



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Long Lake Lifestyles Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenant applied on June 29, 2022 for:

- compensation for monetary loss or other money owed, in the amount of \$5,713.54; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and Rule 7.4 requiring evidence to be presented.

Neither side raised an issue regarding service of the hearing materials.

### Preliminary Matter

The tenant testified that on March 1, 2023 she served additional evidence on the landlords, including a \$325.50 invoice for upholstery cleaning, by posting it to their door on March 1, 2023. The tenant testified she did not provide the landlord with a revised total for her monetary claim. The landlord confirmed she received and became aware of the invoice on about March 2, 2023. Considering Rule 3.14 which states that evidence intended to be relied on in the hearing must be received by the respondent not less than 14 days before the hearing, and that the landlord confirmed she became aware of the invoice on March 2, 2023, 18 days before the March 20 hearing, I will consider this additional expense claimed by the tenant.

### Issues to be Decided

- 1) Is the tenant entitled to compensation for monetary loss or other money owed, in the amount of \$6,039.04 (\$5,713.54 + \$325.50)?
- 2) Is the tenant entitled to the filing fee?

### Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began October 1, 2015 and ended June 15, 2022; rent was \$1,009.00, due at the end of the month for the following month; and the tenant paid a security deposit of \$450.00 which the landlord still holds.

The tenant submitted a Monetary Order Worksheet in support of her claim.

The first two items are for loss of use of two rooms in the unit. The tenant is seeking \$779.13 for loss of use of the sunroom, which she used as a dining and sitting room. The tenant testified she arrived at this amount with a calculation based on the square footage of the sunroom in relation to the whole unit, the rent, and the number of days she could not use it. The tenant testified she could not use the room from November 21, 2021 to May 2, 2022 (163 days).

The tenant testified she had previously used this room year-round, and submitted photos in support, which show decorations and items from Christmas and Easter. The tenant testified she was not able to use the space due to the presence of black mould, which made her sick. The tenant testified that on November 21, 2021 she noticed the floor was wet in a corner of the sunroom, then discovered that a nearby wall was damp and rotten. The tenant testified that the area of wetness on the floor increased. She submitted a photo showing an area of wet carpet which takes up most of the room, and photos of mould, removed drywall, and debris.

The tenant testified that she continued to live in the remainder of the unit, though the conditions were very unhealthy as the sunroom was right beside her living room.

The tenant said that because the sunroom carpet was soaking wet and mouldy, she had to take all the furniture and possessions out of the sunroom, except for the dining table as she had no other place for it, and store them in her spare room and around the unit.

The tenant is claiming \$607.16 for loss of use of the spare room, based on the same logic and number of days as the loss of use of the sunroom. The tenant testified that she had previously used the spare room for storage, but began to work in that room after the sunroom began to make her ill while working from home due to the pandemic. The tenant testified that once the carpet in the sunroom got wet and restoration work in the sunroom began, she had to fill the storage room with items from the sunroom. The tenant testified she then had to work in the living room, sitting on the couch, bent over a small table.

The landlord provided testimony describing how the sunroom was a converted outdoor deck, that there had been persistent problems with condensation, and that the acute water issue in the sunroom was likely the result of a workman accidentally poking a hole into the sunroom while fixing a drainpipe issue. The landlord submitted that the tenant could have mitigated her damages had she kept the door between the sunroom and the rest of the unit closed. The landlord submitted the tenant had complained about mould in the unit since the current landlords bought the property in 2017.

The landlord submitted that the period the sunroom was unusable for was December 28, 2021 to April 12, 2022. The landlord testified she knew it was December 28 because they helped the tenant move her furniture out of the sunroom that day. The landlord testified that on April 12, 2022 the work was done except for the outside windows, which did not affect the tenant's use of the space. The landlord submitted that they spend two months a year out of the country, but are reachable by cell phone when away, and respond to tenant issues very quickly. The landlord testified that once notified of the sunroom issue, they called over 30 handymen, and checked multiple online resources, but as it was the height of COVID, and a small job, they had great difficulty getting someone competent to do the work. The landlord testified that they told the tenant that if she could find someone, to have them visit to provide a quote. The landlord testified the tenant said a couple of times she does not use the sunroom in the winter as it is too hard to heat.

