# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL; MNDCT, MNSD, FFT

Introduction

This hearing dealt with the landlord's application, filed on May 13, 2023, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $3,510.00 for unpaid rent, utilities, and compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*"), or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of $1,125.00, pursuant to section 38; 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 November 2, 2023, pursuant to the *Act* for:

- a monetary order of $1,125.00 for compensation for damage or loss under the *Act*, *Regulation,* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the tenant's security deposit of $1,125.00, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for his application, pursuant to section 72.

The landlord's two agents, "landlord GH" and "landlord BB," 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 60 minutes from 1:30 p.m. to 2:30 p.m.

All hearing participants confirmed their names and spelling. Landlord GH and the tenant both provided their email addresses, for me to send copies of this decision to both parties.

Landlord GH stated that he is a property manager, employed by the landlord company ("landlord") named in both applications. He said that the landlord is an agent for the owner. He said that he had permission to represent the landlord and the owner. He provided the rental unit address. He identified himself as the primary speaker for the landlord at this hearing. Landlord BB agreed to same.

Landlord BB stated that he is a senior property manager, employed by the landlord. He said that he had permission to represent the landlord and the owner.

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 that they would not record this hearing.

Landlord GH removed his telephone from speakerphone because it was causing echoing and feedback, making it difficult for me to hear properly.

I informed the tenant that I had difficulty hearing him because his telephone line kept cutting in and out. Landlord GH said that he had difficulty hearing the tenant as well. The tenant said that he was calling from overseas and he would not take any responsibility for any interference on his telephone line. I asked the tenant to repeat information, so that I could hear him properly.

Preliminary Issues – Hearing and Settlement Options, Service of Documents

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties affirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications. Both parties were given multiple opportunities to settle at the beginning and end of this hearing but declined to do so.

I cautioned the landlord's agents that if I dismissed the landlord's application without leave to reapply, the landlord would receive $0. Landlord GH affirmed that the landlord was prepared to accept the above consequences if that was my decision.

I cautioned the tenant that if I granted the landlord's entire application, the tenant would be required to pay the landlord up to the full amount of the landlord's application. The tenant affirmed that he was prepared to accept the above consequences if that was my decision.

I cautioned the tenant that if I dismissed his entire application without leave to reapply, he would receive $0. The tenant affirmed that he was prepared to accept the above consequences if that was my decision.

I cautioned the landlord's agents that if I granted the tenant's entire application, the landlord would be required to pay the tenant up to the full amount of his application. Landlord GH affirmed that the landlord was prepared to accept the above consequences if that was my decision.

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

Issues to be Decided

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

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation,* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to the return of his security deposit?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my summaries and findings are set out below.

Landlord GH and the tenant agreed to the following facts. This tenancy began on December 16, 2022, and ended on April 30, 2023. Monthly rent in the amount of $2,250.00 was payable on the first day of each month. A security deposit of $1,125.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on April 30, 2023, by way of the move-out condition inspection report. The tenant did not provide written permission for the landlord to retain any amount from his security deposit.

*Landlord's Application*

Landlord GH made the following submissions. This was a fixed term tenancy, that was supposed to end on December 31, 2023. The tenant provided a notice to vacate, which was sent on March 30, 2023. The landlord told the tenant that the notice was given during the fixed term tenancy to end it early. The tenant was subject to "penalties," including a liquidated damages fee for the cost to re-rent the unit. The tenant was also subject to other fees, including rent for the following month of May 2023. The tenancy agreement says that a rent loss for the months left in the fixed term tenancy can be issued against the tenant, if he moves out early and the rental unit is not rented during that time. The rental unit was vacant during May 2023, and new tenants moved in on June 1, 2023, as per their tenancy agreement. The landlord seeks the filing fee and a moving fee. The landlord resolved the tenant's complaints during his tenancy.

