Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on March 18, 2021, July 13, 2021, and October 21, 2021. The Tenants applied for multiple remedies, pursuant to the *Manufacture Home Park Tenancy Act (*the *Act*).

The Tenants were represented at the hearing by their daughter, P.L, (occupant). The Landlord was present at the hearings, along with legal counsel, his wife, and his neighbour (first and second hearings). All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I note the Tenancy Agreement provided into evidence shows that there are two tenants listed on the agreement. Although there were initially 3 parties named as "Tenants" on this application, I hereby amend the application, pursuant to section 57 (3)(c) of the Act. I find the third individual (the daughter of the Tenants), was an occupant, not a Tenant. Only the Tenants may bring an application against the Landlord. As such, the application has been amended to reflect only those listed as Tenants on the tenancy agreement. The Tenants' daughter was allowed to represent and present statements at the hearing on behalf of the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the parties informed me that the tenancy has now ended. As such, I dismiss the following grounds on the Tenants' application, as the issues are now moot:

- An order for the Landlord to comply with the Act
- To cancel the Landlord's 1-Month Notice to End Tenancy for Cause (the Notice)

Some of the issues the Tenants applied for are no longer relevant, given the tenancy is over, and at this point the Tenants are only seeking monetary compensation. Since a significant portion of the Tenants' application is now moot, and given the large volume of evidence uploaded by the Tenants, I reminded P.L. (present on behalf of the Tenants) that she is expected to present and point out the which portions of the evidence support her monetary claim, and why. I note the following Rule:

> *7.4 Evidence must be presented*
>
> *Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*

Preliminary and Procedural Matters #2 – Service

The Tenants stated that they sent the Landlord the initial Notice of Dispute Resolution and evidence package on December 30, 2020. The Tenants stated that this package contained a USB stick with her digital evidence. The Landlord acknowledged receipt of this package and did not take issue with it. The Landlord confirmed that he was able to open the digital files on the USB stick. I find this first package was sufficiently served for the purposes of this Act. The Tenants stated that they sent a second package to the Landlord on March 1, 2021, which contained the first amendment, and more evidence. The Tenant sent this by registered mail, and the Landlord confirmed receipt of this package on March 3, 2021. I find the Tenants sufficiently served this amendment and evidence, as it was received by the Landlord about 16 days before the hearing, which satisfied Rule 4.6.

In this amendment, the Tenant requested to add an additional item in the amount of $5,000.00 for non-pecuniary damages. Along with this amendment, the Tenant included an updated monetary worksheet, speaking to the total amount of the claim, which totalled $15,850.82. The worksheet completed alongside this amendment outlined all

the items on the initial application (for $10,850.82), plus the additional $5,000.00 for non-pecuniary damages.

The Tenant was contacted by our office to resubmit the amendment on March 12, 2021, to update the amount on the amendment form to reflect the total amount sought ($15,850.82), not just the new additional amount ($5,000.00). However, I find this was not necessary. I find the Tenant's first amendment, received by the Landlord and our office on March 3, 2021, was sufficiently clear in that the Tenants were seeking to add the amount of $5,000.00 on top of what was already being sought. The monetary worksheet attached provided the necessary clarity. As such, it is not necessary for me to consider whether or not the 2nd amendment was filed in time because the 2nd amendment was only to clarify matters which I find were already sufficiently clear. The Landlord appears to have understood that the amendment received on March 3, 2021, was to increase the amount of the claim to $15,850.82.

The Tenant sent a 3rd package to the Landlord (containing some additional evidence and some submissions) by registered mail on March 12, 2021. The Landlord confirmed receipt of this package on March 16, 2021, but stated he has not had time to review the materials, since he only got them a couple days before the hearing. As stated in the hearing, this package was supposed to be served to the respondent no later than 14 days before the hearing, as per Rule 3.14. The Tenant was asked why she waited so long to serve this package. However, she only briefly said that the materials were "not available" sooner. However, she did not elaborate further on this, and explain which documents were unavailable, and why.

