



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 505578 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. 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 the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on June 13, 2022 by Canada Post registered mail (the "NoDRP package") to the address specified at the end of the move-out condition inspection report. This address is the current address of the rental unit. The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered

mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on June 18, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant testified that this tenancy began as a fixed term tenancy on October 29, 2020. The fixed term ended on April 1, 2021, then the tenancy continued on a month-to-month basis. Monthly rent was \$7,500.00 payable on the first day of each month. A security deposit of \$3,750.00 was collected at the start of the tenancy and the security deposit was returned in full. The tenancy ended June 10, 2021.

The Tenant previously filed a dispute resolution claim for this same matter which she served to the address of the property management company. The previous file number is noted on the cover sheet of this decision. The Arbitrator dismissed her application because she did not serve the Landlord at the address noted on page three of the move-out condition inspection report. For this application, the Tenant served the Landlord at the address noted on page three of the move-out condition inspection report. The Tenant testified that while she was residing in the rental unit, the Landlord would pick up mail from the residential property twice per week. The Landlord's agent was alerted by the Tenant that she would be re-applying for dispute resolution. The Canada Post package was not claimed by the Landlord.

The Tenant moved from an international city to BC, then to another country. The purpose for choosing the rental unit was that it was supposed to be fully furnished as all their home items were in transit to their final location. The submitted tenancy agreement outlined what was included in the rent as:

Water	Cablevision
Electricity	Internet
Heat	Natural Gas
Sewage disposal	Snow removal
Storage	Garbage collection
Recycling services	Kitchen scrap collection
Free laundry	Refrigerator
Dishwasher	Stove and oven
Window coverings	Furniture
Parking for 2 vehicles	

Additional information: Property is fully furnished with Brand new furniture

The Tenant's monetary order worksheet claims compensation for:

<i>Henckels</i>	<i>Knife set</i>	<i>\$149.99</i>
<i>Cleaning service company</i>	<i>Cleaning</i>	<i>\$318.75</i>
<i>Canadian Tire</i>	<i>Coffee and paint kit</i>	<i>\$252.61</i>
<i>[Linens] company</i>	<i>Duvets</i>	<i>\$1,898.00</i>
<i>Rents from similar property at same time</i>		<i>\$7,000.00</i>
<i>Landlord verbally agreed that</i>		
<i>then never paid</i>	<i>Elevator broken</i>	<i>\$375.00</i>
<i>Landlord estimate based on usage</i>	<i>Bathtub not fixed for</i>	
	<i>four months</i>	<i>\$4,000.00</i>
<i>Landlord in lease</i>	<i>Elevator broken</i>	<i><u>\$375.00</u></i>
<i>TOTAL</i>		<i>\$14,369.35</i>

The Tenant uploaded the tenancy agreement for the rental unit which included an agreement addendum. Item #5 on the tenancy agreement addendum states, "... A condition inspection report will be carried out prior to the commencement of the lease and upon final departure." The Tenant stated no move-in condition inspection report was completed at the start of the tenancy. At the end of the tenancy, the Tenant testified that the Landlord's agent just ticked everything off on the condition inspection report like it had been completed at move-in.

The Tenant testified that when they moved in, the rental unit was not clean. A November 10, 2020 email to the Landlord's agent, specified that,

...

A number of the items were not just dirty, but quite gross:

The duvet was covered in blood and dirt. ...

The IKEA cabinet in the main room had hair and dirt in the cupboard and we had to clean the whole thing out (picture attached)

The oven hasn't been cleaned in at least a year (picture attached)

The kitchen table is used

...

The Tenant had a cleaning company come in and clean the rental unit.

The Tenant said the rental unit had pots, pans, dishes and cutlery, but it did not have knives or a coffee machine. She said she picked up a knife set, a coffee machine and new duvet sets. The Tenant already owned knives which were shipped to their final destination. When the Tenant vacated, she took these items with her, and she gave the knife set to her brother-in-law. The receipt the Tenant submitted for the coffee machine, and some painting supplies which she said they used to do some minor repairs was dated April 27, 2020. The Tenant said they originally bought these items for her husband's parents but that they ended up using them instead.

