Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZAM Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, OLC, RP, RR, LRE, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Manufactured Home Park Tenancy Act (the Act) on December 8, 2020, seeking:

- Repairs to the rental unit;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order restricting or setting conditions on the Landlord's right to enter the manufactured home site (the Site); and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on March 5, 2021, at 11:00 AM and was attended by the Tenant N.B. (the Tenant) and their advocate (the Advocate) as well as an agent for the Landlord A.K. (the Agent). All testimony provided was affirmed. As the Agent confirmed at the hearing that they had received a copy of the Application and the Notice of Hearing from the Tenant in accordance with the Act and the Rules of Procedure, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Due to time constraints and the complexity of the matters, the hearing was adjourned, and an interim decision was made on March 8, 2021. The reconvened hearing was set for March 10, 2021, at 2:00 PM, by mutual agreement at the hearing. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential

Tenancy Branch (the Branch) in the manner requested by them at the hearing. For the sake of brevity, I will not repeat here all of the matters covered in the interim decision and as a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on March 10, 2021, at 2:00 PM and attended by the same parties. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence, testimony, and submissions before me that were accepted for consideration in this matter in accordance with the Rules of Procedure, not all evidence, testimony and submissions have been reproduced here. In this decision I refer only to the relevant and determinative facts, evidence, issues, and submissions.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them by email at the email addresses listed in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

In the Application the Tenants named J.M., whose name I have stated on the cover page of this decision for reference, as a respondent, as they stated that they are an agent for the Landlord and can therefore be named as a party to the dispute.

J.M. did not appear at either hearing and the Agent, who is J.M.'s spouse, stated that only they are an agent for the Landlord, not J.M. As a result, the Agent argued that J.M. should not be named as a party to the dispute or as a respondent in the Application. The Tenant and Advocate disagreed, stating that J.M. is in fact an agent for the Landlord and has been properly named as a respondent and a party to the dispute.

Section 1 of the Act defines a landlord in relation to a manufactured home site, as any of the following:

- the owner of the manufactured home site, the owner's agent, or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;
- the heirs, assigns, personal representatives, and successors in title to a person referred to above;

- a person, other than a tenant whose manufactured home occupies the manufactured home site, who is entitled to possession of the manufactured home site, and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site; and
- a former landlord, when the context requires this.

Residential Tenancy Policy Guideline (the Policy Guideline) #48 states that parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named and Policy Guideline #26 states that agents may be named as a party to the dispute.

Although the Tenant and the Advocate argued that J.M. is an agent for the Landlord and therefore can be named as a party to the dispute, I am not satisfied that this is the case. The Agent stated that although they sometimes have J.M. complete work around the manufactured home park (the Park), like a contractor, as J.M. is their spouse, J.M. is not an agent for the Landlord and has no contractual obligations with the Landlord in relation to this tenancy, any other tenancies at the Park, or the Act. I also note that in the numerous previous decisions and orders before me from the Branch in relation to this tenancy, J.M. was named as a Respondent in only one decision dated September 23, 2020, and the associated interim decision dated July 16, 2020. Although the above noted decisions name J.M. as a respondent, there is no finding in either of these decisions that J.M. is an agent for the Landlord or an analysis upon which any such finding could be based. Further to this, none of the other decisions before me in relation to this tenancy contain any analysis or findings of fact in relation to whether J.M. is an agent for the Landlord. As a result, I am not satisfied that the matter of whether or not J.M. is in fact an agent for the Landlord was ever properly before an arbitrator and I therefore accept jurisdiction to decide this issue.

As stated above, in the numerous previous decisions and orders before me from the Branch in relation to these parties, J.M. was named as a Respondent in only one Interim Decision dated July 16, 2020, and the final decision and order(s) dated September 23, 2020, and no finding or analysis in relation to whether J.M. is an agent for the Landlord can be found in that, or any other decision, before me for consideration in relation to this tenancy. Further to this, during the hearings neither the Tenant nor the Advocate pointed me to any documentary evidence in support of their position that J.M. is an agent for the Landlord, other than the decisions and order(s) noted above, and I note that only the Agent or the corporate Landlord are named in correspondence before me for consideration between the parties in relation to the tenancy. Although the tenancy agreement was not before me, the parties were in agreement that it pre-dates

owner ship of the Park by the Landlord, and as a result, neither the Landlord nor any of the current agents are listed in it.

Based on the above, I am not satisfied, on a balance of probabilities, that J.M. is in fact an agent for the Landlord, as alleged by the Tenants and the Advocate, and I have therefore removed them as a named party to this dispute.

