Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding InterRent Holdings dba CLV Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on December 6, 2022 seeking compensation for monetary loss or other money owed. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 4, 2023.

Both parties attended the hearing, and I afforded each the opportunity to ask questions on the hearing procedure.

At the outset of the hearing, both parties confirmed they received service of the documentary evidence of the other. On this assurance, I proceeded with the hearing as scheduled.

Preliminary Matter –timeline for this decision

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision-maker, ss. (2) does not invalidate a decision that is given past the 30-day period. I reached this decision through review and evaluation of all testimony, and hundreds of pages of evidence submitted by both parties for this hearing. The Tenant provided numerous email records that were not sorted by category or subject.

The parties' right of due process, for a thorough consideration of all evidence, and my deliberation of the applicability of the law, outweighs the need for a 30-day time limit. Also, this was a matter of the Tenant's right to compensation for what they alleged were breaches to their quiet enjoyment of their rental unit in the past. This did not concern an eviction or end of tenancy that are matters of more immediate human consequence.

Issues to be Decided

- Is the Tenant entitled to compensation for monetary loss/other money owed pursuant to s. 65 of the *Act*?

- Is the Tenant entitled to reimbursement of the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord and the Tenant each provided a copy of the tenancy agreement in this matter. In this hearing they confirmed the basic information therein: the tenancy started on July 1, 2011, continuing on a month-to-month basis. Over the course of the tenancy the rent increased eventually to $1,631.10 which is what the Tenant listed on their Application as the rent amount during the period in question.

The rental unit is on the 5th floor of a six-floor rental unit building, one of 30 total units. The Landlord presented that the building was new in 1964. The Landlord took over as management on January 28, 2021. They set out the need for elevator modifications for the elevator installed in 1964. Other major work in the building included the lobby, hallways, security systems, the boiler, and individual unit renovations, as described in an Executive Summary provided by the Landlord.

In July 2021, an arbitrator heard the Tenant's individual Application wherein they requested the Landlord's compliance with the law/tenancy agreement. The Tenant had raised the issue of noise resulting from apartment renovations starting in April 2021 through to July 2021. That Arbitrator ordered the Landlord to comply with the local area bylaw by completing work within the building within set hours, thereby providing the Tenant with quiet enjoyment of the rental unit as required by the *Act*.

The Tenant provided email records from 2021 through to March 2023. These are reminders to the Landlord about unreasonable disruption, and show the Tenant posing direct questions about timelines, compliance with emergency requirements, and the true need for renovations throughout the building. The Tenant's email records also show their efforts at getting other Tenant's together in October 2021 to present the issue to the Residential Tenancy Branch "for continued bylaw violations to quiet enjoyment, compensation with the ongoing repairs, and request for repairs to elevator, ventilation, heat, and previous hot water."

The Tenant, together with other rental unit property residents, filed an application on this issue, heard by an arbitrator at the Residential Tenancy Branch on September 27, 2022. The Arbitrator dismissed the joined applications, noting distinct differences in the grounds for each tenant's application, and finding that "the specific impacts on each Tenant must be heard separately in order to ascertain what, if any, compensation is due based on the alleged loss of quiet enjoyment."

For this present hearing, the Tenant submitted statements and evidence from each of 10 other rental unit property residents. One Tenant, who is a plumber, set out their critique of the construction work and handling of the sites throughout the building. Another set out their findings on hours of work in individual units involved, "poor construction", and improper garbage disposal. Another refers to the construction during the day that made their work from home difficult. Another provided details on the weeks from mid-June to late July, with daily drilling and hammering. Another resident provided their assertion that the Landlord was engaging in predatory behaviour to drive out current older residents, thereby driving up rent with new tenants.

The Tenant also included copies of 10 online reviews with the Landlord as the subject, from what appears to be some online tenant forum/rating scheme. They also included a news article focused on some other residents' (not from this rental unit property, in a different jurisdiction) experience with the Landlord. They also provided a copy of the response from the then-Minster responsible for housing, dated August 10, 2021.

In the hearing, the Tenant presented a summary of their situation; this was a re-statement of their provided one-page summary. In the hearing, they also described their "multiple requests for repairs" and pointed to September 2022 emails they sent/received with the Landlord as the source for aggravated damages.