The landlord testified they learned of the sunroom problem on November 21, 2021, and were going to fly home on November 23, but could not for about 10 days, due to contracting COVID. The landlord arrived home December 1, 2021, but the tenant did not want them to enter the unit for about two weeks due to COVID precautions. The

landlord testified that some of the delays were due to the tenant, but mainly because the landlords had such difficulty getting a contractor to do the work. The landlord testified that around that time the tenant again said that she does not use the sunroom in winter, so the delay was okay.

The landlord testified they offered the tenant \$600.00 for loss of use of the sunroom.

Regarding the loss of use of the spare room, the landlord testified they offered for the tenant to store some of her belongings in another storage space, but the tenant declined. The tenant testified the landlord did not offer for her use of additional storage space.

The next item claimed by the tenant is \$180.00 for loss of use of the bathroom sink for nine days from about February 24, 2022. The tenant submitted that she sought an "arbitrary amount" of \$20.00 a day for the sink. The tenant testified that she discovered the sink was leaking, notified the landlord, and that there was a delay because the landlords tried to rectify the problem the least expensive way possible. The tenant submitted she could not put a bucket under the sink and continue to use the sink because there was a shelf below it.

The landlord testified that the tenant could have placed a shallow bucket underneath the sink and continued using it. The landlord testified that the delay was not to save money, but because the sink had been built into the vanity, so they were trying to find the best way to make the repair. The landlord testified they also chose to find a new handyman, and that the sink work was not his first priority. The landlord testified that once the sink was removed it was replaced the next day.

The next item regarding the tenant's compensation claim is \$1,600.00 for time spent waiting for contractors, which the tenant submitted she calculated based on \$200.00 a week for eight weeks, for the value of her time. The tenant testified that she had to be present when handymen were in the unit, as she could not just leave the unit unlocked, and sometimes was working from home. The tenant testified there were handymen in and out of the unit for eight weeks.

The landlord testified that the tenant had told the landlords she always wanted to be home when workers were there. The landlord testified that they could have arranged for someone to be present to admit workers.

The next item is \$200.00 for cleaning, which the tenant submitted was based on eight hours of cleaning at \$25.00 an hour. The tenant testified she was seeking this “arbitrary dollar amount” because she helped get the carpet out of the sunroom, and cleaned up fibreglass insulation and drywall from the sunroom. The tenant testified she would clean up after the contractors each day. The tenant did not present supporting evidence for this expense, such as a log of the time she spent cleaning.

The landlord submitted that if the tenant had closed the door to the sunroom during the work she would not have had to do a lot of cleaning. The landlord speculated that they or the contractor did all of the removal of insulation and drywall, but acknowledged that the tenant helped with the carpet.

The tenant is seeking to recover \$47.25 she paid for an asbestos report. The tenant testified that when she discovered the water damage in the sunroom, the landlords were out of the country and asked her to find a handyman. The tenant testified that the first handyman would not come, and the second would not visit without an asbestos report. The tenant testified she paid for the asbestos report of her own initiative because the landlords had asked her to find a handyman.

The landlord testified that they ask tenants to submit their repair requests, and that the landlord will assess the situation themselves before potentially approving the expense. The landlord testified the tenant did not tell them she was going to get the report, and that they did not approve the expense.

The tenant is seeking \$2,300.00 due to unsafe, uncomfortable, and unhealthy living conditions for 23 weeks, the period from the end of November 2021 to the beginning of May, 2022, at \$100.00 a week. The tenant testified there was a long time she could not live normally in the unit, and that she tried to stay out in order to get fresh air, but also had to be there for the workers. The tenant testified she lived for an excessively long period with her belongings and furniture crammed in the remaining areas of the unit, and that the unit was smelly and looked awful. The tenant testified that due to the conditions she was not able to host annual celebrations as she normally would.

The landlord testified that the tenant stayed in the unit the whole time, and had people over.

The tenant is seeking \$325.50 for upholstery cleaning, and submitted an invoice in support, dated June 23, 2022. The tenant testified that after she move out of the unit she noticed that her upholstered sofa and chair, which had been next to the sunroom,

had an odour, so she had them cleaned a week later. The tenant speculated the odour was due to being in the rental unit, which smelled of mould and must, and was damp.

The landlord submitted that the tenant's furniture looked fine, that movers often get furniture dirty, and that the tenant had the furniture cleaned about a week after she moved.