The hearing therefore proceeded against only the corporate landlord (the Landlord) named as the respondent in the Application, as all parties agreed that the Landlord had been properly named as a party to the dispute.

Preliminary Matter #2

Although the Advocate and Tenants sought an administrative penalty against the Landlord, I advised them that the first hearing that I have no authority under the Act to decide such a claim or to impose such a penalty, and provided them with information on how to seek an administrative penalty with the Branch, should they wish to do so.

Issue(s) to be Decided

Are the Tenants entitled to repairs to the rental unit?

Are the Tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to an order for the Landlord to comply with the Act, regulations, or tenancy agreement?

Are the Tenants entitled to an order for the Landlord to provide services or facilities required by the tenancy agreement or law?

Are the Tenants entitled to an order restricting or setting conditions on the Landlord’s right to enter the manufactured home site?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

There have been three previous decisions from the Branch, one interim decision, two corrections or clarifications, and one review consideration request, in relation to this tenancy with regards to the matter of a fence and the Landlord's right of entry to the Site. Although I have summarized the relevant decisions, orders, and findings of fact made in these decisions below, these decisions should be read in conjunction with this decision for a thorough understanding of the history of the matters which have given rise to this Application.

On November 6, 2019, a decision was rendered by an arbitrator at the Branch in response to an Application filed by the Tenants on September 4, 2019, seeking:

- An order suspending or setting conditions on the Landlord's right to enter the Site;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order for the Landlord to complete repairs to the unit, Site, or property;
- An order that rent be reduced for repairs, services, or facilities agreed upon but not provided;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The arbitrator dismissed the following claims with leave to reapply pursuant to rule 2.3 of the Rules of Procedure:

- An order suspending or setting conditions on the Landlord's right to enter the Site;
- An order that rent be reduced for repairs, services, or facilities agreed upon but not provided; and
- Compensation for monetary loss or other money owed.

The arbitrator made the following findings and orders in relation to the remaining claims. The arbitrator found that the Tenants had enjoyed exclusive possession of the disputed area, for the past 12 years, and that the Landlord was estopped from now relying on a site map for the Site and Park, in order to reduce the areas which the Tenants' have exclusive access to, and possession of, as part of their tenancy. The arbitrator therefore ordered that the Tenants remain entitled to continued use and possession of the

disputed area under their tenancy agreement and ordered the Landlord to provide such use and access to the Tenants.

The arbitrator also found that a fence, which enclosed the disputed area, had been removed unreasonably and prematurely by the Landlord or the agent(s), on or about August 8, 2019, and ordered the Landlord to replace the fence, at their own cost.

Despite the above, the arbitrator explicitly stated that the Landlord's right to access the site under section 23 of the Act remains unaffected. The arbitrator also awarded the Tenants recovery of the $100.00 filing fee, which they were authorized to deduct from future rent.

On November 8, 2019, the Tenants sought a clarification of the November 6, 2019, decision pursuant to section 71 of the Act, regarding when the fence was to be replaced. The arbitrator agreed that a clarification of the decision was required, and on November 12, 2019, they issued a clarification to the previous decision stating that the fence was to be replaced as soon as reasonably possible, and in any event, not later than December 31, 2019.

On April 24, 2020, a decision was rendered by a different arbitrator at the Branch in response to an Application filed by the Tenants on February 21, 2020, again seeking:

- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order for the Landlord to complete repairs to the unit, Site, or property;
- An order that rent be reduced for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

Although the Tenants had re-applied in relation to the fence, again seeking an order for the Landlord to provide services or facilities required by the tenancy agreement or law, and an order for the Landlord to complete repairs to the unit, Site, or property, the arbitrator determined that they had no authority to re-adjudicate those matters, as a decision with regards to the fence had previously been rendered by an arbitrator with the Branch wherein the Landlord was ordered to replace the fence by December 31, 2019. As a result, the arbitrator stated that the Landlord was expected to obey the previous order made in relation to the fence, which remains final and binding.

The arbitrator proceeded to hear and decide the matters related to the Tenants' request for a rent reduction and recovery of the filing fee, and found that the Landlord had

breached section 21 of the Act when they removed the fence in August of 2019 without authority to do so under the Act, resulting in a substantial loss in the value of the tenancy for the Tenants. The arbitrator found that the Tenants were therefore entitled to a $150.00 per month rent reduction for the loss of services and facilities, retroactive to August of 2019 when the breach of the Act occurred and the Tenants' losses began, and continuing on a monthly basis until such a time as the fence was replaced as previously ordered. The Tenants were granted a Monetary Order in the amount of $1,450.00 for the retroactive rent reduction and recovery of the $100.00 filing fee.