I do not find the Tenants sufficiently elaborated in the hearing, which portions of their evidence were not available in advance, and why, and that they qualify as new and relevant evidence, under Rule 3.17. The Tenants brief statements on this matter are insufficient. Further, the Tenants did not direct me to any part of their written submission which speaks to this issue. Ultimately, I find the Tenants failed to sufficiently serve the Landlord, in accordance with the Rules, with the package they sent on March 12, 2021. I find it is not admissible, and the evidence will not be considered. However, the written submissions and arguments from this package will be accepted, as they are not considered evidence.

With respect to the couple of documents the Tenants provided to our office on March 18, 2021, the day before the hearing, there is no evidence to show any of these documents were served to the Landlord. Further, no explanation was given as to why these documents could not have been submitted sooner. The Tenant did not articulate

that photo and video files uploaded yesterday were not available to be served to the Landlord well in advance of March 18, 2021. Overall, given the files uploaded yesterday were not served to the Landlord in accordance with Rule 3.14, and the Tenant failed to demonstrate that the evidence is new and relevant (and not available sooner), I find this evidence is not admissible.

With respect to the Landlord's evidence, he stated he sent 2 different packages by registered mail to all of the Tenants, individually, one was sent on March 1, 2021, and the other was sent on March 5, 2021. The Tenants did not take issue with the service of these packages. I find the Landlord sufficiently served the Tenants with both packages and the USB evidence. The Landlord included USB sticks in all packages, and the Tenants confirmed that they were able to open and view all files, except for one file, which was a video of the Landlord posting a Notice to End Tenancy on the Tenant's door. A copy of an email was provided into evidence, where the Landlord messaged the Tenants at their respective email addresses to ensure they could open the files. An email was sent back to the Landlord indicating that one video was not viewable. The Landlord replied to this acknowledging the Tenants could not open the video file. It does not appear the Landlord took any further steps to ensure the file could be opened or accessed. I find this one video file is not admissible, as it could not be opened by the Tenants, and I do not find the Landlord sufficiently followed up, after becoming aware it was not viewable.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

General Background Information

The Tenancy Agreement provided into evidence shows that two tenants were listed on the agreement, although 3 people lived at the home site. The Landlord lives on the property adjacent to the Tenants' home site. The Tenancy Agreement specifies that monthly rent was $800.00 and was due on the first of the month. The tenancy started on October 1, 2019, and was set for a 6-month fixed term, expiring in March 2020. At that point, the tenancy was set to revert to a month-to-month tenancy. However, the parties re-signed this agreement, adding another 6 months fixed-term to the agreement. The end of the fixed term was extended from March 2020, until September 2020. Following

this, the tenancy reverted to a month-to-month tenancy. The Tenants vacated the property on or around February 1, 2021.

The initial Tenancy Agreement, signed in the fall of 2019, and the second one, signed around March 2020, both include an addendum. Among other things, the initial addendum indicates the Tenants are to be provided with a 30 Amp electricity hookup to their RV, at the RV site as indicated in the attached map. The addendum also specifies that the Tenants are responsible for snow clearing that is required to provide access to their rental area. The Landlord was to also provide water for the Tenants' RV and for the Tenants' livestock (4 horses and 3 dogs).

The second Tenancy Agreement, signed around March 2020, shows that the Tenants initialed next to area pertaining to the extension of the fixed term lease to September 2020. There also appears to be an updated addendum document, which was dated August 29, 2020, and has a few modified terms. Notably, the Landlord crossed out the term specifying that he would provide 30 amp electrical service to the RV, reduced parking from 3 vehicles to 2, and updated the location of the home site on the attached map to be further away from the Landlord's residence. Although it appears the Landlord initialed the bottom of the modified addendum, there is no evidence the Tenants signed or acknowledged the specific changes to the different terms on the addendum. It appears the modified addendum was the same signed copy from the start of the tenancy, but with a few uninitialed modified terms. It appears the Tenants signed the modified site plan where the location of the Tenant's home site was shifted further away from the house. However, the dimensions and scale of this drawing are unclear.