### Analysis

The tenant is seeking compensation from the landlord in the amount of \$6,039.04.

The tenant testified that she lost the use of the sunroom and spare room from November 21, 2021 to May 2, 2022, and that during that period she experienced unsafe, uncomfortable, and unhealthy living conditions.

The tenant testified that she had become ill after spending substantial time in the sunroom due to the presence of mould, and that on November 21, 2021 she discovered a wet patch on the floor and that a nearby wall was damp and rotten. The tenant testified that the area of the floor that was wet increased, and presented documentary evidence in support. The tenant stated that she had to take her furniture and belongings out of the sunroom, and store them in her spare room and other areas around the unit. The tenant testified that she sometimes works from home, and that the need to move her belongings resulted in her having to work in an uncomfortable position. The tenant submits there was an excessive delay in the restoration work in the sunroom. The tenant testified that during this time the unit was cramped, smelly, and unattractive. The tenant testified that she used the sunroom year-round, and that due to the prolonged state of the unit, she was not able to host a number of her usual seasonal celebrations.

The landlord testified that the sunroom was unusable from December 28, 2021 to April 12, 2022. The landlord testified that she remembered helping the tenant move her belongings out of the unit on December 28, and that the work to the sunroom, with the exception of the exterior windows, which would not affect the use of the space, was completed April 12. The landlord testified that the tenant had repeatedly said she did not use the sunroom in winter as it was too hard to heat. The landlord submitted that the tenant could have mitigated her damages, had she kept the door between the sunroom and the rest of the unit closed. The landlord testified that the primary reason for the restoration delay was that it was at the height of COVID, and despite a significant effort on the part of the landlords, they had great difficulty finding a qualified handyman willing to take on a small job.

Section 27 of the Act states that a landlord may terminate or restrict a service or facility if the landlord 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.

The parties agree there was a period of time where the tenant did not have use of the sunroom, and that there was a delay in the required restoration work. I find the landlord therefore was obligated under section 27 of the Act to reduce the rent accordingly. The landlord testified that they offered the tenant \$600.00 for loss of use of the sunroom, however, I find that the impact on the tenancy was greater than simply the tenant not being able to use the sunroom.

Policy Guideline 22 states that 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. Given the significance of the impact of the moisture damage to the sunroom, I find the tenant's use of the rental unit was greatly affected, and the tenant is entitled to a rent reduction.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment of the rental unit.

Policy Guideline 6 states: "A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises."

The tenant testified that her enjoyment of remaining parts of the unit she had access to was impacted by the disruption of workers, and the smell, mess, disruption, and clutter resulting from the condition of the sunroom and its remediation.

Therefore, I find the tenant's right to quiet enjoyment was breached, per section 28 of the Act.

Based on the forgoing, I find the tenant is entitled to a 40 percent rent reduction for loss of use and loss of quiet enjoyment for the period from November 21, 2021 to April 12, 2022, in the amount of \$1,923.64, calculated as follows:

Rent paid from November 21, 2021 to April 12, 2022 (143 days):

\$1,009.00 per month/30 days in a month = \$33.63 per day

$\$33.63 \text{ per day} \times 143 \text{ days} = \$4809.09 \text{ rent paid}$

Forty percent of \$4809.09:

$\$4809.09 \times 0.40 = \$1,923.64$

I find the tenant is entitled to a monetary award of **\$1,923.64**.

My reasoning for the 40 percent reduction is as follows. I find there was an overall diminishment in the value of the tenancy as a result of the breaches, but that the tenant still had use of the kitchen, bathroom, and bedroom — the most important areas of the rental unit.

My reasoning for the date range of November 21, 2021 to April 12, 2022 for the rent reduction is as follows. The tenant testified that on November 21, 2021 discovered that the floor was wet in a corner of the sunroom, that a nearby wall was damp and rotten, and that the wet spot on the floor expanded. The landlord testified that they learned of the sunroom problem on November 21, 2021. I find it highly unlikely that a tenant would continue to use a room in the described condition, or be expected to do so.