On May 7, 2020, the Landlord sought a correction to the April 24, 2020, decision pursuant to section 71 of the Act, arguing that an "obvious error" occurred in the rendering of the decision as they were not properly notified of the hearing by the Tenants or provided with the hearing information and access code, and therefore could not properly argue their case. As a result, they requested a new hearing. The arbitrator found that there was insufficient evidence that they had made an obvious error, inadvertent omission, or other error, and declined to correct the decision. The Arbitrator also found that the Agent was incorrectly attempting to seek a new hearing through the correction and clarification process, instead of the review consideration process set out under section 72 of the Act, and advised the Landlord that if they wished to seek a new hearing on the basis that they did not attend the original hearing for reasons beyond their control which could not be anticipated, they could seek a review consideration from the Branch.

On May 26, 2020, an Application for Review Consideration was received by the Branch form the Landlord in relation to the April 24, 2020, decision; however, the Application for Review Consideration required a correction before it could be accepted, as it did not contain the date upon which the decision and/or order to be reviewed was received by the Landlord. A corrected Application for Review Consideration was received by the Branch by email on June 2, 2020, wherein the Landlord sought a new hearing of the Application filed by the Tenants on February 21, 2020, on the basis that they were unable to attend the hearing for reasons beyond their control which could not be anticipated. On June 5, 2020, the arbitrator dismissed the Landlord's Application for Review Consideration on the basis that they had not filed the Application seeking the Review Consideration within the required legislative timeframes, and had not sought an extension to this deadline.

On June 22, 2020, an Application was filed by the Tenants seeking:

- An order suspending or setting conditions on the Landlord's right to enter the Site;

- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

On July 16, 2020, an interim decision was rendered in relation to this Application wherein the arbitrator ordered that the matter be adjourned to allow both parties a fair opportunity to be heard and that the hearing be reconvened at the date and time shown in the attached Notice of Hearing documents. The hearing was reconvened by conference call on August 25, 2020, before the same arbitrator and on September 23, 2020, a decision was rendered in relation to the Application. In the decision the arbitrator found that the matter of the rent reduction, and the Tenants' request to be allowed to deduct $1,450.00 from their rent in relation to an unpaid Monetary Order from the Branch, is res judicata, and therefore dismissed this portion of the Application without leave to reapply. The arbitrator also found that a replacement fence erected by the Landlord did not meet the definition of a repair or replacement as previously ordered and therefore violated the rights of the Tenants in relation to their use of the disputed area. The arbitrator ordered the Landlord to comply with the previous order dated November 6, 2019, that they replace the fence with permanent and secure fencing similar in height, material, and structure, to the previous fence, which allows the Tenants to use the disputed area as they did before the previous fence was removed. The arbitrator then granted the Landlord until October 31, 2020, to comply, and ordered that the Tenants' previously granted $150.00 rent reduction continue until the Landlord complied.

Lastly, the arbitrator dismissed the Tenants' Application seeking a further rent reduction for harassment and an order restriction or setting conditions on the Landlord's right to enter the Site with leave to reapply, as they were not satisfied that the Landlord had contravened the Act or the tenancy agreement in this regard. Despite this finding, the arbitrator reiterated that the Landlord was required to comply with section 22 of the Act in relation to protection of the Tenants' right to quiet enjoyment and section 23 of the Act in relation to entry to the Site. The arbitrator also granted the Tenants recovery of the $100.00 filing fee and made orders regarding replacement of a June 2020 rent cheque.

On December 8, 2020, the Tenants filed the Application before me for consideration, wherein they sought:

- Repairs to the unit, Site, or property;
- A rent reduction for repairs, services or facilities agreed upon but not provided;

- An order for the Landlord to comply with the Act, regulations, or tenancy agreement;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order restricting or setting conditions on the Landlord's right to enter the Site; and
- Recovery of the filing fee.

At the first hearing I sought clarification from the Tenant and Advocate on what the Tenants are seeking, as their Application lists numerous issues, a number of which have previously been decided by the Branch. The Tenant and Advocate stated that they are seeking authorization to have a fence installed, at the Landlord's expense, as the Landlord has repeatedly failed to comply with several previous decisions and orders from the Branch that a fence surrounding the Site be reinstalled, a Monetary Order to cover the cost of the fence installation, that the $150.00 rent reduction previously ordered continue until the fence has been reinstalled, and an order that the Landlord seek authorization from the Branch, in advance, for all future entries to the Site, as well as recovery of the filing fee.