With respect to the Tenancy Agreements provided into evidence, I note the Landlord and both Tenants signed the agreement, and the addendum around September 23, 2019. However, after reviewing the other subsequent Tenancy Agreements and addendums provided into evidence, I find there is insufficient evidence to demonstrate that both the Landlord and the Tenants agreed to and initialled all changes to the initial agreement. The only modification to the initial Agreement which has been clearly initialed by both parties is the extension of the fixed term lease until March 2020. I find the site plan, modified by the Landlord, with the updated location of the Tenants' home site is not sufficiently clear. The scale and dimensions are nearly impossible to decipher such that I could determine what exactly has been agreed to, if anything. Further, the modifications to the actual addendum itself, are not specifically initialled by the Landlord and the Tenants, and I find there is insufficient evidence there was a meeting of the minds, in writing, on these terms. I find the terms of the tenancy agreement were as listed on the initial Tenancy Agreement, and addendum, given the lack of evidence the

parties agreed otherwise, in writing (except for the term specifying the extension of the lease, which appears to be clearly understood and initialled).

The Tenants have claimed the following items:

1) $3,200.00 – Loss of Quiet Enjoyment

On their application, the Tenants stated that they are seeking 50% of the rent they paid from June 2020 until January 2021. P.L. presented this item on behalf of her parents, the “Tenants”. During the hearing, P.L. was asked to explain what this amount is based off. She stated that it is based on 10 different issues spanning from June 2020, until January 2021. P.L. was given an opportunity to present these 10 items. Although her explanation was scattered and unclear, she explained the following items as a basis for their quiet enjoyment claim. P.L had initially stated there were 10 items, but she only presented 8, loosely explained items, as follows:

1) “unlawful” entry incidents

P.L. stated that the “first” incident regarding unlawful entry was on August 29, 2020, and she pointed to the “minutes” uploaded into evidence. In the minutes document, the Tenants indicated the Landlord unlawfully entered the property starting in June 2020. P.L. was not able to articulate how many times the Landlord unlawfully entered their property, when exactly it occurred, or why it was unlawful. P.L. appeared confused about the dates and times, and when asked to clarify, she requested to move on to the next item.

2) Unlawful rent increase

P.L. explained that the Landlord unlawfully tried to pressure them into signing a new Tenancy Agreement on August 29, 2020, to double their rent. P.L. pointed to the tenancy agreement from that date showing the doubled rent, and a few other modified terms. The Tenants did not sign this tenancy agreement, and eventually the Landlord withdrew his attempts to double the rent.

3) Tenants witnessed the Landlord moving cannabis plants

P.L. explained that on September 24, 2020, the Tenants saw the Landlord moving 10 cannabis plants. P.L. pointed out that the legal maximum is 4 plants, which suggests the Landlord was illegally growing cannabis in and around the property.

P.L. stated that the Tenants felt unsafe due to the suspected illegal activity. P.L. did not elaborate further, and articulate how this issue impacted the Tenant's quiet enjoyment. P.L. did not point out which of her documentary evidence was relevant to this point.

4) Non-conforming eviction notices

P.L. stated that the Landlord gave them "non-conforming" eviction notices on September 26, 2020, and another on October 31, 2020. P.L. pointed to the document in the Tenants evidence package which shows that the Landlord gave the Tenants a typed letter on September 26, 2020, asking the Tenants to vacate the property. The Landlord asked them to move within 30 days, and indicated it was because he wasn't legally allowed to have the Tenants stay on the property, and because the tenancy was never intended to last this long.

P.L. also explained that there was a second non-conforming eviction notice on October 31, 2020, which consisted of an email (provided into evidence) where the Landlord asked what the earliest date was that the Tenants could vacate.

5) Loss of Electrical Services

P.L. explained that the Landlord shut off their power on October 10, 2020. P.L. pointed to the "minutes" document uploaded on Page 35-37 to support her statements on this matter. P.L. stated that at around 11:00 pm their power went off in their trailer, with little to no reason. P.L. stated that they were not using any appliances which would warrant their power to switch off at the breaker (which was located in the basement of the Landlord's house). P.L. stated that they suspect the Landlord intentionally shut off their power as a way to punish them for not vacating the property. P.L. stated that although the Landlord promised them 30 amp electrical service at the start of the tenancy, they only ever received 20 amp service. P.L. stated that they had a few instances in the past where their power would go out, or the breaker was shut off. P.L. did not elaborate on those other incidents any further.