The tenant testified regarding the following facts. There was no communication from the landlord after the tenant gave notice to vacate. The landlord has not provided any evidence at all that it advertised the rental unit or that it was vacant. The tenant provided "significant evidence" that the landlord did not resolve his complaints, so he vacated the rental unit. The advertisement invoice from the landlord does not show the rental unit address. The screenshot from the landlord does not show the rental unit address. The same advertisement was used in May, but the prices were different. The landlord provided no reasons that it "jacked up the price." The advertisement shows the

date of April 30, but the notice that the tenant provided was March 31, one month prior. It is impossible that the landlord did not show or rent the unit in that area. The April 4 invoice is questionable. The landlord provided invoices from April 28 and April 30. The invoice was issued by the landlord with its own company name. The listing agent fees are different on the two invoices. One amount is higher than the other. The landlord has not been "honest" or made efforts to re-rent the unit. Residential Tenancy Policy Guideline 5 shows that the landlord has a duty to minimize its loss and provide a reasonable rent price and show that they have done so, for a similar rental unit. The tenant provided notice to vacate on March 31, but no one contacted the tenant to show the rental unit. The landlord made no efforts and used the same advertisement. There are no move-in or move-out fees allowed under the *Act*. The patio door was not aligned, the laminate floor was leaking and was not fixed, and there was an overflow of hydrogen sulphide gas. The tenant provided evidence of his communications. The landlord breached the tenancy agreement, it did not provide a rental unit according to health, safety, or housing standards, and no repairs were done. The tenant disputes the landlord's entire application.

Landlord GH stated the following in reply. The landlord provided evidence of rental advertisements from April 4, on a rental website, and there were no unit numbers specified but the floor plan and the price were the same. This was three days after the tenant gave notice to vacate. The rent invoice shows two charges, one for the general advertisement for the building, and the second featuring the listing of the specific rental unit. The April 30 date is because the invoices are given at the end of each month. The tenant posted notices on his door regarding the rental unit and issues with sewage smell, so it impeded the landlord's ability to show and re-rent the unit. The landlord sent the tenant emails on April 26 and 30, regarding the above issues. The landlord provided evidence that the rental unit was vacant in May.

*Tenant's Application*

The tenant testified regarding the following facts. The tenant viewed the rental unit before moving in December. The patio door was misaligned, and the tenant asked the landlord to fix it in October and November. The landlord promised to get the work done before the tenant moved in. For the first issue, the patio door had a big gap on the side and the top, and there was construction noise. The tenant provided evidence of communications with the landlord, and the landlord did not fix the issue. The landlord used a "bandage" fix by using sealant, but it did not seal the noise or the air, and it was "unprofessional." The above issue was a problem from December 16 to April 30. The tenant asked for his money back. The second issue was the sewage smell, which

changed in intensity. It was present to the last day of tenancy. The tenant requested that the landlord repair the bathtub drain and overflow vent in December. The landlord brought a plumber, and it reduced the intensity of the smell but did not fix it. The tenant called different companies, who said that the pipeline could be inspected with a small camera. The tenant provided the name of a local company, but the landlord refused to address it. The landlord's work did not meet good repair and safety standards. The tenant took out the air vent in the bathroom and closed the bathtub drain. The third issue was the laminate floor, which was leaking colour or the scratch resistant top surface. It marked the clothes and socks with a grey colour. The landlord did not address the issue. The landlord failed to provide the rental unit according to health and safety standards and good repair. The tenant provided evidence of correspondence, where he tried to resolve the issue.

The tenant testified regarding the following facts. In January, the landlord used a liquid plumber treatment. On February 14, the tenant sent a breach letter to the landlord. On March 31, the tenant provided a notice to vacate. On April 30, the tenant vacated the rental unit. Section 28 of the *Act* entitles a tenant to a loss of quiet enjoyment. The landlord was running a construction business next to the tenant's patio door and the landlord's job was to seal the noise before the tenant's tenancy began. It reduced the value of the tenant's rental unit. Residential Tenancy Policy Guideline 6 allows compensation for loss of property, quiet enjoyment, and health and safety standards. The construction was from 7:00 a.m. to the late afternoon everyday. There was construction noise and the tenant posted notices on his unit door, to see if any other tenants had the same problems. He found out that other tenants had issues that were not repaired by the landlord. The tenant tried to contact local companies and the fire department, but no one would "claim responsibility." The sewage companies could not come to look at the rental unit because they needed the landlord's approval. The landlord was "negligent," had an "attitude," and told the tenant that he could move out if he did not like it. The fixed term tenancy ended because the landlord breached the tenancy agreement and did not repair the tenant's issues. Section 45 of the *Act* allows the tenant to provide a notice to move out.