Their one-page list/summary of the issue contains the following points:

- continuous non-stop renovations, disturbances, and disruptions from April 2021 to February 2022, and June 2022, and July to August 2022 – excessive noise, dust/garbage build-up, lack of elevator use
- "No good faith promises to repairs, no notices to continued repairs."
- "planned and deliberate drilling, banging, slamming doors, hammering, no proper health and safety ventilation for drilling" – rental unit covered in dust
- "continuous violations" of the city bylaw, "outside hours til 10pm, on Sundays and Stat holidays"

- cosmetic renovations to the building foyer, involving “non-stop loud stone drilling, jack hammering”
- 11 other residents have moved since this Landlord started, raising rents
- no concern from the Landlord for “well being of tenants” who worked from home during this time, impossible for Tenant to have online meetings for work

In the hearing, the Tenant rephrased the Landlord’s statement to them from December 21, 2021: “better get used to it, this will be ongoing for two more years”. The Tenant also provided a phone number as the source of information/dialogue that was “very predatory, bullying, and harassing”.

The Tenant also compared renovated units, with “new flooring, stainless steel appliances, AC, washer & dryers, new ventilation overhead fans.” Older units remained in a “state of disrepair, mold, bugs, broken appliances, water damage, elevator not in service, etc.”

The Tenant completed a monetary order worksheet on January 18, 2023. For the hearing, they prepared a spreadsheet document showing the following pieces of their claimed amount:

	Dates	rent	total	50%
A.	Apr – Dec 2021 – 50%	$1,607	$14,463	$7,2231.50
B.	Jan – Feb 2022 – 50%	$1,631	$3,262	$1,631
C.	Jun – Oct 2022 – 50%	$1,631	$8,155	$4,077.50
	Total			$12,940
D.	Aggravated damages 25%			$3,235
E.	2 application fees			$200
	TOTAL			**$16,375**

Item-by-item, the Tenant’s evidence for each timeframe/issue shows the following:

A. *<u>April – December 2021 50% reduction in rent</u>*

The Tenant provided email records of their communication with the Landlord which at this time was the Tenant’s inquiry on “lobby renovations”. They inquired on the purpose of these renovations and the impact on day-to-day access and use for each building resident. They inquired on noise emanating from a unit above, with the Landlord responding that there was no ongoing work in that particular unit at that time.

At the end of July, the Tenant queried the Landlord on lack of hot water in their rental unit. On August 5th, they instructed the Landlord to "Govern yourself accordingly" and "You have 24 hrs to get this back in order."

Through August, the Tenant continued to inquire on the lobby renovations, attempting to gain assurance from the Landlord that the final date for these renovations was August 5, 2021. In each email, the Landlord responded to the Tenant.

By late September, the Landlord notified the Tenant of a certain issue involving the elevator's 5th floor call button. The elevator technician's message to the Landlord (forwarded to the Tenant) provides that the elevator is 60 years old, past the life span of most elevators. This makes parts difficult to obtain.

The Tenant's complaints of odours and inconvenience with no elevator continued through mid-October and November. The Tenant during this time communicated with other residents who appeared to be interested in pursuing the matter at the Residential Tenancy Branch. The Landlord informed the Tenant on November 18 that they would not be able to inform them of each time someone moves out and what sort of work would be done; however, the Tenant "can expect apartment renovations to continue upon turnover moving forward." The Tenant responded that "we need formalized letters telling us when and how long repairs are going to be done". Repairs with the elevator continued through December.

B. *January – February 2022 50% reduction in rent*

Another resident summed up experience throughout 2021 to the Tenant in an email on February 3. This provided specific dates of September 7, October 15 and 19, November 19.

On May 8, 2022 the Tenant emailed the Landlord and explained that they were responding to the Landlord's "withholding the materials terms of tenancy" under s. 27(1) of the *Act* and "Policy 22 of RTA" for the elevator use. They requested compensation on behalf of other building residents and "rent reduction for the purposed 4 months stoppage of the elevator". The Landlord responded the following day to specific inquiries from the Tenant on the work. The Tenant reiterated their claim for a rent reduction.

C. *June – October 2022 50 % reduction in rent*

The Tenant's emails to the Landlord during this time, from late September, show their queries on no heat in the building, as well as ongoing issues with elevator access.

The Landlord advised all tenants of third floor renovations starting on October 14. This would shut down the elevator for the whole day on October 18, 2022 for new flooring.