6) Refusal of in person document service

P.L. pointed to page 52 of the Tenants' "minutes" document and stated that they tried to serve the Landlord a letter on November 11, 2020, in person, and the Landlord refused to accept the document. P.L. stated that the Landlord was

aggressive and hostile this day when he showed up, and the Tenants were concerned as the Landlord showed up without a mask, and without advance notice.

7) Receipt of a 30 Day Notice for Cause (the Notice)

P.L. stated that on December 11, 2020, the Landlord issued them a Notice for invalid reasons. P.L. pointed out that the Landlord took issue with a degrading tarp they had and its potential impact on the farmland, which the Tenants feel was a made-up issue. P.L. also pointed out that the Landlord issued the Notice because his property zoning did not allow for people to live long term, in trailers, on the property. P.L. asserted that the Landlord was the one who reported the potential zoning issue to the municipality. P.L. stated that the Landlord purposely reported them to make their stay illegal, so that he could issue the Notice.

8) Tenant made 12 attempts to mitigate the Landlord's breaches of the Act

P.L. pointed to several different pages in the "minutes" document provided into evidence by the Tenants. P.L. stated that they were continually trying to mitigate their losses and mitigate the Landlord's breaches of the Act by calling the RTB, drafting letters to the Landlord, trying to navigate laws (municipal and provincial). P.L. suggested that all of their work, effort, and mitigation attempts eroded their enjoyment of the space and the property.

The Landlord stated that they feel the Tenants' characterization of the events are highly inaccurate and dramatized. The Landlord denied that he contravened the Act in any of the ways noted above, and he adamantly denied ever entering the Tenants rental unit. The Landlord stated that the only time he would come near the rental home site, was to deliver Notices and letters to the Tenant, and to discuss issues they were having. The Landlord also notes that he is not an experienced Landlord, and he was not aware of all the rules when he was discussing potentially increasing rent during the tenancy. The Landlord stated that once he became aware of what the rules were, he did not push the Tenants on this matter further such that it would have caused them a loss of quiet enjoyment.

The Landlord also noted that the Tenants' characterization of the power disruptions in October 2020 was inaccurate. More specifically, he stated that he never intentionally shut the Tenants' power off to their home site, and pointed out that the Tenants have no evidence to suggest any power disruptions were on purpose. The Landlord stated that the electrical breaker supplying power to the Tenants' home site

would sporadically trip, and would require the Landlord to re-set it. The Landlord pointed out that when their power went out late one night in October, the Tenants called the police rather than knocking on the Landlord's door to have him turn the power back on.

The Landlord stated that on numerous occasions in the fall of 2020, the Tenants threatened them with lawsuits, and tried to intimidate and manipulate them for their own gain, and to improve the terms of their tenancy agreement, and their home site. The Landlord stated that one of the Tenants even went as far as to say he has many years of experience litigating matters relating to his company and he would readily turn on the Landlord if he was not satisfied with how things unfolded.

The Landlord opined that the Tenants have failed to demonstrate a loss of quiet enjoyment, and feels that the Tenants played a large part in the dysfunction.

2) $1,800.00 – Lost Government Support

P.L. explained that this amount is comprised of $600.00 total per month for the months of April, May, and June 2020 ($300.00 per month for both the Tenants together, and $300.00 for their daughter, P.L.). P.L. stated that she and her parents were deprived of the government subsidy (BC Temporary Rental Supplement Program, "TRS") for a few months while the pandemic was going on because the Landlord failed to submit and complete his part of the application for rental subsidy. P.L. noted that the TRS subsidy was extended in June, for a subsidy for July and August. However, P.L. stated the Tenants are only seeking the amounts they lost out on for April, May, and June 2020.

P.L. pointed out that because the Landlord always insisted on being paid in cash, it made it difficult to apply for the TRS. P.L. also noted that the Tenants did not apply for the TRS because they did not want to escalate the conflict, and exacerbate the issues with quiet enjoyment of the space. P.L. confirmed that the Tenants never actually applied for the TRS.