Landlord GH made the following submissions. Regarding the patio door, the tenant was aware of the issue prior to moving in, but the landlord was not aware before December 16. On the move-in condition inspection report, there is a picture of the patio door, where you can see the seal around the whole perimeter of the door. The tenant may have reported the issue later, but it was not at move-in. Regarding plumbing and the sewage smell, the landlord provided emails about breaking the lease. The first email between the parties was on December 22, 2022, which outlined an issue with the patio

door seal, the floor, and the front door. There was no mention of the sewage issue. The landlord treated it with different products and there was no smell. The rental unit was occupied as of November 2021, a year before the tenant moved in. The rental unit has been occupied since the tenant moved out. There have been no issues reported before or after the tenant lived there, regarding sewage smell. Regarding the third issue of the floor, the landlord provided emails. The flooring was brand new in 2021 and passed inspections. There are no reports or claims of dirt or residue on the flooring. The listing agent fees in the landlord's application are for a listing invoice and a commission invoice. There are emails showing the landlord gave notice to enter and the construction crew repaired the patio door.

The tenant stated the following in reply. The patio door was not fixed, it was not aligned, and there is correspondence from December. A week after the December 22 email, the tenant told the landlord about the sewage smell. The construction crew could not align the patio door and they took out the sealant.

Analysis

**Burden of Proof**

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 both parties to provide sufficient evidence of their applications and claims, in order to obtain monetary orders.

Both parties received application packages from the RTB, including instructions regarding the hearing process. They received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their applications and receiving the other party's application. These documents contain the phone number and access code to call into this hearing.

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

> ***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.***

- ***Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at 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. I informed both parties that I had 30 days to issue a written decision after this hearing. They affirmed their understanding of same.

Both parties received detailed application packages from the RTB, including the NODRP documents, with information about the hearing process, notices to provide evidence to support their application, and links to the RTB website. It is up to both parties to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to both parties 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:

> *6.6 The standard of proof and onus of proof*
>
> *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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*
> …

*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 the 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.***

**Landlord's Application**

I find that the landlord's agents did not sufficiently present the landlord's application, claims, and evidence, as required by Rules 6.6 and 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, as per Rules 7.17 and 7.18 of the RTB *Rules.* The landlord's agents failed to sufficiently review and explain the landlord's claims and the documents submitted in support of its application.

This hearing lasted approximately 60 minutes total. The landlord's agents had ample time and multiple opportunities to present its application and evidence. I repeatedly asked the landlord's agents if they had any other information to present and to respond to the tenant's evidence. Two landlord agents attended this hearing to present the landlord's application.

The landlord submitted numerous documents with its application, but the landlord's agents failed to review or explain them in sufficient detail with references to specific page numbers, provisions, paragraphs, sections, document names, or other specific information.

The landlord had ample time of almost 7 months, from filing its application on May 13, 2023, to this hearing date of December 4, 2023, to provide sufficient evidence and prepare for this hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for $3,510.00, without leave to reapply. This includes $2,250.00 for a loss of

rent, $35.00 for utilities, $100.00 for moving fee, and $1,125.00 for liquidated damages. The landlord did not provide the above amounts and information during this hearing. The above amounts and explanations were taken directly from the landlord's application on the online RTB dispute access site.

I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlord stated the following on the online RTB dispute access site, to describe its entire application:

> *"The rent of $2,250 and utility fee of $35, both for May 2023 as noted on the Moveout charge form. As outlined in the Tenancy Agreement Additional Terms, Term 3 "Tenant will also be responsible for any monthly rent for any months remaining on the fixed term, until the Premises are re-rented"*
>
> *This amount is the moving fee of $100, and the Liquidated damages fee of $1,125. As outlined in the Tenancy Agreement Additional Terms, Term 3 '...if the Tenant ends the fixed term tenancy prior to the end of the fixed term....the Tenant will pay to the landlord the sum of $1,125.00 as liquidated damages. Such liquidated damages are an agreed pre-estimate of the Landlord's cost of re-renting the Premises...' "*

*Utilities and Moving Fee*

As noted above, the landlord described the utilities and moving fee as follows, on the online RTB dispute access site:

> *"utility fee of $35, both for May 2023"*
> *"This amount is the moving fee of $100"*

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for utilities of $35.00 and a moving fee of $100.00, without leave to reapply.

