



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMPANION CONSTRUCTION  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, FFL; MNDCT, FFT

### Introduction

This hearing dealt with the landlord's application, filed on March 21, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent of \$14,250.00, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for its application, pursuant to section 72.

This hearing also dealt with the tenant's application, filed on August 9, 2022, pursuant to the *Act* for:

- a monetary order of \$33,600.00 for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

The landlord's agent, the landlord's lawyer, and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 49 minutes from 1:30 p.m. to 2:19 p.m.

All hearing participants confirmed their names and spelling. The landlord's lawyer and the tenant both provided their email addresses for me to send copies of this decision to both parties after this hearing.

The landlord's agent confirmed that he co-owns the landlord company ("landlord") named in this application, with his wife. He said that the landlord's lawyer had permission to represent him, his wife, and the landlord. He said that the landlord owns

the rental unit. He provided the rental unit address. He identified the landlord's lawyer as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed them that I could not provide legal advice to them or represent them as their agent or advocate. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle both applications, and they wanted me to make a decision. Both parties declined to settle their applications, despite being offered multiple opportunities at the beginning and end of this hearing.

I cautioned the tenant that if I dismissed her application without leave to reapply, she would receive \$0. The tenant repeatedly affirmed that she was prepared for the above consequences if that was my decision.

I cautioned the landlord's agent and the landlord's lawyer that if I dismissed the landlord's application, it would receive \$0. The landlord's agent repeatedly affirmed that the landlord was prepared for the above consequences if that was my decision.

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that landlord was duly served with the tenant's application.

The tenant said that she received a letter from the landlord's lawyer, summarizing the landlord's application, a copy of the lease, and work contracts from the landlord. She said that she did not receive any RTB hearing documents from the landlord.

The landlord's lawyer stated that the landlord served a copy of the landlord's application for dispute resolution hearing package to the tenant on March 23, 2023, by way of registered mail. He provided the address where the mail was sent, and the tenant confirmed that was her correct address. He provided a Canada Post tracking number

verbally during this hearing. The Canada Post website indicates that the mail was signed and delivered on March 24, 2023. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application on March 28, 2023, five days after its registered mailing.

I informed both parties that I would consider the landlord's application at this hearing and in my decision. The tenant did not dispute same. I notified them that the tenant was deemed served with the above application, including the RTB documents, which she also received with her own application. I informed them that the tenant had notice of the landlord's claims in the documents that she acknowledged receiving from the landlord. Both parties affirmed their understanding of same.

Pursuant to section 64(3)(c) of the *Act*, I amend both parties' applications to include the legal name of the landlord and to remove the name of the landlord's agent's wife, who was named personally as a landlord-respondent party. Both parties consented to the amendment regarding the legal name of the landlord. I find no prejudice to either party in making both amendments.

Throughout this hearing, I repeatedly cautioned the tenant about interrupting and speaking at the same time as me and the landlord's lawyer, and not allowing me to speak, answer her questions, or provide information. The tenant continued with the above behaviour, throughout this hearing, despite my warnings. However, I allowed the tenant to attend this full hearing, in order to present her submissions and evidence regarding her application, and to respond to the landlord's application.

#### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the tenant entitled to a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of both parties' claims and my findings are set out below.

The landlord's lawyer and the tenant agreed to the following facts. This tenancy began on November 15, 2013 and ended on April 30, 2022. Monthly rent in the amount of \$1,900.00 was payable on the first day of each month. No security or pet damage deposits were paid by the tenant to the landlord. Multiple written tenancy agreements were signed by both parties, for the tenant to occupy the rental unit. Multiple separate employment agreements were signed by both parties, as the tenant was employed by the landlord as a property manager at the rental property.