The Tenant and advocate pointed to the numerous previous decisions and orders from the Branch, which I have summarized above, stating that despite the fact that the Landlord was ordered to replace a fence that was improperly removed by the Landlord or their agent(s) on or about August 8, 2019, the Landlord has yet to reinstall permanent and secure fencing similar in height, material, and structure, to the previous fence, which allows the Tenants to use the disputed area as they did before the previous fence was removed, as previously ordered by the Branch. The Tenant and Advocate argued that the Landlord's failure to install the fence since they were first order to do so on November 6, 2019, and their repeated failure to comply with subsequent orders and decisions from the Branch regarding reinstallation of the fence, demonstrates that the Landlord has no intention of reinstalling the fence as ordered. As a result, the Tenant and Agent sought authorization for the Tenants to have permanent and secure fencing similar in height, material, and structure, to the previous fence, installed at the Landlord's expense, if the Landlord has not reinstalled the fencing within two weeks after the date of the first hearing.

The Tenant and Advocate also sought a Monetary Order in the amount of $5,003.25, the anticipated cost for its replacement in a quote obtained by them, as it is clear that the Landlord has no intention of either replacing the fence, or complying with the previous decisions and orders of the Branch and the Tenants do not have the financial

means to replace the fence at their own costs and seek reimbursement from the Landlord at a later date. The Tenant and Advocate also stated that contractors in the area will not complete work for the Landlord without pre-payment, and sought leave to reapply for reimbursement of any costs incurred above $5,003.25 for the installation of the fencing in compliance with previous Branch decisions and orders.

Although the Agent did not disagree that the fence was required to be reinstalled as per previous decisions and orders from the Branch, they requested that the Landlord be permitted until April 30, 2021, to have it installed. The Agent stated that although the materials to reinstall the fence have been purchased by the Landlord, the fence has not yet been installed due to ground frost, which will make the installation of the fence difficult, if not impossible. The Agent also stated that even if the fence can currently be installed, the frozen ground will impact the security and longevity of the fencing.

The Advocate disagreed that that the ground temperature is currently such that a fence cannot be properly installed. The Advocate also argued that the Landlord has had ample opportunity to install the fencing, and is simply seeking to further delay its installation by claiming that the weather now prevents them from complying with the previous decisions and orders of the Branch. Further to this, the Advocate stated that even if the Landlord is granted until April 30, 2021, to reinstall the fence, it is unlikely that they will do so, given their past behavior.

When I asked the Agent why the fence was not previously reinstalled as ordered in the past 15 months, the Agent stated that life circumstances, such as the terminal illness of their parent, a serious health condition suffered by their spouse, and a serious and life-threatening health condition suffered by the Landlord, have prevented both they and the Landlord from acting diligently with regards to this matter and their duties under the Act. The Agent also stated that a lack of available contractors to do the work, and the Tenants' "intimidation" of contractors, has delayed the reinstallation of the fence.

The Tenant and the Advocate denied any intimidation on the part of the Tenants, and the Advocate stated that many contractors have remained available in the area for this type of work, even throughout the pandemic. The Advocate argued that the Agent is simply proffering unfounded excuses for they and the Landlord's failure to comply with the previous decisions and orders of the Branch.

Further to the above, the Agent stated that the $5,003.25 sought by the Tenants for replacement of the fence is excessive, as the Landlord has already purchased the fence

panels, and the quote they obtained for the reinstallation of the fence using these panels is only $683.20. A copy of this quote was submitted for my review.

With regards to access to the Site, the Tenant and Advocate stated that the Agent and J.K. have repeatedly breached section 22 and 23 of the Act, by entering the Site without proper notice, and contrary to the previous decision from the Branch dated September 23, 2020, wherein the Landlord was ordered to comply with sections 22 and 23 of the Act. The Agent and Tenant stated that the Landlord and/or the Agent, J.K., and persons authorized by the Landlord, have entered the rental unit on the following dates, without proper notice or permission under the Act:

- August 8, 2019, when the fence was initially removed;
- December 14, 2020, in relation to streetlight repairs and maintenance;
- May 5, 2020, May 8, 2020, and May 29, 2020, to spray paint a line on the ground, move the Tenants' personal possessions without consent, and to install temporary fencing; and
- October 2, 2020, to remove the previously erected temporary fencing.