The landlord's agents did not sufficiently present or explain any utility bills, amounts, time periods, usage, or other such information, during this hearing. They did not sufficiently point me to any receipts to indicate that the landlord paid any utilities on behalf of the tenant. They did not sufficiently point me to any documents, including specific references to page numbers, provisions, paragraphs, sections, or other such

details. They did not indicate the amount of $35.00 during this hearing. I find that the landlord failed to provide sufficient evidence for this claim of utilities of $35.00 for May 2023.

The landlord's agents did not sufficiently present or explain any moving fee, time periods, or other such information, during this hearing. They did not sufficiently point me to any receipts to indicate that the landlord paid any moving fees on behalf of the tenant. They did not sufficiently point me to any documents, including specific references to page numbers, provisions, paragraphs, sections, or other such details. I find that the landlord failed to provide sufficient evidence for this moving fee claim of $100.00.

*Rent Loss*

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.

However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. I find that the landlord failed to show how it sufficiently mitigated its losses in efforts to re-rent the unit.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for a loss of rent of $2,250.00, without leave to reapply.

The landlord applied for $2,250.00 in its application. The landlord's agents did not provide this amount for this claim, during this hearing. This amount was taken directly from the landlord's application on the online RTB dispute access site.

I find that the landlord's agents failed to provide sufficient testimonial evidence about the specific details given in any rent advertisements, if or how many inquiries were made for re-rental, how many showings were done, when any showings were done, if or how many applications were received, how many applications were accepted or rejected, and other such information.

I find that the landlord's agents failed to provide sufficient testimonial evidence to indicate the rent amount per month, the term or length of the tenancy, or other such information for the new tenants who they said occupied the rental unit in June 2023.

*Liquidated Damages*

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for liquidated damages of $1,125.00, without leave to reapply.

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times.

The landlord's agents did not provide sufficient testimonial evidence regarding liquidated damages, to show how the $1,125.00 was a genuine pre-estimate of the loss. In fact, landlord GH described it as a "penalty" against the tenant, in his testimony during this hearing. As noted above, liquidated damages cannot constitute a penalty, or it is unenforceable.

Also noted above, I find that the landlord's agents failed to provide sufficient testimonial evidence about the specific details given in any rent advertisements, if or how many inquiries were made for re-rental, how many showings were done, when any showings were done, if or how many applications were received, how many applications were accepted or rejected, and other such information. I find that the landlord's agents failed to provide sufficient testimonial evidence to indicate the rent amount per month, the term or length of the tenancy, or other such information for the new tenants who they said occupied the rental unit in June 2023.

*Filing Fee*

As the landlord was unsuccessful in its application, I find that it is not entitled to recover the $100.00 filing fee paid for its application, from the tenant. This claim is also dismissed without leave to reapply.

**Tenant's Application**

I find that the tenant did not sufficiently present his application, claims, and evidence, as required by Rules 6.6 and 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, as per Rules 7.17 and 7.18 of the RTB *Rules.* The tenant failed to sufficiently review and explain his claims and the documents submitted in support of his application.

This hearing lasted approximately 60 minutes total. The tenant spoke for the majority of the hearing time, as compared to the landlord's agents. The tenant had ample time and multiple opportunities to present his application and evidence. I repeatedly asked the tenant if he had any other information to present and to respond to the landlord's evidence. Two landlord agents attended this hearing to present the landlord's application.

The tenant submitted numerous documents with his application, but failed to review or explain them in sufficient detail. The tenant provided document and page references but failed to sufficiently explain his documents in specific detail and how they related to his monetary claims.

The tenant had ample time of over one month, from filing his application on November 2, 2023, to this hearing date of December 4, 2023, to provide sufficient evidence and prepare for this hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for $1,125.00 for compensation for damage or loss, without leave to reapply.