#### Landlord's Application

The landlord's lawyer made the following submissions. This was a longstanding dual business relationship. There was a property manager agreement and a tenancy agreement. From 2013 to 2021, the arrangement was clear. The tenant owed rent to the landlord, pursuant to the tenancy agreement. The landlord owed a salary to the tenant, under the property management agreement. The property management agreement paid a higher amount than the rent, so the tenant was paid a difference for the set off by the landlord. Both parties agreed verbally and in writing. The rent in the tenancy agreement was increased yearly, as was the salary in the property management agreement. The tenant was only paid the difference for 9 years. There was no fraud, deception, or unilateral actions by the landlord. The tenant signed the agreements and verbally agreed as well. The tenant's grandchildren were added as occupants on the tenancy agreement. The rent increases began in 2017. The rent and salary changes were logically increased with each other. The landlord completed upgrades to the rental unit. The landlord also offered the tenant bonuses for her employment from between \$250.00 to \$1,500.00 over the years.

The landlord's lawyer made the following submissions. There were no illegal rent increases. The tenant did not pay any rent to the landlord. The landlord paid the tenant the difference between the rent and the salary. The tenant was only paid the set off, so she did not pay any rent in practicality. There are tax statements provided by the landlord for the payment to the tenant each year for her salary. The tenant was paid what she was owed. The tenant now claims that she overpaid rent, which was ok for 9 years prior. Problems began in September 2021, when the tenant provided a notice to end tenancy and resigned from her employment as a property manager. The tenant provided notice to move by November 15 and then tried to withdraw the notice, which is not permitted. The landlord filed an application in December and the hearing occurred

in March. The tenant vacated on April 30, 2022, as per the previous decision by the arbitrator. The tenant overstayed at the rental unit, no rent was paid during that time, and the tenant was not paid a salary because she stopped working in September 2021. The landlord seeks 7.5 months of rent between September 15, 2021 and April 30, 2022 of \$1,900.00 per month in rent, totalling \$14,250.00 in rent. The landlord only filed this claim because the tenant filed her claim against the landlord, first.

The tenant testified regarding the following facts. The landlord cannot cancel the lease. The rent increases were illegal. She does not dispute that she owes rent from November 15, 2021 to April 30, 2022. She gave 60 days' notice, as per her employment contract, to stop working. The 4% rent increase is all that is allowed by the RTB. The landlord withheld the rent and did not pay the salary. She began her job in 2017 and worked 7 days per week. She did not ask for the renovations to her rental unit by the landlord and she provided text messages showing that the landlord wanted to use her unit as a show suite. She should never have exposed her rental unit, but she did so under "duress," along with the contracts that she signed because she was worried that she would be fired from her job and removed from the rental unit if she did not sign the agreements. The landlord's agent showed up to her jobs and "bullied" her, "harassed" her, and "creeped" around. She was paying \$1,950.00 in rent to the landlord. She agrees that she owes 7.5 months of rent from September 15, 2021 to April 30, 2022, to the landlord. She agreed that her rent was \$1,900.00 per month, but her rent should have been \$1,335.00 per month, based on the legal rent increases, that she calculated as per the RTB website. She provided 60 days notice on September 15, but the landlord did not let her work as of September 17.

The tenant stated the following facts. She reported the bullying and harassment by the landlord's agent to the police, but they did not charge him criminally, claiming it was an RTB issue. She knows that she has 2 years to file any claims against the landlord. She has been under "duress" since 2017. The landlord's agent did not threaten her life, just her job and her home. She knew that she would be removed from the property in 24 hours and fired, so that is why she did not dispute the rent increases at the RTB. She did not dispute the rent increases after she quit her job in September 2021 because she was still living at the rental unit, and she was worried about being kicked out of her home. She did a lot of extra work for the landlord and was not paid for it. Once she left the rental unit, she knew that she could file within 2 years period. Her grandkids were abandoned, and she wanted to deal with their health and safety. She relies on the Act to support her. She provided sufficient evidence of 3 leases showing her 2018 rent was increased 3 times period. There were extenuating circumstances regarding the

landlord's demands. She was only supposed to work 40 hours per month but ended up working 40 hours per week for the landlord.

The landlord's lawyer made the following submissions in response. The landlord's agent denies any duress, bullying, and harassment of the tenant for 9 years. The tenant was never pressured to sign any agreements. The tenant repeatedly entered mutual agreements with the landlord and asked for them, but claims she was under duress.

The tenant testified regarding the following facts in response. The landlord withheld the rent. The landlord lied saying that she did not pay any rent. She was not paid a salary. She only got \$250.00 as payment from the landlord.