The Advocate and Tenant stated that the Landlord and Agent failed on all occasions to give proper notice under the Act for entry and did not have the Tenants' consent to enter in the absence of proper written notice. The Advocate pointed to an email dated May 29, 2020, wherein A.K. states that they will be working on the area throughout the summer as they are able and as they see fit, and that this will be the only notice the Tenants will receive with regards to access to property owned by the Landlord. The Advocate argued that this email clearly shows that the Agent has no intention of complying with section 23 of the Act, as previously ordered. The Advocate also pointed to a notice of entry dated September 29, 2020, wherein the Agent stated that they will be entering the Site between 8:00 AM – 9:00 PM on weekdays between October 1, 2020 – October 30, 2020, for weedkilling, repairs to the shop adjacent to the rental unit, an possible excavating. The Advocate stated that this type of notice of entry cannot reasonably be construed to comply with section 23(b) of the Act, given that it encompasses every weekday for an entire month, rather than a set date or series of dates upon which the Landlord or their agents legitimately intended to access the Site for reasonable and lawful purposes. The Advocate stated that this notice left the Tenants in a perpetual state of readiness for entries to the Site, which never even occurred, for an entire month and that the Site was in fact entered on October 2, 2020, to remove the temporary fencing, before this notice of entry was even served on the Tenants, despite the date written on the notice of entry.

Although the Agent first stated that they had given proper notice for entry to the Site on December 14, 2019, they later acknowledged that they had not, stating that although they had called to advise the Tenants of the entry, there was no answer at their phone number. As justification for the failure to provide proper notice of entry, the Agent stated that the construction industry is crazy and they sometimes get very short notice of availability for work to be done, which in this case, related to streetlights for the Park and the digging of a trench through the Site. With regards to the May 5th and 8th 2020 entries, the Agent stated that they and their spouse J.K. were authorized to enter as it was an emergency, as water was coming into the foundation for the shop where all of the electrical for the entire Park is located. The Tenant and Advocate stated that no such emergency existed and that these entries were for ulterior purposes, as set out above. When I asked the Agent if they had submitted documentary evidence to corroborate their testimony that emergencies existed on May 5, 2020, and May 8, 2020, which would permit them to enter the Site without written notice or permission from the Tenants, such as proof of water ingress to the shop endangering the electrical systems for the Park, they stated that no such evidence exists, as they were too focused on the emergency to obtain such verification. When asked if an electrician, plumber, or other professional tradesperson had been called in relation to the emergencies on the above noted dates, they acknowledged that they had not.

The Agent disagreed with the Tenant and Advocate regarding the September 29, 2020, notice for entry to the Site, stating that it was reasonable, given that they did not know exactly when they would need entry as tradespeople can be difficult to schedule, and they were attempting to comply with the previous decisions and orders from the Branch by giving written notice.

With regards to the May 29, 2020, and October 2, 2020, entry to place and subsequently remove the temporary fence, the Agent also argued that no actual entry to the Site was required, as they could access the fence from common property outside of the Site. The Agent also disagreed with the Advocates assertion that the Landlord and Agent had continually breached section 23, stating that they have only accessed the rental unit once without proper notice or justification under section 23, which cannot reasonably be considered to be continual. In any event, the Agent also argued that a restriction requiring the Landlord to seek entry to the Site from the Branch would be detrimental to not just the Landlord but other tenants at the Park, given that all of the main electrical, water, and sewer lines for the Park run directly under the Site.

Although neither the Tenant nor the Advocate disagreed that the main electrical, water, and sewer lines for the Park run directly under the Site, the Advocate argued that there

are alternatives available to the Landlord to accessing the Site for maintenance of these services and facilities, such as running these lines in another location.

Although the Tenants sought a rent reduction as part of their Application, at the hearing they only sought confirmation that the already ordered $150.00 rent reduction is to continue until the fencing is reinstalled in compliance with the previous decisions and orders of the Branch. No new monthly rent reduction amount was given or sought by the Tenant or Advocate in either hearing or the Application.

Both parties submitted documentary evidence in support of their testimony. The Tenants submitted an email from the Agent A.K. dated May 29, 2020, a notice of entry dated September 29, 2020, a quote for the replacement of the fence, still photographs taken from security camera footage showing entries to the Site, and several photographs of the Site with annotations. The Landlord submitted two photographs of the Site, what appears to be a hand-drawn Park and Site map, and an invoice for the installation of fencing, not including the cost of fence panels.

