
> I refer you also to The Residential Tenancy Branch (RTB) Policy Guideline 22: Termination or Restriction of a Service or Facility

https://www2.gov.bc.ca/assets/gov/housing-andtenancy/ residential-tenancies/policy-guidelines/gl22.pdf

As the hot water has now been cut off for 72 hours as of this morning, you are also in violation of the tenants rights under RTA section 28 to "quiet enjoyment". As set out in policy guideline 6, a breach is established when a tenant experiences: 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.

Further: 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.

[…]

Finally, it is also a violation of [redact for privacy] Standards of Maintenance Bylaw No. 5462 at 16.1 (2), to fail to provide hot water.

If you are in any doubt as to your obligations in this matter, please call or email the Residential Tenancy Branch at [redact for privacy] or email [redact for privacy], and you may contact the City of [redacted for privacy].

The tenants do not want to litigate and will forgo further action if the water is restored and demands for payment cease. Failure to respond within 24 hours of receipt of this letter may result in immediate action with no further notice. Note that in addition to any compensation the tenants may be entitled to, a successful claim will result in an award that you repay the tenants' filing fee ($100.00 per tenant). All correspondence should be directed to my attention at our office.

(emphasis added)

On June 01, 2022 the landlord informed tenant BB that the commercial tenant was paying for the electricity bill for the hot water boiling tank and that as the commercial tenant is no longer paying for this bill tenant BB must pay the electricity bill for the hot water boiling tank.

The advocate submitted emails between the advocate and the city of Vancouver regarding the hot water service between June 8 and 16, 2022. The city of Vancouver informed the advocate that the city's inspector visited the rental unit on June 03, 2022 and concluded that the rental unit does not have hot water and that the landlord may be referred for prosecution.

Tenant BB submitted this application on June 8, 2022. The advocate did not submit an application for emergency repairs because hot water is not an emergency repair.

The advocate mailed landlord RJ on June 14, 2022:

> My previous correspondence indicated that the hot water was shut off on the morning of May 27, but I now see from the tenants' messages that in fact it was shut off on May 26. On June 16, 2022 it will be three weeks that the tenants have gone without hot water. The tenants are requesting an order that you pay them $150 for the first week and an additional $50 for each additional week the hot water is shut off, to $350/week ongoing until the water is restored. The compensation requested so far will amount to $600 each on June 16, 2022.

The advocate said the landlord did not reply to her emails, letters and phone calls.

Tenant BB is claiming a rent reduction in the amount of $150.00 from May 26 to June 1; $200.00 from June 2 to 8, and $250.00 from June 9 to 15, 2022, as tenant BB did not have hot water from May 26 to June 17, 2022. Tenant BB is also claiming aggravated damages in the amount of $300.00, as stated in the monetary order worksheet.

Tenant BB's application states:

> On or about April 27, 2022 the landlord demanded the 3 residential tenants split a hot water bill. All of the units are metered and pay their own hydro so this is a new charge the landlord is trying to impose on us. When I and the other tenant did not pay, he shut off the hot water. I am requesting ongoing compensation of: $150 for the week of May 27-June 2 $200 June 3-June 9 $250 June 10-June 16 $300 June 17-June 23 $350/week thereafter.

Tenant BB works as a house cleaner and could not work because she did not have hot water in her rental unit. Tenant BB lost income in the amount of $270.00. Tenant BB felt

very bad because she asked her clients to take a shower in their houses, as she could not do so in her rental unit.

Tenant BB boiled water for 3 hours per day for her and her daughter to take a bath.

Tenant BB affirmed that landlord RJ harassed and threatened her, claiming that he was going to evict her and increase her rent if she did not agree to pay the extra amount for the hot water. Tenant BB stated that her physical and mental health was severely impacted by landlord RJ's action. Tenant BB testified that her daughter also suffered because of this situation.

Tenant BB submitted a monetary order worksheet indicating a total claim in the amount of $900.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Rent Reduction

The tenancy agreement indicates that rent includes water. I accept tenant BB's undisputed and convincing testimony that she did not pay an extra amount of money to have access to hot water.

Based on the tenancy agreement, tenant BB's undisputed and convincing testimony, the text messages, the letters and emails submitted into evidence, I find that rent includes hot water.

Based on tenant BB's undisputed and convincing testimony and the text messages, I find that the landlord purposefully restricted tenant BB's access to hot water from May 26 to June 17, 2022 because tenant BB did not agree to pay an extra amount for the electricity bill for the hot water boiling tank.

Section 65(1) of the Act states:

> (1)Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], **if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreemen**t, the director may make any of the following orders:
> […]
> (b)**that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;
> […]
> (f) **that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement**;
>
> (emphasis added)

RTB Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Tenant BB claims she suffered a reduction in her tenancy in the total amount of $600.00 from May 26 to June 15, 2022 (the affected period).

Section 13(2) of the Act states that all residential tenancy agreements in British Columbia should include the standard terms:

> (2)A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:
> (a)the standard terms;

The standard terms referenced in section 13(2)(a) refer to the standard terms as set out in the Schedule to the Regulation. Dealing only with the provision of utilities, section 5(2) of the Schedule to the Regulation provides as follows:

> (2)The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

Section 27 of the Act addresses the landlord’s ability to terminate or restrict services of facilities:

> (1)A landlord must not terminate or restrict a service or facility if
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b)providing the service or facility is a material term of the tenancy agreement.
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
> (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
> (b)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.

RTB Policy Guideline 01 states:

> 1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.