### *Tenant's Application*

The tenant testified regarding the following facts. She provided sufficient evidence of her application. She provided contracts and an outline regarding the law. She has nothing else to say. The RTB knows the law and will make a fair and reasonable decision. She provided 500 documents as evidence.

The landlord's lawyer made the following submissions. The landlord disputes the tenant's entire application. This was already discussed previously at this hearing. This was a mutual arrangement. The tenant is not owed anything by the landlord. The tenant made no rent payments to the landlord, and nothing was withheld by the landlord. The tenant was paid the difference between her rent and salary. It was ok for nine years but when there was bad blood between the parties, the tenant filed her application after the end of her tenancy. The tenant did not provide any receipts or invoices of rent payments.

The tenant stated the following facts in response. The landlord's position is "just baloney." The landlord withheld the money in the contract for rent. The landlord cannot withhold the rent. The tenant is owed a salary. It is hard to get references for a tenancy. This is not the first or last landlord to do this. The tenant can provide tens of thousands of documents more, if this hearing is postponed and the arbitrator wants more documents. The tenant should not have to provide her personal bank documents. This is one of many hearings with the landlord's agent and his wife. The tenant had sufficient time to provide her evidence, since she filed her application in August 2022.

## Analysis

### Credibility

I found the landlord's lawyer to be more credible, as compared to the tenant. He provided his submissions in a calm, candid, forthright, and consistent manner. I found his submissions to be convincing, credible, and consistent. His submissions remained consistent and did not change based on the questions being asked.

Conversely, I found the tenant provided her testimony in an unclear, confusing, inconsistent, upset, and agitated manner. I found her testimony to be less convincing and less credible. I found her testimony changed based on the questions being asked and it was inconsistent and confusing. For example, she repeatedly changed her position regarding the amount of rent she owed and the time periods for same. From the beginning of this hearing, she was upset that the landlord's agent showed up rather than his wife. She was also upset that the landlord's lawyer appeared at this hearing because she claimed that she was not given any prior notice about it.

As noted above, the tenant repeatedly argued with me and interrupted me and the landlord's lawyer throughout this hearing. I provided her with multiple opportunities to present her submissions and responses, during this hearing. I provided explicit directions at the outset and repeatedly throughout this hearing that neither party should interrupt each other or myself because I was unable to hear properly, when more than one person was speaking at a time. The tenant confirmed that she understood my instructions and had no questions. However, she continued to interrupt me and the landlord's lawyer throughout this hearing.

### Burden of Proof

I informed both parties of the following information at the outset of this hearing. Both parties, as the applicants, have the burden of proof, on a balance of probabilities, to prove their applications and monetary claims. The *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the applicants to provide evidence of their claims, in order to obtain monetary orders. Both parties affirmed their understanding of same.

Both parties received application packages from the RTB, including instructions regarding the hearing process. Both parties received documents entitled "Notice of

Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing their applications. These documents contain the phone number and access code to call into the hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days from this hearing date, to issue a written decision to both parties. Both parties affirmed their understanding of same.

Both parties received detailed application packages from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the applicants to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the applicants to provide sufficient evidence of their claims, since they chose to file their applications on their own accord.

#### Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

##### *7.4 Evidence must be presented*



*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

#### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

#### *7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claims. To prove a loss, the applicants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the respondents in violation of the Act, Regulation or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the applicants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

#### **C. COMPENSATION**

*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.**

...

#### **D. AMOUNT OF COMPENSATION**

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

On a balance of probabilities and for the reasons stated below, I make the following findings.

#### **Landlord's Application**

Section 26 of the *Act* requires the tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, unless the tenant has an Arbitrator's order to deduct rent or the tenant has paid for emergency repairs that can be deducted from rent, in accordance with section 33 of the *Act*. I find that the tenant did not have any entitlement to deduct rent, as per the above.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I award the landlord \$14,250.00 total for unpaid rent from September 15, 2021 to April 30, 2022. I find that the landlord is entitled to rent of \$1,900.00 per month, for the above period of 7.5 months, which totals \$14,250.00. I find that the tenant occupied the rental unit during the above time period and did not pay rent to the landlord, nor was she employed by the landlord during that time to receive a salary set-off from the landlord.