The Tenant said she paid near the top of pricing in the city for a furnished apartment, and she should not have had to buy the extra items in the first place. They had also looked at other new furnished rentals in the city and those prices ranged around \$6,000.00 per month. The Tenant is claiming \$1,000.00 per month compensation for the seven months they stayed in the city.

The tenancy agreement said the rental unit came with brand new furniture, but the Tenant testified that maybe 70% of the items in the rental were not new. Due to Covid-19, it was a big draw for the Tenant to have brand new furniture; however, this was not the case.

Item #14 in the tenancy agreement addendum states,

The tenant and landlord both agree that when/if the elevator is being scheduled for major repairs and this happens during the tenancy for an extended period (72 hours or longer), then the landlord will compensate the tenant \$375 per week that the elevator is down for a maximum of \$1500 in the event the elevator will be down for a month.

The Tenant testified that the elevator was often out of commission in the residential property, and the Landlord often paid the Tenant the agreed amount based on Item #14 in the tenancy agreement addendum. The Landlord stopped paying the Tenant for the out of commission elevator in the beginning of March 2021. The Tenant seeks \$750.00 for two occasions the elevator was not operating on March 20 to March 24, and April 2 to April 6, 2021. A May 23, 2021 email from the Landlord's agent stated, "*I've also spoke with the owners and they have agreed to the additional \$375 :) I'll have them send you a cheque direct.*" The Landlord has not compensated the Tenant for these two elevator outages.

The Tenant had just had a baby prior to moving into the rental unit. The Tenant said the problems with the tub was the crux of the Tenant's stay as needing a tub with a young child is a must. The first time the Tenant was alerted there was a problem was sometime in November 2020. The Tenant thinks that the tub plumbing had a problem with one of the pipes, although no one ever determined the source of the leak. When the tub drained, it started leaking into the downstairs neighbours' rental unit below the Tenant. The Tenant testified that the Landlord refused to fix it, and he told the Tenant to bathe their child in the kitchen sink which they did for four months. The Tenant was asked to use the tub sparingly.

The Tenant accommodated access to their rental unit seven times so workers could attempt to fix the plumbing below the tub. It never was resolved. In March 2021, the Landlord's agent asked the Tenant to stop using the tub. By May 24, 2021 the Tenant wrote,

We have been incredibly accommodating and patient to date which has been well documented on email. However, we are incredibly busy especially in light of the fact we are trying to move in a pandemic. I do not have time to keep going back and forth being told when and when we cannot use the tub or the main shower. Our rent should cover a working apartment. Even having to keep emailing about this with you, the building manager, and the downstairs owners is onerous. The point of renting is that we shouldn't be dealing with this.

I am not prepared to spend the next two weeks like the previous two weeks. I therefore recommend we stop using the tub and you can sort it out when we have left the apartment. ...

The Tenant said this rental unit was pitched to them as a luxury apartment, that was to be furnished with brand new furniture. Normal day-to-day amenities were missing (no knives, no coffeemaker) and the Tenant paid \$7,500.00 per month for it. The Tenant seeks a total of \$14,369.35 in monetary compensation.

Analysis

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 their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

The Tenant served the NoDRP package on the Landlord by sending it by registered mail to the address noted on page three of the move-out condition inspection report. A party must not avoid service of the NoDRP package by refusing to accept registered mail. Where registered mail is refused or deliberately not picked up, service is considered to be on the fifth day after mailing. The Tenant testified that while she was residing in the rental unit, the Landlord would pick up mail from the residential property twice per week. The Landlord's agent was alerted that the Tenant would be re-applying for dispute resolution. I find the Landlord had notice this application was coming. I previously found that the Landlord was deemed served with the NoDRP package on June 18, 2022.

Landlord and tenant obligations to repair and maintain

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) *complies with the health, safety and housing standards required by law, and*

- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

...

Liability for not complying with this Act or a tenancy agreement

- 7** (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.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 Tenant agreed to rent a luxury apartment that was to be fully furnished with brand new furniture. The rent amount was \$7,500.00 which is not on the lower end or mid end of rent amounts for apartments in the city. The tenancy agreement stipulates that the rental unit will be furnished with brand new furniture; however, this is not what the Tenant found. There were several missing items needed for day-to-day use, and there

were many deficiencies with the furnishings in the rental unit. I find the Landlord failed to comply with his own tenancy agreement and he breached Section 32(1) of the Act.