I find that access to hot water is an essential service to the tenant's use of the rental unit, as this is a necessary service to the use of a rental unit as a living accommodation.

I accepted the uncontested convincing testimony that tenant BB and her daughter could not shower because there was no hot water during the affected period and tenant BB's physical and mental health was impacted by the landlord's actions. I find the landlord breached section 27(1)(a) of the Act by restricting tenant BB's access to hot water during the affected period and tenant BB suffered a loss.

I accept the uncontested testimony that monthly rent is $1,375.00. Thus, daily rent is $45.83 ($1,375.00 divided by 30 days) and the rent for the affected period was $962.43 ($45.83 x 21 days). Considering how essential hot water is, I find that a rent reduction in the amount claimed by tenant BB is a reasonable amount.

Tenant BB did not claim compensation for loss of income. I am considering the tenant BB's claim for a rent reduction because of a reduction in the value of the tenancy overall.

I find that tenant BB and the advocate mitigated tenant BB's losses by sending the vast amount of text messages, emails and letters to landlord RJ, contacting the city of Vancouver and submitting this application on June 08, 2022.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in tenant BB's favour in the amount of $600.00 to compensate tenant BB for the reduction in the value of the tenancy agreement during the affected period.

Aggravated damages

RTB Policy Guideline 16 states:

> "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.

In Sahota v. Director of Residential Tenancy Branch, 2010 BCSC 750, the Court states:

[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 CanLII 93 (SCC), [1989] 1 S.C.R. 1085.

[48] There is a close relationship between aggravated and punitive damages. The harshness of the defendant's conduct may give rise to both. There need be no finding of harsh, vindictive, reprehensible and malicious conduct in order to award aggravated damages. That type of conduct supports an award of punitive damages. The conduct for the award of aggravated damages need only be high handed. However, it is important that a plaintiff not be compensated twice for the same harm or the defendant punished twice for the same type of moral culpability: Huff v. Price (1990), 1990 CanLII 5402 (BC CA), 51 B.C.L.R. (2d) 282 (C.A.).

[49] The difference between aggravated and punitive damages was discussed in Huff:

> ... aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. They are designed to compensate the plaintiff, and they are measured by the plaintiff's suffering. Such intangible elements as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters that are caused by the conduct of the defendant; that are of the type that the defendant should reasonably have foreseen in tort cases or had in contemplation in contract cases; that cannot be said to be fully compensated for in an award for pecuniary losses; and that are sufficiently significant in depth, or duration, or both, that they represent a significant influence on the plaintiff's life, can properly be the basis for the making of an award for non-pecuniary losses or for the augmentation of such an award. An award of that kind is frequently referred to as aggravated damages. It is, of course, not the damages that are aggravated but the injury. The damage award is for aggravation of the injury by the defendant's highhanded conduct.
>
> Punitive damages, by contrast, are a separate award against the defendant designed to impose a punishment on the defendant and to set an example to others who might seek to act in a similar way. Punitive damages are measured by the degree of moral culpability of the defendant. They are not designed to compensate the plaintiff and they are not measured by an assessment of the plaintiff's suffering. An element of wilfulness or recklessness such as would underlie a finding of guilt in a criminal act is likely to be present before punitive damages will be awarded. But the defendant's conduct need not be criminal. Mr. Justice McIntyre used such words to describe the conduct that would give rise to a claim for punitive damages as "harsh, vindictive, reprehensible and malicious" but Mr. Justice McIntyre acknowledged that he had not exhausted the

> available adjectives. The anomaly, of course, about punitive damages is that they are paid to the plaintiff and not to the state, even though the plaintiff should have been fully compensated by his award of compensatory damages, pecuniary, non- pecuniary, and aggravated.

Based on tenant BB's convincing and undisputed testimony, the text messages, the letters and emails, I find tenant BB proved, on a balance of probabilities, that tenant BB and her daughter suffered significant mental and physical health losses because landlord RJ harassed and insulted tenant BB by threatening to evict her and increase her rent without a notice of rent increase. Furthermore, landlord RJ deliberately restricted access to hot water during the affected period.

I emphasize the text message sent by RJ on April 17, 2022 ("If you don't pay you will be getting no hot water and you will be kicked out of the apartment. [Landlord's agent] is waiting for you to pick up the money. The rent will also be going up in June.") and on May 30, 2022 ("You owe $465 dollars. [neighbour] has already paid so you are ruining it for her. This is the last warning I'm giving you guys or I will find new tenants. You should have been happy that someone else was paying for it.") as two clear examples of landlord RJ harassing tenant BB.

Based on the May 27 email and May 30, 2022 letter, I find that landlord RJ was clearly warned in writing by tenant BB and the advocate and landlord RJ still deliberately restricted BB's access to hot water. Landlord RJ only provided access to hot water after the City of Vancouver emailed him and tenant BB submitted this application.

Considering all of the above, I find that it is reasonable to award aggravated damages in the amount claimed of $300.00.

As such, I award tenant BB $300.00.

Filing fee and summary

As tenant BB was successful with her application, I authorize tenant BB to recover the $100.00 filing fee.

In summary, tenant BB is entitled to:

Item	Amount $
Rent reduction	600.00
Aggravated damages	300.00
Filing fee	100.00
Total	**1,000.00**

Conclusion

Pursuant to sections 65(1)(f), 67 and 72(2)(a) of the Act, I award tenant BB $1,000.00 and authorize tenant BB to deduct the amount of $1,000.00 from a future rent payment in full satisfaction of the amount awarded.

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

Dated: October 19, 2022

Residential Tenancy Branch