The Landlord stated that they had no idea the Tenants ever wanted to pursue the TRS program, as the Tenants did not appear to have trouble paying rent, and never mentioned their interest in the program. The Landlord stated that, as per the document provided into evidence outlining the details of the program (the factsheet), the Tenant must submit the application, and then the Landlord must complete it. However, since the Tenants never submitted the application, the Landlord feels it should not be his responsibility to pay for benefits that were never applied for.

3) $3,375.82 – Invoice for Services Rendered

P.L. stated that the Tenants are seeking to recover the above noted amount for services they rendered which went well beyond what should be expected of a renter. P.L. stated that her father and Tenant, B.L., is a heavy equipment operatory and helped improve and work on the Landlord's large rural property in a variety of ways.

P.L. stated that the Tenants also helped clear and prepare the home site, and other regions of the Landlord's property. P.L. also noted that her father completed several hours of heavy equipment work on the farmland, including preparing fields for animals, pets, and crops. As per the change order document, the Tenants performed many tasks on the property such as blading and levelling the home site, moving topsoil, tilling, relocating wood shavings, moving telephone poles, pulling vehicle out of ditch, lawn-mowing, general backhoe services, and trailer rentals.

P.L. stated that the Tenants gave the Landlord the invoice for services rendered on the property soon after they were served with the 1 Month Notice to End Tenancy. P.L. stated that they should be reimbursed for the work they did on the property, as it left the Landlord with lasting benefit. The specifics of the work done were laid out under the invoice, and the change order 001 document. P.L. stated that the work that was done was all work the Landlord ordered, but P.L. did not point to any documentary evidence to support these work orders from the Landlord.

The Landlord refutes that they owe these amounts to the Tenants because most of this work was taken on by the Tenants on their own initiative to improve their home site in ways that suited them. The Landlord stated that he was approached by the Tenants in the summer of 2019 at a farmer's market, and the Landlord stated he offered the Tenants a place to park their trailer for around 6 months, until another alternative could be found. The Landlord stated that the Tenants voluntarily agreed to help prepare the home site for their own use, such as levelling the site, mowing the field, and dig a water line etc. The Landlord stated that the Tenants chose to do this work, and never asked for payment, or compensation, until the relationship soured.

The Landlord stated that he offered the Tenant use of some yard areas, as is, but the Tenants chose to work on, and improve the land, and they voluntarily put in the work, which they now want compensation for. The Landlord stated that he only ever asked them to do a couple hours of work relating to his potato field, moving a "midden", and

snowplowing in 2019. The Landlord noted that he paid for the plumber to install the water line, and the electrician to run the power cable.

4) $2,375.00 – Moving Costs

The Tenants stated that they incurred many expenses as a result of having to move, after receiving the disputed eviction notice. In the Tenants' written submissions, they explained that their relationship with the Landlords was seriously degrading in the summer of 2020, with multiple conflicts and negative interactions. The Tenants assert that they received a "Notice" from the Landlord on or around October 31, 2020, by email, stating that they would have to move out in 3 months due to bylaw infractions. The Tenants stated that that the relationship continued to be contentious and stressful. The Tenants contacted an advocate around that time who assisted them in drafting a response to the issues they were having with the Landlords.

The Tenants explained in their written submissions that they received a 1 Month Notice to End Tenancy for Cause on December 11, 2020. The Tenants feels the grounds listed on this 1 Month Notice were invalid, not sufficient, and retaliatory. The Tenants explained that following receipt of this 1 Months Notice, they delivered a memorandum of understanding to the Landlords, which included an invoice for services they rendered throughout the tenancy. The Tenants noted that the Landlord did not directly respond to this letter from them. The Tenants felt unsafe in their rental unit because they felt one of the Landlord's was coming into their area without sufficient notice, and intimidating and harassing them with non-conforming eviction notices, letters, site visits, and negative interactions. The Tenants expressed that they were concerned with COVID, and one of the Landlord's disregard for social distancing.