The tenant testified that she did not pay rent and that she owed rent to the landlord for the above time period, while she occupied the rental unit, and she was not employed by the landlord as a property manager.

The tenant testified that her rent was \$1,900.00 during the above time period. She claimed that the landlord illegally increased the rent, she signed her tenancy agreements under “duress,” and she did not dispute the illegal rent increases until after her tenancy was over, because she was worried about losing her job and rental unit. She claimed that her rent should have been \$1,335.00 according to calculations she made, based on the allowable *Regulation* amount increases, on the RTB website.

Both parties provided copies of written tenancy agreements for this rental unit and tenancy. The latest tenancy agreement states that the tenant owes rent of \$1,900.00 by the first day of each month, to the landlord, for a fixed term from January to December 2021, after which it became a month-to-month tenancy. Therefore, I find that the tenant owed rent of \$1,900.00 per month, to the landlord, from September 2021 to April 2022, as per the above tenancy agreement.

I find that the tenant voluntarily signed and agreed to multiple written tenancy agreements, where her rent was increased by the landlord, along with increasing additional occupants in the rental unit. I find that the tenant was not under duress. I find that the tenant paid the rent increases as per the tenancy agreements, for a period of 9 years during her tenancy at the rental unit, without complaint and without filing RTB applications to dispute any rent increases. I find that the tenant did not dispute any rent increases or file any RTB applications for same, even after she gave notice to vacate the rental unit and quit her job in September 2022, when there was no threat to her job or her home. I find that the tenant agreed to pay a higher rent in writing, as is permitted by section 43 of the *Act*.

As the landlord was successful in its application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

I issue a monetary order for \$14,350.00 total to the landlord against the tenant.

#### *Tenant's Application*

I find that the tenant failed to sufficiently present her application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the tenant failed to sufficiently review, reference, and explain her claims and the documents she submitted in support of her application.

This hearing lasted 49 minutes, so the tenant had ample time and opportunity to present her application and respond to the landlord's evidence. I repeatedly asked the tenant if she had any other information to add and if she wanted to respond to the landlord's submissions. I repeatedly asked the tenant about her claims and evidence.

I dismiss the tenant's application for \$33,600.00, without leave to reapply. The tenant did not provide the above amount until I asked her specifically about it, since it was indicated in her online RTB application.

Based on the description provided by the tenant in the RTB online dispute access site, she stated the following regarding this claim:

*"Illegal rent increases: see attached leases - No 90 day notice/increased more than legally allowed % -multiple leases in 2018/cannot cancel lease to increase rent - leases cancelled to increase -rent increases 2020/2021 despite provincial ban"*

During this hearing, the tenant did not provide a breakdown of what items she was seeking, the amounts of same, or why she was seeking same. The tenant did not review or explain any documents that she submitted, including any receipts, invoices, estimates, quotes, bank statements, or other such information.

The tenant failed to provide sufficient testimonial evidence of what losses she suffered, the amounts of such losses, and if, when, where, or how she expended any money for losses. She did not review or explain the documents she submitted with her application. She did not point me to specific documents, provisions, pages, or other such information, during this hearing. She simply mentioned providing 500 documents for this hearing but did not review, reference, or explain them in any detail during this hearing. The landlord disputed the tenant's entire application.

As noted above, I found that the tenant voluntarily signed multiple written tenancy agreements, where her rent was increased by the landlord, she was not under duress, and she paid the rent increases as per the tenancy agreements, for a period of 9 years during her tenancy at the rental unit, without complaint and without filing RTB applications to dispute any rent increases. I find that the tenant did not dispute any rent increases even after she gave notice to vacate the rental unit and to quit her job in September 2022, when there was no threat to her job or her home. I find that the tenant agreed to pay a higher rent in writing, as is permitted by section 43 of the *Act*.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is granted.

I issue a monetary order in the landlord's favour in the amount of \$14,350.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's entire application is dismissed without leave to reapply.

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: May 11, 2023

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Residential Tenancy Branch