By late November, the Landlord advised all building residents about the hallway restoration project. This would take up to 8 weeks in total. The Tenant responded to ask for more particulars on this work.

The Landlord completed a written response to the Tenant's Application, dated March 21, 2023. Specific to issues of ongoing work and the communication with the Tenant, and impact during the time periods in question, the Landlord provided the following:

- The Tenant did not provide succinct written submissions and their documents were not organized to assist in determining which evidence addresses rent abatement. This impacted the Landlord's ability to respond to the Tenant's claims.

- The prior Arbitrator ruled on July 19, 2021 that the Landlord must comply with the local by and the *Act* by "providing the tenant with quiet enjoyment of the rental unit by working within the bylaw." The local noise control by-law provides for the limitation of construction noise to 7:30am to 8:00pm on weekdays and 10:00am to 8:00pm on Saturdays. The Tenant did not provide evidence that there was construction noise outside of these hours, aside from the one instance of "drilling noise" on Sunday, December 5, 2021. Further, the Tenant complained of noise twice when no construction was taking place, and encouraged other residents to email the Landlord "in order to create evidence in support of [the Tenant's] claim." In sum, there were no "continuous violations" of the noise control by-law, and the Landlord disputes that the Tenant was disturbed by construction noise outside of the noise control by-law. This means the Landlord did not breach the Tenant's right to quiet enjoyment of their rental unit.

  In support of this response, the Landlord provided letters from the elevator contractor, the individual contractor responsible for rental unit renovations, and the letter from "INLINE SALES & SERVICE LTD." (In response to this, the Tenant stated these accounts from contractors bear a "weird consistency", making them "extremely questionable.")

- Additionally, the Landlord instructed contractors to stop work when advised by the Tenant that the noise was disturbing. The Landlord posted notices in common areas of the building, as well as timelines for construction/repairs, as shown in the evidence in the form of the Landlord's common-area-posted elevator notices.

- They commissioned a building condition review and elevator assessment report in early 2021. From this point forward, they renovated individual units as they became vacant the installed/upgraded the building intercom system and fob entry, and installed closed-circuit cameras

- In addition to specific age-related projects in the building, such as the security system and the lobby, the Landlord maintained the building overall. The Tenant did not raise any issues with their rental unit that the Landlord failed to address.

- The evidence in the form of statements from other building residents mention various types of work in individual rental units, with varying impacts. One piece in the Landlord's evidence shows the response of one other resident who stated that the Landlord stopped construction at that resident's request during by-law permitted hours.

  Overall, the impact of a breach on one resident "does not prove a breach of quiet enjoyment for a different tenant"; for this reason, the other residents' statements should not be considered in this hearing, and consideration should properly be limited to the Tenant's own individual experience as they explain it. (In response to this, the Tenant reiterated that 11 different residents provided accounts, consistent in their complaints of the amount of drilling that continued.)

- There is a lack of particulars from the Tenant here, and with no explanation from the Tenant in detail, the Landlord "believes that [the Tenant] seeks compensation for an alleged breach of [their] right to quiet enjoyment as a result of [their] allegation that contractors have worked outside of the Noise Control By-law hours."

- Demolition in 4 individual units (from April to June 2021) was limited to 4 days in total, and within by-law-set hours, and with quieter work taking place on Saturdays. In their evidence, the Landlord provided a letter from the contractor explaining this.

- A particular floor elevator call-button issue prompted an elevator technician to inquire to the Landlord whether they had considered modernizing the elevator, based on its age. The Landlord had planned this in advance for 2022. The Landlord examined temporary fixed for the call-button issue, and notified all building residents of the issue by way of a

posted notice, in their evidence. The Landlord notes the Tenant did not request special assistance at this time, and did not request any temporary move to other accommodations.

Overall, the elevator replacement took 3 months. The Landlord submits they acted reasonably in accomplishing this project within this time, and by providing notice to residents and offering accommodations. This is shown in the Landlord's notices to building residents, as seen in their evidence. The Tenant did not avail themselves of assistance or other arrangements, and the Landlord submits the Tenant "simply complained about the inconvenience and demanded a monetary windfall."

- On the Tenant's credibility in this matter, the Landlord notes there is no proof of at least one specific incident of drilling noted by the Tenant to have taken place on December 5, 2021. This is not "continuous violations" of the noise control by-law.