The Tenants explained in their written statement that the Landlords delivered a 10 Day Notice to End Tenancy for Unpaid rent on January 22, 2021, and did so, "without notice". The Tenants also noted that the Landlord also left a mutual agreement to end tenancy, and a response to the Tenant's claim for services rendered, if they agreed to withdraw all claims against him. The Tenants explained in their written submission that they vacated the rental property on February 1, 2021, prior to the effective date of the 10 Day Notice.

The Tenants filed an application to cancel the 1 Month Notice with our office (dated December 2020) around December 21, 2020. However, it does not appear the Tenants applied to cancel the 10 Day Notice they received on January 22, 2021.

The Tenants written submission explains that it took a significant effort to move their belongings in the middle of winter, especially considering that they had fences, equipment, enclosures, and trailers. The Tenants assert that their actual cost to move was about $12,000.00, and the amount they are seeking for this part of the application ($2,375.00) is only a small fraction of the overall costs for their move. The Tenants assert they did their best to mitigate the damages due to the Landlord's breaches of the Act but ultimately decided they had to move.

The Tenant, P.L., reiterated in the hearing the issues that were summarized in B.L.'s written submission, which she asserts led to them deciding to move out, rather than face a continued tenancy with no quiet enjoyment. P.L. reiterated that the Landlord attempted to increase rent about 6 months into the tenancy, without success, and following this, he leveraged the zoning of his own property as a basis to end the tenancy several months after the rent increase became an issue. P.L. also asserted that the claims regarding the "tarp" in the 1 Month Notice were baseless. P.L. asserts that the Landlords were not acting in good faith throughout the tenancy.

P.L. pointed to an incident on October 10, whereby their power went off. P.L. asserts that this was done in "sub-zero" temperatures, and they were unable to heat their home, access internet, or to turn their power back on during that evening. The Landlord, A.F., stated that the temperature records of this day show it was no colder than 8 degrees Celsius, and that power was only off for about 2 hours, and was not intentional as the Tenants are asserting.

P.L. also reiterated the several times the Landlord "unlawfully" entered their property to deliver invalid notices to end tenancy, invalid rent increases, letters, and to cross through portions of the property that the Tenants assert was only for their use. The Landlords assert that they only ever entered the Tenants' area to deliver the Tenants' mail, to deliver documents and serve notices. The Landlords assert that they since they also lived on the property, and shared many spaces, they had to access these shared areas, including walking in adjoining areas, buildings and fields, but they deny that they unlawfully entered into the Tenant's private space, as alleged.

P.L. noted that all of the dysfunction and the Landlord's improper behaviour led to their decision to end the tenancy early, rather than dispute the Notices to End Tenancy. This in turn caused the Tenants to incur thousands of dollars in moving expenses, as shown by their invoices paid, and as a result, they want a portion of this back.

The Landlords responded by explaining that they never agreed to pay for any moving expenses, and since the Tenants chose to move out, the Landlord should not be liable for the expenses incurred. The Landlords explained that they tried their best to come to a mutual agreement with the Tenant, which would allow them to move after the cold part of the winter, but no agreement was reached, and the Tenants moved out and pursued this application for compensation instead at the advice of their advocate.

5) $5,000.00 – Non-Pecuniary Damages (Aggravated Damages)

In their written submission, the Tenants stated that they are seeking this amount for aggravated damages due to the Landlord's actions over the last 10-months of the tenancy, during a public health crisis, with the goal of ending the tenancy. The Tenants assert that each time they tried to re-establish peace, behaviour and conflict escalated. The Tenants submitted minutes to document some of the specifics of the interactions. The Tenants assert in their written submission, that the Landlord would repeatedly come across as short tempered, rude, intimidating, and aggressive. The Tenants assert in their written submission that the Landlord, on several occasions, would walk close to, or inside, their private yard space with inappropriate and hostile conduct while made them feel intimidated and threatened. The Tenants assert this happened for a variety of reasons, when the Landlord would walk nearby with dogs, cannabis plants, guests, and when he would come to deliver correspondence to the rental unit.