Analysis

On November 6, 2019, an arbitrator found that a fence, which enclosed the disputed area, had been removed unreasonably and prematurely by the Landlord, on or about August 8, 2019, and ordered the Landlord to replace the fence, at their own cost. On November 12, 2019, the arbitrator issued a clarification to their previous decision dated November 6, 2019, stating that the fence was to be replaced as soon as reasonably possible, and in any event, not later than December 31, 2019. On September 23, 2020, a different arbitrator with the Branch ordered that the Landlord comply with the previous decision dated November 6, 2019, in relation to replacement of the fence, but granted the Landlord until October 31, 2020, to comply. As the fence had yet to be replaced as of the date of our first and second hearings on March 5, 2021, and March 10, 2021, I find that the Landlord has therefore been in repeated and continued non-compliance with the above noted previous decisions and orders, and any subsequent orders issued in relation to replacement of the fence, between midnight on December 31, 2019, and September 23, 2020, when an extension to the date for compliance with regards to reinstallation for the fence was ordered, and between midnight on October 31, 2020, and at least March 10, 2021, the date of the last hearing, if not longer.

Although the Agent offered explanations at the hearings as to why the fence had not yet been replaced in the more than 15 months since the Landlord was originally ordered to replace it, I find that the situations explained, such as their own illness, the illness of the

Landlord, and local weather conditions, amount to excuses for the Landlord's failure to comply, not reasons why the Landlord would not legally have been required to comply with the previous decisions and orders of the Branch. Based on the testimony of the parties at the hearings, Branch records, and the documentary evidence before me, which includes copies of some but not all of the previous decisions and orders issued by the Branch in relation to these matters, I am satisfied on a balance of probabilities that the Landlord and the Agent A.K. have failed to comply with the previous decisions and orders from the Branch with regards to replacement of the fence either willfully, or through negligence in the exercise of their duties under the Act, or both. Further to this, I find that the Landlord has remained, at all times since the first decision was issued in relation to the fence on November 6, 2019, required to replace the fence at their own cost as soon as reasonably possible.

Although more than 15 months had elapsed at the time of the hearings since the Landlord was first ordered to replace the fence, the parties were agreed that the fence had not yet been replaced. Although the Agent requested an order allowing the Landlord until April 30, 2021, to have the fence replaced, I find that the timeline for replacing the fence has already been decided, and as a result, that matter is res judicata, and therefore it is not open to me to reconsider the matter and allow the Landlord additional time to install the fence. Further to this, even if I had found that I had jurisdiction to re-decide that matter, which I have not, I find the Agent's request in this regard entirely unreasonable, as the Landlord has had ample time and opportunity to replace the fence since they were first ordered to do so on November 6, 2019.

As stated above, I find that the Landlord has been required to replace the fence surrounding the disputed area since November 6, 2019, and that they have repeatedly failed to replace it either through willful disregard for the decisions and orders of the Branch, or through negligence in the exercise of their duties under the Act, or both. At the hearings the Tenant and Advocate sought authorization for the Tenants to have the fence replaced, at a cost of $5,003.25, and a Monetary Order against the Landlord in that amount, to cover the cost of the fence replacement, as they stated that it is clear that the Landlord has no intention of either replacing the fence, or complying with the previous decisions and orders of the Branch. I agree with the Tenants' and the Advocate in this regard.

Section 55(3) of the Act states that the director may make any order necessary to give effect to the rights, obligations, and prohibitions under this Act. Given my findings above that the Landlord has remained responsible since November 6, 2019, to replace the fence around the disputed area at their own cost, and has been in repeated non-

compliance with the Act and previous decisions and orders from the Branch with regards to replacement of the fence, as well as my finding that the Landlord and Agent A.K. have either willfully or negligently failed to comply with the previous decisions and orders of the Branch, or both, I therefore find it necessary to order that the Tenants are entitled to have the fence replaced themselves, at the Landlord's expense, if it has not already been fully replaced in compliance with the previous decisions an orders by the date of this decision, April 21, 2021.

Although the Agent argued that the quoted price for fence replacement submitted by the Tenants is too high, as the Landlord already has the fence panels, no proof of the existence of these fence panels was before me, such as photographs showing their existence or receipts for their purchase. Although the Landlord submitted a much lower quote in which it states that the Landlord will provide the fence panels, the quote does not state that such fence panels have already been purchased, or what the cost of the fence panels would be if the Landlord does not provide them. As a result, I find the quote submitted by the Landlord of limited value in assessing the total costs for reinstallation of the fence in compliance with the previous Branch decisions and orders, and I therefore prefer the Tenants' more complete quote, in this regard.