  Further:

  - the Landlord did respond to the Tenant's settlement correspondence; the Tenant's claim that they did not is simply not accurate.
  - the Tenant reported on two incidents of drilling, to which the Landlord each time followed up and confirmed that no work was taking place form the locations the Tenant indicated.
  - another resident copied their communication to the Landlord as a b.c.c. to the Tenant here, for which the Landlord states the Tenant encouraged others to do so in order to create evidence for their own claim.
  - there is no evidence the Landlord is targeting the Tenant or deliberately inconveniencing them
  - there is no evidence the Landlord is being "predatory, bullying, and harassing" as claimed

In the hearing, the Landlord spoke directly to the issues involved, supplementing their written response with the following information:

- The work did not involve "continuous excessive noise" in the period spanning April 2021 to October 2022. Some individual unit's work would span 4 or 5 weeks, with some periods that were louder than others. Even the elevator or boiler work was not continuous (*i.e.*, every day and every hour), and it was scheduled work inside of the by-law hours.

- The Landlord was closely communicating with contractors and made a note of disruptions to any Tenant. They provided both door-to-door notices and notices posted in the common areas of the building, as far in advance as possible. If specific complaints arose from individual unit's construction work noise, the Landlord would advise the contractor who would then "compress" their noisier work efforts, focusing on less noisier tasks at that time.

- The Landlord offered accommodation and a porter service to those residents facing difficulty with the construction/renovation work. The Landlord in the hearing confirmed the Tenant did not ask for a hotel, nor a separate workspace, nor any other accommodation. (While the Tenant rebutted this by saying there was never any offers from the Landlord; the Landlord stated the Tenant never asked for any kind of assistance.)

- For the inconvenience associated with the elevator, the Tenant either had to go to the 6th or 4th floor to call the elevator when the 5th floor call button was inoperable. In total, the elevator work ran from June 27, 2022 to September 28, 2022 which is a reasonable amount of time.

The Landlord made written submissions on the applicability of the law in this scenario, and reiterated these points in the hearing:

- The *Act* s. 28 provides for a tenant's right to quiet enjoyment – this is freedom from unreasonable disturbance and significant interference. A breach thereof must be "serious, grave, and permanent in nature."

- On this, the burden of proof rests on a tenant who raises this. The *Act* is designed to protect tenants to ensure a landlord is accommodating to tenants' needs, "not to provide a monetary windfall to tenants."

- The *Residential Tenancy Branch Policy Guidelines*, specifically *6: Entitlement to Quiet Enjoyment* states there is a balance between a tenant's right to quiet enjoyment with a landlord's obligation to maintain the premises. Also, a landlord is not responsible for a loss of a tenant's quiet enjoyment "unless the landlord was aware of the interference or unreasonable disturbance and failed to take reasonable steps to correct it."

  An arbitrator, in deciding appropriate compensation must consider the seriousness of the situation, or the degree to which a 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 tenancy existed.

D. Aggravated Damages

On their worksheet entry for this item, the Tenant specified "retaliation and harassment filing RTB claim." On my calculation to verify this amount, I see the amount is 25% of their claimed amount total, items A. through C. above.

Specific to this category of compensation, the Tenant pointed to September 14, 2022 as the date they provided evidence in this matter to the Landlord's office directly. The next day they received an email from the Landlord instructing them to no longer drop rental cheques to that office in the Landlord's drop box. Instead, the Tenant was instructed to mail their rent cheques to the Landlord's office in Ottawa. The Tenant presented that no other residents got this message from the Landlord. The Tenant also inquired on their use of their own particular bank for direct deposit purposes; however, the Landlord denied this request. On this, the Tenant pointed to the online reviews they provided, showing negative experiences from other residents, with the Landlord as a corporate entity, from varying jurisdictions.

Though not linked to the timelines provided by the Tenant in this Application for rent reduction/compensation, by December 27, the Tenant advised the Landlord that the heat in the rental unit was off. In the hearing when they presented this aspect of their Application, the Tenant stated they got the "runaround" from the Landlord on this specific issue. They had no heat, as evident in their emails to/from the Landlord, and they had to buy 2 space heaters and then face "horrendous" power bills.

Additionally, the Tenant presented in the hearing that they were instructed to settle with the Landlord on their own. On November 24, 2022 they messaged to the Landlord to inquire on this, and proposed an amount – redacted from their copy of the email in the record – for cash compensation, or rent abatement, for breach of quiet enjoyment from April 2021 to October 2022, at 50%, minus their particular claim of "any and all harassment/retaliation by the landlord". The Landlord's response (undated in the Tenant's evidence) is that they would not be offering rent reduction or any compensation. This communication preceded the Tenant's December 6, 2022 Application to the Residential Tenancy Branch.