The Tenants indicated in their written submission that on some occasions, and due to differing outlooks on safe COVID protocols/social distancing, the Landlord would have disagreements with one of the Tenants; some of these conflicts resulted in raised voices, and some interpersonal distress which was perceived by the Tenants as physically and emotionally distressing. During the hearing P.L. tried to summarize and explain the serious incidents which supports their claim for aggravated damages. However, she presented a scattered and unclear explanation of the minutes document, how it relates to this part of their claim, and how the various alleged incidents (such as trespass, harassment, intimidation, unlawful notices) noted under this part of their application may have caused substantial suffering or distress that is significant in depth and duration.

P.L. stated that they feel the nature of the conflict with the Landlord contributed to the negative health outcomes of one of the Tenants, B.L. P.L. explained that she and her mother suffered anxiety due to having no visitation rights or access to the Tenant, B.L., when he was admitted to the hospital. Although the lack of visitation in the hospital was due to COVID protocols, and related to B.L.'s comorbid conditions, P.L. asserts that

B.L.'s increased reliance on the hospitals was caused by the stress associated with the Landlord's poor conduct. The Tenants also feel they are entitled to aggravated damages as a result of having to plan and execute a move in winter conditions with livestock and heavy machinery, while the Tenant, B.L., was in the hospital.

During the hearing, the Tenant, P.L., spoke to some of the negative health outcomes they experienced at the end of the tenancy. However, her explanation as to how these outcomes relate to the Landlord's conduct was scattered and unclear. P.L. explained that the pain and suffering was significant and severe and it is difficult to quantify. P.L. stated that although she and her mother suffered from emotional distress, insomnia, and weight loss due to the Landlord's attempts to end the tenancy, it was her father B.L. who suffered most. More specifically, P.L. noted that B.L. was previously in the military, and has multiple health issues. P.L. noted that her father, B.L., was injured, had major back surgery in 2018, and following that, he contracted a serious life-threatening infection, which continues to affect his health. P.L. also noted that her father has chronic asthma, Chronic Obstructive Pulmonary Disease (COPD), Gastroesophageal Reflux Disease (GERD), among other comorbid conditions which make his health highly sensitive to external stresses.

P.L. pointed to notes from physicians speaking to the health conditions of B.L. P.L. stated that due to all B.L.'s health conditions, it was highly stressful to navigate the pandemic, social distancing regulations, and fears of contracting the virus from the Landlord, while he was in and around the rental site without the same level of caution that the Tenants would have wished for. P.L. stated that COVID would have been a death sentence for her father given his pre-existing conditions, and this heightened the stress for all of the Tenants, particularly as the relationship degraded, and the Tenants felt the Landlord should be taking greater efforts to stay away from the Tenants and their space, despite living on the same property.

P.L. stated that her father was in and out of hospital numerous times before the tenancy began, but after the tenancy started, his suffering and hospital admissions increased due to stressful interactions with the Landlord and the exacerbation of his health issues. P.L. only spoke generally to B.L.'s increased medical needs over the course of the tenancy. P.L. also noted that the Landlord would sometimes burn fires on the property, without proper permits, and the smoke would exacerbate the Tenant's pulmonary disorders, although the timing and placement of these fires was unclear. Again, the Tenant feels the Landlord came to their trailer site too many times, without sufficient notice, and for improper reasons.

The Landlord points out that there is no proof that any of B.L.'s hospital stays were the result of his actions, or breaches of the Act. The Landlord points out that the Tenant, B.L., had significant health challenges prior to any dysfunction on the rental property, and there is insufficient evidence that any negative health outcomes he encountered were the result of his actions, rather than due to his pre-existing issues. The Landlord denies not taking COVID seriously, and did his best to only come in or around the rental site for delivering mail, attending to issues with the property, delivering documents or communications, or transiting by while accessing other parts of the farm property.