I therefore grant the Tenants a Conditional Monetary Order in the amount of $5,003.25, pursuant to section 60 of the Act, so that the fence can be replaced by the Tenants at the Landlord's expense, if it has not already been replaced by the Landlord as of the date of this decision. If the Landlord has already had the fence replaced in compliance with the previous decisions by the date of this decision, meaning that it has been replaced with permanent and secure fencing similar in height, material, and structure, to the previous fence, and allows the Tenants to use the disputed area as they did before the previous fence was removed, the Tenants are not entitled to serve or enforce the attached Conditional Monetary Order in the amount of $5,003.25. In lieu of serving and enforcing this Conditional Monetary Order and pursuant to section 65(2), I authorize the Tenants to deduct this amount from future rent owed, should they wish to do so.

Should service of the above noted Conditional Monetary Order on the Landlord be necessary, I also order the Tenants to have the fence installed as soon as possible after receiving the above noted amount of compensation from the Landlord, by way of voluntary compliance, service and enforcement of the Conditional Monetary Order in the Small Claims Division of the Provincial Court, or rent deduction, and not later than 60 days after full payment is affected in one of the manners set out above.

Having made these findings, I will now turn my mind to the matter of the Tenants' Application seeking suspension or restrictions on the Landlord's right to enter the Site.

Although the Agent A.K. argued that the Landlord has given proper notice to enter the Site or was authorized to enter pursuant to section 23(e) of the Act, on all but one of the occasions mentioned by the Tenant and the Advocate at the hearings, I am not satisfied this is the case. At the hearing the Agent stated that they and/or their spouse J.K. had entered the Site several times in May of 2021, as the result of an emergency at a utility shop adjacent to the Site, as a result of "water coming into the foundation for the shop, where the electrical is", no documentary or other corroboratory evidence was submitted in support of this assertion, which the Tenant and the Advocate denied. In contrast, the Tenant and Advocate argued that these entries were for the purpose of moving the Tenants' belongings without authorization or consent, spray painting an orange line in the grass, and for erecting a temporary fence. The Tenants submitted several photographs corroborating the entries and demonstrating, to my satisfaction on a balance of probabilities, that the entries were not for emergency purposes.

Further to this, the Agent acknowledged that they did not either give proper written notice or obtain the Tenants' permission to enter the Site on December 14, 2020. While I agree that the notice of entry dated September 29, 2020, is not reasonable, given the large date range and lengthy time periods per day for entry covered by the notice, I am not satisfied, as asserted by the Tenant and the Advocate, that this notice was abusive or an attempt to avoid the Tenants' rights. Instead I find that the Landlord was attempting to comply with the requirements of the Act, albeit in a misguided way.

As a result of the above, I am satisfied that the Landlord and their agent(s) have failed to comply with section 23 of the Act with regards to entry to the Site, on at least four occasions, if not more, including but not limited to December 14, 2020, May 5, 2020, May 8, 2020, and May 29, 2020, despite having previously been ordered to comply with section 23 of the Act by an arbitrator with the Branch on September 23, 2020. Although the Tenants also argued that the Landlord entered on October 2, 2020, without proper authority to do so, the Agent disagreed, and given that this date is covered by the above noted notice of entry, I am not satisfied that the Landlord or their agents knowingly or intentionally entered the Site contrary to section 23 of the Act on this date.

In their Application, the Tenants and Advocate sought an order that the Landlord be required to seek authorization from the Branch for all future entries to the Site. However, I find this request to be excessive in light of the circumstances before me, the lengthy delay such a requirement would have on all entries to the Site, including entries in

emergency situations, and in light of the relatively few unauthorized entries set out above. While the Advocate argued that the Landlord has alternatives to accessing the sewer, water, and power lines through the Site, as the Landlord could move these lines to another location outside of the Site, I disagree with the Advocate about the reasonableness of that suggestion. In any event, there was no disagreement between the parties that these utility services are currently located under the Site.