On this, the Landlord noted the first time this is mentioned is in the Tenant's monetary order worksheet, with no explanation in the form of written submissions, and unclear from the Tenant's submitted documents for this hearing.

In the hearing, the Landlord presented that they moved to an online system of rent payment in September 2022. This was clear to any resident that was using cheques, in the form of a notice giving direction to online payments. The Tenant's particular bank was not added to the Landlord's portfolio, in what is a "long process". This was not targeting the Tenant deliberately; this policy would affect any resident who paid by cheque or used the same local bank as the Tenant.

The Landlord commissioned a boiler replacement in December 2022 because of that component ending its useful life. This made it possible that individual units could experience trouble. The maintenance technician had regular calls to other units, with individual valves, entirely on a unit-by-unit basis using valves. This was not deliberate or a form of retaliation from the Landlord to the Tenant in their rental unit.

E. 2 application fees

The Tenant added the amount of $200 on their worksheet. Presumably this includes their prior Application filing fee and the current filing fee.

The Landlord submits this piece is not clear from the Tenant's monetary order worksheet. Presumably one of these $100 fees is from an earlier application dismissed by the Arbitrator previously in October 2022. The Landlord submits the Tenant cannot recover this earlier fee.

Analysis

As specified by the Landlord in their response, the *Act* s. 28 provides for a tenant's right to quiet enjoyment, including reasonable privacy, freedom from unreasonable disturbance, exclusive possession subject to a landlord's limited right to enter, and use of common areas free from significant interference.

The Landlord's obligation to provide and maintain a residential property in a suitable state of repair is set out in s. 32 of the *Act*. This is a state of decoration and repair that "complies with the health, safety and housing standards required by law", and suitability for occupation by a tenant.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

A. to C. <u>50% reduction in rent</u>

For each of four points above, I find as follows:

- I am not satisfied a damage or loss to the Tenant exists in this scenario. The Tenant was not specific in describing the incidents of construction noise in terms of dates, times, types of noise, and impact to their daily tasks at that time. The Tenant did not describe the issue in terms of a negative impact to their health. Although they alluded to an impact on their work environment, they did not provide specific information on this.

  I find the Tenant was aware of the nature of their queries and complaints to the Landlord every step of the way; however, they did not compile information on the degree and severity of noise and other interruptions, information that would be necessary to prove their point.

  I find the Tenant was preparing to challenge the Landlord formally on this issue, at least since summer 2021. A damage or loss to the Tenant in this type of scenario would be the loss of enjoyment of their rental unit. The Tenant did not prove this with reference to specific information. I do see that other residents provided this information to the Tenant for their use; however, the Tenant did not present these dates and times as actual incidents of noise or other violations. This is the equivalent of stating ‘there was a lot of noise’ rather generally and broadly, without specific information. If I am to infer this information from the Tenant’s record, the Tenant did not point to specific messages to/from the Landlord with reference to dates or types of complaints. I find the Tenant

did not present clearly that there was a loss of quiet enjoyment to them such that an equitable rent reduction based on a loss of value of the tenancy was warranted. I cannot award compensation on non-specific information such as the Tenant presented here.

The Tenant also did not present any limitation to use of common areas in terms of dates, times, and specifics on individual areas in the building. If any scenario would present itself as such, it is that involving the lobby; however, the Tenant did not provide sufficient evidence to illustrate that access to/from the building or other areas was impeded or blocked at any time. I do not import other residents' complaints with respect to parking access or other areas into the Tenant's own experience without specific information as such presented by the Tenant here.

- I find the Landlord presented adequate evidence to show they did not breach the Tenant's right to quiet enjoyment. Again, the Tenant provided no specific information on incidents on this. The previous Arbitrator's July 2021 decision emphasized the importance of the Landlord following the local noise control by-law, and there is no credible evidence to show the Landlord disobeyed the bylaw.

  I find the evidence shows the Landlord followed up on queries or complaints from the Tenant on possible violations. The Tenant was never left without a response on the issues they raised.