As for the last day the sunroom was unusable, the parties provided conflicting testimony. The tenant stated it was May 2, 2022, but did not provide further detail in her testimony, or present evidence in support. The landlord testified that on April 12, 2022 the work was completed, except for the outside windows, which did not affect the tenant's use of the space. As the onus to prove the tenant's claim is on the tenant, in the absence of additional supporting evidence from the tenant, I accept the landlord's position that the work on the sunroom concluded on April 12, 2022.

I accept the tenant's testimony and documentary evidence that she used the sunroom year-round, over the landlord's testimony to the contrary, which was not supported by additional evidence.



*Loss of use of bathroom sink*

The tenant seeks \$180.00 for loss of use of the bathroom sink for nine days. The tenant testified that she discovered the sink was leaking, notified the landlord, and there was a delay in getting the repair done. The tenant submitted she could not put a bucket under the sink and continue using the sink because there was a shelf below it.

The landlord testified that the tenant could have placed a shallow bucket underneath the sink and continued using it. I find this defense does not account for the tenant's testimony that there was a shelf below the sink, blocking the use of a bucket. The landlord testified that the delay was due to the sink being built into the vanity, making the replacement more challenging. The landlord testified they also chose to find a new handyman, and that the sink work was not his first priority. The landlord testified that once the sink was removed it was replaced the next day.

I find the delay in the sink repair to be a restriction of a service, pursuant to Section 27 of the Act, and that the tenant is entitled to a nominal monetary award of **\$25.00**.

*Time waiting for contractors*

The tenant seeks \$1,600.00 for time spent waiting for contractors. The tenant testified that she had to be present when handymen were in the unit as she could not just leave the unit unlocked and sometimes was working from home. The tenant testified there were handymen in and out of the unit for eight weeks.

The landlord testified that the tenant had previously told the landlords she always wanted to be home when workers were there. The landlord testified they could have arranged for someone to be present to admit workers.

I find the tenant is not entitled to an amount for this claim, as the workers could have been given a key, the landlord could have arranged for the workers' access to the unit, and the tenant would have suffered no loss if she was working from home.

*Compensation for cleaning*

The tenant seeks \$200.00 for time she spent cleaning. The tenant testified she was seeking this "arbitrary dollar amount" because she helped get the carpet out of the sunroom, cleaned up fibreglass insulation and drywall, and would clean up after the contractors each day.

I find the tenant is not entitled to an amount for this claim, as the tenant did not present evidence of a requirement for her to do the contractors' cleaning.

*Asbestos report*

The tenant is seeking to recover \$47.25 she paid for an asbestos report, because the landlords asked her to find a handyman, and after the first refused to come, the second would not visit without an asbestos report. The landlord testified they told the tenant that if she could find someone, to have them visit to provide a quote. The landlord also testified the tenant did not tell them she was going to get the report, and that they did not approve the expense. The landlord also testified they had called around 30 handymen but could not find anyone willing to do the small repair at the height of COVID.

Based on the testimony of the parties, and considering the difficulty the landlords were having securing a qualified handyman, and their request of the tenant to try to have a handyman visit to provide a quote, I find it reasonable that the tenant proactively paid for this relatively inexpensive report.

I find the tenant is entitled to the **\$47.25** she paid for the asbestos report.

*Upholstery cleaning*

The tenant is seeking \$325.50 for upholstery cleaning, and submitted an invoice in support, which includes cleaning costs of \$240.00, and five percent GST. The tenant testified that after she move out of the unit she noticed that her upholstered sofa and chair, which had been next to the sunroom, had an odour, so she had them cleaned. The tenant speculated the odour was due to being in the rental unit, which smelled of mould.

The landlord submitted that the tenant's furniture had looked fine, that movers often get furniture dirty, and that the tenant had the furniture cleaned after she moved out.

I find on a balance of probabilities, meaning more likely than not, that the odour the tenant noticed from the upholstered furniture was due to its extended exposure to the condition of the sunroom, which the furniture had been next to.

Therefore, I find the tenant is entitled to the upholstery cleaning costs of \$240.00 and \$12.00 GST, for a total of **\$252.00**.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is partially successful in her application, I order the landlords to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a monetary order in the amount of **\$2,347.89**, comprising \$2,247.89 for the preceding monetary awards and \$100.00 for the filing fee.

### Conclusion

The tenant is granted a monetary order in the amount of **\$2,347.89**. The monetary order must be served on the landlords. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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

Dated: April 19, 2023

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Residential Tenancy Branch