Although I recognize and agree that the Landlord and/or their agents have breached section 23 of the Act by entering the Site without proper authorization to do so, I am not satisfied that either the number of unauthorized entries, or the purpose for them, justify a requirement for the Landlord to seek Branch approval for all entries, a process that would be both significantly lengthy and restrictive. However, I do find that some restrictions to, and conditions on, the Landlord's right to enter the Site are required for the protection of the Tenant's rights under section 22 and 23 of the Act. As a result, I make the following orders, pursuant to sections 55(3) and 63 of the Act:

- **I order** that the right of the Landlord and/or their agents to enter the rental unit pursuant to sections 23(c), and 23(f) remains unchanged.
- **I order** that the Landlord and/or their agents remain entitled to enter the Site pursuant to section 23(a) of the Act, provided they obtain permission, in writing (handwritten, typed, text message, or email), from the Tenant(s) at the time of the entry or not more than 30 days before the entry.
- **I order** that the Landlord and/or their agents remain entitled to enter the Site pursuant to section 23(e) of the Act, but are required to collect and retain evidence of the emergency that existed at the time of the entry, and proof that the entry was necessary to protect life or property.
- **I order** the Landlord or their agents to serve the above noted evidence on the Tenants at their request, and to submit it to the Branch upon request.
- **I order** that the right of the Landlord and/or their agents to enter the Site pursuant to section 23(b) of the Act is suspended until **11:59 P.M. on April 30, 2022**, and that in lieu of serving written notice for entries to the Site under section 23(b) of the Act, the Landlord and/or their agents must instead seek an order from the Branch, in advance, for all entries not covered under sections, 23(c), 23(d), 23(e) and 23(f) of the Act, or 23(a) of the Act if permission is received in writing as set out in the above order, by way of filing an Application for Dispute Resolution with the Branch for this purpose. If the exact date of entry is not known by the Landlord or Agents in advance, the Landlord and/or agents must still seek authorization from the Branch for entries to the Site during the above noted time period, at which point an Arbitrator may determine whether there is sufficient evidence that entry to the site is required, given the stated

purpose for the entry, and may make any orders they deem necessary in relation to the date and time of any authorized entries for that purpose or the service of any necessary notice of entry, as applicable.

As the Tenants were successful in their Application, I also grant them $100.00 for recovery of the filing fee for this Application, pursuant to section 65(1) of the Act, which they are authorized to deduct from the next month's rent payable under the tenancy agreement, or to otherwise recover from the Landlord, pursuant to section 65(2) of the Act.

In addition to the above, the Tenants remain entitled to file an Application for Dispute Resolution with the Branch seeking compensation from the Landlord for any loss suffered by them as a result of the willful and repeated non-compliance by the Landlord and their agents, with the previous decisions and orders of the Branch, should they wish to do so.

The Landlord is also cautioned that failure to comply with the Act, regulations, or decisions and orders from the Branch, including this decision and any associated orders and all previous decisions and orders of the Branch, may result in administrative penalties of up to $5,000.00 per day of non-compliance, under Part 6.1 of the Act.

Conclusion

Pursuant to section 60 of the Act, I grant the Tenants a Conditional Monetary Order in the amount of **$5,003.25.** This Order **must** be read in conjunction with this decision and the Tenants **must not** serve or seek to enforce this Order on the Landlord unless the fence has not already been reinstalled by the Landlord as of the date of this decision. The Tenants are provided with this Conditional Monetary Order in the above terms and should the Landlord not have had the fence reinstalled by the date of this decision, as per the previous decisions and orders of the Branch, 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.

In lieu of serving and enforcing this Conditional Monetary Order and pursuant to section 65(2) of the Act, the Tenants may deduct this amount from future rent owed, should they wish to do so.

Pursuant to section 65(2) of the Act, the Tenant's are authorized to withhold $100.00 from the next months rent for recovery of the filing fee for this Application. The Tenants are also authorized to withhold $150.00 per month in rent, as previously ordered, until permanent and secure fencing similar in height, material, and structure, to the previous fence, is installed, which allows the Tenants to use the disputed area as they did before the previous fence was removed.

The Landlord and/or their agents are required to comply with the above noted conditions, restrictions, and orders in relation to access to the Site, pursuant to sections 55(3) and 63 of the Act, including but not limited to, a suspension on their right to enter the Site pursuant to section 23(b) of the Act until 11:59 P.M. on April 30, 2022, and a requirement for them to collect, retain, and serve on the Tenant and the Branch, as required, proof that entries made pursuant to section 23(e) of the Act were made because an emergency existed and the entry was necessary to protect life or property.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated orders, nor my authority to render this decision, is affected by the fact that this decision and the associated orders were rendered more than 30 days after the close of the proceedings.

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

Dated: April 21, 2021

Residential Tenancy Branch