  I deem the Landlord's need for repairs and renovations throughout the building as absolutely necessary in this older building, both in terms of safety with the elevator replacement, and health and safety standards for individual rental units throughout the building, a concern that the Tenant raised individually to compare newer units to old. I balance the Landlord's statutory s. 32 obligations against the Tenant's s. 28 right to quiet enjoyment. I find the Landlord achieved a balance by notifying building residents of next-phase projects and timelines, making themselves available throughout to check on status and the Tenant's own queries/complaints, and conceding to residents' individual needs when raised, requiring special assistance, or even requesting the work noise to stop.

  In terms of a breach to the local noise control by-law, there was no account from the Tenant that they raised issues of noise with the local bylaw authorities. This would ensure compliance with the by-law, in situations where the Tenant felt their requests or complaints to the Landlord were not addressed. The fact the Tenant did not take this up as a matter of by-law violations – which would be egregious in the instance of evening and/or Sunday work noise, as the Tenant loosely described – lends credibility to the Landlord's account that work was not continuing during those times. Combined with the

lack of specific information from the Tenant, I find the Tenant is either exaggerating or falsifying entirely their account of further by-law violations.

I weigh the Tenant's account, with a complete absence of specific evidence on dates and incidents, against the Landlord's thorough account that shows their timely responses and action on the Tenant's queries throughout. I find the Landlord credible on their action to stop work that any resident identified as disturbing or interfering. The Tenant did not raise that the Landlord was not responding to their complaints or queries. I find the record shows the Landlord responded each time throughout the months-long project work in all areas of the building.

- The Tenant did not provide a rationale or description for the 50% reduction of rent they are claiming for the periods they identified. I am not in a position to award compensation where the period in question is not identified as a time when the Tenant endured noise or other inconveniences, a higher-than-usual level of noise, time they had to spend away from their unit, or time during which they had to avoid certain areas of the building. I find the tenancy was not devalued to the level claimed, that is, 50% of the Tenant's use and enjoyment of their rental unit throughout the time in question.

  The Tenant did not quantify this amount anywhere in their submissions and provided no description of their rationale in the hearing. That is to say, they have not established the value of their damage or loss. I find their value here is based on an estimate without sufficient detail.

  Fundamentally, there was no breach by the Landlord in undertaking renovations throughout the building. In no way is the Tenant entitled to half the amount of their rent throughout this time. A one-half amount of rent would imply that the Tenant had their access, or quiet enjoyment, or other rights limited to this degree during this time, and I find categorically that was not the case.

- The Tenant's account on their damage or loss is thoroughly lacking specifics throughout. Given this, I am not satisfied there was in fact an opportunity for them to mitigate in this situation, without measurable damage or loss to them. I find there were opportunities for assistance as the Landlord made known to all building residents. There is no evidence from the Tenant, with this being their onus of proof, that they inquired to the Landlord on other arrangements. If the situation was as difficult as they described, this would be a reasonable measure undertaken by the Tenant. There is no evidence the Tenant undertook any measure to minimize the impact to them.

D. Aggravated Damages

As on other pieces of their Application, the Tenant did not provide specific information. On their worksheet, the Tenant listed “retaliation and harassment” but there were no details in their testimony and the Tenant did not point to specific instances in either dialogue with the Landlord through email, or in person.

A defining feature of “aggravated damages” is that they are for intangible damage or loss, where significant damage or loss has been caused either deliberately or through negligence. The Tenant did not show deliberate actions of the Landlord leading to damage or loss. The spectre of “retaliation” and “harassment” was loosely described by the Tenant in their one-page summary, though they did not present specific instances or illustrate any impact to them.

I find this claim by the Tenant is unsubstantiated in the evidence provided by the Tenant. I accept the Landlord’s explanation for both of the issues of heating issues owing to a specific individual part in the Tenant’s own unit, and an issue with the method of rent payment. I dismiss this piece of the Tenant’s claim.

E. 2 application fees

The prior Arbitrator in their decision of October 5, 2022 dismissed the single Application filing fee paid by all separate residents for that hearing. That was without leave to reapply. The Tenant is not entitled to reimbursement of that separate Application filing fee. They did not present that this is something owed to them from the Landlord in this present hearing.

I dismiss the Tenant’s claim in its entirety; therefore, in this present hearing I find that the Tenant is not entitled to reimbursement of the Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's claim in its entirety, without leave to reapply.

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

Dated: May 9, 2023

Residential Tenancy Branch