The Tenant claims \$149.99 compensation for a Henckels knife set she purchased for use while her and her family stayed in the rental unit. She took the knife set when they vacated, but said this was not a purchase that she expected she would have to make. The Tenant claims \$252.61 compensation for a coffeemaker (and paint kit) she had previously purchased as a gift for her husband's parents. When she vacated the rental unit, she took the coffeemaker with them. The Tenant claims \$1,898.00 compensation for duvet sets she purchased because when they moved in the duvet sets that were already in the rental unit were yellow and stained with blood. I find these three items would be common items found in a luxury apartment rental; however, the Tenant took them when she vacated.

I find the Tenant is entitled to nominal damages for the infraction of her legal right under the tenancy agreement and the expectation that these common items would be included in the rental unit. They were not, and the Tenant went out and picked up her own knives, coffeemaker and duvet sets. She also took these items with her when she vacated. I award the Tenant **\$100.00** for this small loss over the seven months she resided in the rental unit.

The Tenant testified that the rental unit was terribly unclean when they arrived. The oven was not cleaned after the last rental, the linens were badly soiled and the dirt in the unit at the start of the tenancy was unexpected. They hired their own cleaners to take care of bringing the rental unit up to an acceptable level of clean. They used these same cleaners at the end of their tenancy and the Landlord did not object with the state of the rental unit at the end of the tenancy as noted in the move-out condition inspection report.

This rental unit was a high end residential property and the expectation of a clean unit is undenied. Based on the undisputed testimony of the Tenant, and the uploaded pictures of the state of the rental unit, I find the Tenant is entitled to **\$318.75** compensation for the cleaning company she used when she first moved in.

The Tenant reviewed several properties before settling on this high end rental unit. She said they paid near the top of the pricing in the city for a furnished apartment. Other units she looked at were priced \$1,000.00 less than what they settled on. At the height time of Covid-19, the biggest draw for the Tenant was that the unit was to come with

brand new furniture. The Tenant stated that 70% of the items in the rental unit were not new. Other items were terribly soiled, and the Tenant had to go out and pick up common items she expected to see in the suite. I find the Tenant got less than what she bargained for, and is entitled to **\$5,950.00** compensation for the seven months they stayed in the rental unit.

The Landlord agreed in his tenancy agreement to compensate the Tenant \$375.00 for any extended period the elevator was down. The Tenant testified that for two periods, March 20 to March 24, and April 2 to April 6, 2021 the Landlord did not compensate them. Based on the undisputed testimony of the Tenant, I find the Landlord owes the Tenant **\$750.00** for these two periods that the elevator was down.

The Tenant dealt with a leaking tub from the start of this tenancy. In November 2020, the Tenant was alerted by the Landlord's agent that her draining her bathtub caused a leak into the downstairs tenants' rental unit. On at least seven occasions, workers came in to determine the source of the leak. No one determined from where the water was leaking. The Tenant had a new baby, and the Landlord told her to bathe her baby in the kitchen sink. The Tenant did this, but I agree with the Tenant, that they should have had a fully working apartment.

This was the only tub in the whole rental unit. Initially, the Landlord's agent requested that the Tenant limit their use of the tub. Later the Landlord's agent asked the Tenant not to use the tub. I find that it is not unrealistic that the Tenant should have a working tub in the rental unit. Pursuant to Section 32(1) of the Act, the Landlord is obligated to provide and maintain the 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. The Landlord breached his Section 32(1) obligations to the Tenant.

This leaking tub is an emergency repair, and the Landlord did not treat the situation as such. I find the Tenant is entitled to **\$3,000.00** for the diminished use, then later the lack of use, of the bathroom tub during their tenancy.

As the Tenant is successful in her claim, she is entitled to recovery of the **\$100.00** application filing fee.

The Tenant is entitled to a monetary award totalling \$10,218.75.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$10,218.75. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

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: March 13, 2023

Residential Tenancy Branch