I find that the tenant failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

*Monetary Compensation*

Residential Tenancy Policy Guideline 8 defines material terms (my emphasis added):

> ***A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*** *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the*

*term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.* ***It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.***

***The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question****. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the* ***true intention of the parties in determining whether or not the clause is material.***

***To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:***

- ***that there is a problem;***
- ***that they believe the problem is a breach of a material term of the tenancy agreement;***
- ***that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and***
- ***that if the problem is not fixed by the deadline, the party will end the tenancy.***

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action****, the party alleging the breach bears the burden of proof.*** *A party might not be found in breach of a material term if unaware of the problem.*

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

> *28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from* ***unreasonable disturbance****;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*

> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

> *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. This includes situations in which the* ***landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps*** *to correct these.*
>
> ***Temporary discomfort or inconvenience does not constitute a basis*** *for a breach of the entitlement to quiet enjoyment.* ***Frequent and ongoing interference or unreasonable disturbances may form a basis*** *for a claim of a breach of the entitlement to quiet enjoyment.*
>
> *In determining whether a breach of quiet enjoyment has occurred, it is necessary to* ***balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.***

The tenant stated the following on the online RTB dispute access site, regarding his claim for compensation for damage or loss:

> *"LOSS OF QUIET ENJOYMENT According to Section 28 of the Residential Tenancy Act (RTA), the principle of "quiet enjoyment" ensures that every BC tenant has the right to: -reasonable privacy -freedom from unreasonable disturbances A violation or "breach" of quiet enjoyment is most commonly associated with unreasonable noise. Landlord did not fix leaking patio door while did run construction of new building right next to tenant patio door. Continuous construction from 7am until late afternoon."*

I dismiss the tenant's application for compensation for damage or loss of $1,125.00, without leave to reapply. The tenant did not provide the above amount during this hearing. He did not review any monetary order worksheet or monetary breakdown during this hearing. The above amount was taken directly from the tenant's application on the online RTB dispute access site. During this hearing, the tenant did not

sufficiently explain why he chose the above amount, how it represents his losses, what losses he suffered or paid for, or any receipts to show that he paid for any losses, or other sufficient information. I find that the tenant failed to provide sufficient evidence of the $1,125.00 claimed for a loss of quiet enjoyment.

I find that the tenant chose to move out of the rental unit of his own volition. The tenant testified that he viewed the rental unit prior to moving in and signing the tenancy agreement and he knew the patio door had an issue that needed to be repaired. He agreed that he knew about the issue in October and November 2022, before moving into the rental unit on December 16, 2022. The tenant could have refused to move in or sign the tenancy agreement, until the patio door was repaired first.

I find that the tenant failed to provide sufficient evidence that the patio door, construction noise, laminate flooring, sewage smell, or other issues breached any material terms of the tenancy agreement or constituted a loss of quiet enjoyment. I find that they were not substantial interferences, or frequent or ongoing disturbances. I find that they may have only been temporary discomforts or inconveniences, which do not constitute a basis for a breach of the entitlement to quiet enjoyment.

*Security Deposit*

During this hearing, the tenant did not state that he wanted the return of his security deposit of $1,125.00. This information and amount were obtained directly from the tenant's application on the online RTB dispute access site.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on April 30, 2023. The tenant provided a written forwarding address to the landlord on April 30, 2023. The landlord did not have written permission to retain any amount from the tenant's security deposit.

The landlord filed its application on May 13, 2023, which is within 15 days of April 30, 2023, the end of tenancy and forwarding address date. Therefore, the tenant is not entitled to the return of double the amount of his deposit of $1,125.00.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to a return of the original amount of his security deposit of $1,125.00, from the landlord.

Interest is payable on the tenant's security deposit of $1,125.00, during the period of this tenancy. No interest is payable for the year 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1 to December 4, 2023, since the date of this hearing is December 4, 2023.

Although the date of this decision is December 5, 2023, this is not within either party's control. This results in $20.31 interest on $1,125.00, based on the RTB online deposit interest calculator.

I find that the tenant is entitled to receive the original amount of his security deposit of $1,125.00, plus $20.31 in interest, totalling $1,145.31. The tenant is provided with a monetary order for $1,145.31 total, against the landlord.

*Filing Fee*

As the tenant was only partially successful in his application, I find that he is not entitled to recover the $100.00 filing fee paid for his application, from the landlord. This claim is also dismissed without leave to reapply.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of $1,145.31 against the landlord. 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 and enforced as an Order of that Court.

The remainder of the tenant's 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: December 05, 2023

Residential Tenancy Branch