The Landlord also opines that he should not be liable for the hardships the Tenants encountered due to not being able to visit B.L. while he was in the hospital. The Landlord pointed out that the legal bar for proving aggravated damages is high and the Tenants have not demonstrated that any of their complaints are sufficient in depth, duration, and significance, nor were they based on intentional conduct by the Landlord. The Landlord stated that the Tenants were highly aggressive towards him throughout the tenancy, often taking advantage of his lack of understanding and comprehension of the Act. The Landlord stated that the Tenants also tried numerous times to take over more yard space and manipulate their footprint and take advantage of the his initial generosity. The Landlord stated that the Tenant, B.L., showed sophistication in how he communicated with the Landlord and he always appeared legally savvy.

The Landlord stated he struggled to understand the implications of some of the disputes that had arisen. More specifically, the Landlord stated he suffered a traumatic brain injury a few years ago, when he was in a motor vehicle accident, and he was in a coma for a period of time. The Landlord stated that he had to re-learn basic skills and is easily overwhelmed by complex or stressful matters. The Landlord stated that the issues with the tenancy and his stressful relationship with the Tenants quickly became overwhelming, right at the time COVID was worsening, and tenancy laws were changing rapidly. The Landlord feels he was taken advantage of ever since he allowed the Tenants to move onto his land.

The Landlord stated that due to his cognitive challenges, following his accident, he has done his best to adapt to applicable laws and regulations, but admits that he did not know all of the laws up front at the start of the tenancy, given it was never really his intention to set up a long-term home site on his property. The Landlord explained that he only ever intended for the Tenants to stay for a short term. The Landlord does not disagree with the fact he made some mistakes with improper notices, poorly laid out tenancy agreements, and rent increases. However, he asserts it was never malicious. The Landlord feels he was forced into this arrangement by the Tenant's savvy reliance

on tenancy law, and the fact that the COVID pandemic brought about eviction bans during the start of the dysfunction.

The Landlord stated that prior to the end of the tenancy, and after getting the invoice from the Tenants in December 2020, for work he mostly disagreed with, he actually tried to reach a mutual agreement which would allow the Tenants to stay past the core winter months, and settle some of the other issues, related to vacating the property and amounts owing. No agreement was reached, but the Landlord feels he tried in good faith to reach an agreement that would satisfy both party's needs.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I will address each of the Tenants' monetary items in the same order as above:

1) $3,200.00 – Loss of Quiet Enjoyment

Having reviewed the testimony and evidence presented on this matter, I note the following relevant portions of the Act and the Policy Guidelines:

Loss of Quiet Enjoyment

Section 28 of the Act, states that 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;
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline #16
(Compensation for Damage or Loss)

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and,*
- *Damage to a person, including both physical and mental*

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.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to Quiet Enjoyment)

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.

P.L. was presenting this item for the Tenants. During the hearing, P.L. was asked to present what evidence and written statements were relevant to this part of her claim and to explain what this is based upon. P.L. stated that the Tenants are seeking compensation in the amount of 50% of the rent they paid from June 2020 until January 2021. P.L. stated that the claim for loss of quiet enjoyment is based off 10 different issues. However, she only spoke to the following 8 issues:

1) "unlawful" entry incidents
2) Unlawful rent increase

3) Tenants witnessed the Landlord moving cannabis plants
4) Non-conforming eviction notice
5) Loss of Electrical Services
6) Refusal of in person document service
7) Receipt of a 30 Day Notice for Cause (the Notice)
8) Tenant made 12 attempts to mitigate the Landlord's breaches of the Act

Having reviewed the above noted 8 items, I find P.L.'s explanation and presentation of this matter, in general, was very scattered, unclear, and difficult to follow. It was also incomplete, as she said there were 10 items, and only spoke to 8 in a disorganized manner. P.L. was given several chances to clarify this portion of the Tenants' application but appeared as though she was wishing to move to other aspects of the claim, rather than clarify the issues surrounding the loss of quiet enjoyment or to clarify which portions of the nearly 80 pages of "minutes" pertain to this part of the claim. P.L. did not appear to understand which portions of her own evidence were relevant.

I note that during the first hearing when this portion of the claim was discussed, P.L. displayed a lack of familiarity with what documents, statements and evidence had been submitted by the Tenants themselves, and had difficulty finding and naming the relevant parts of their submissions and evidence while she was trying to articulate and present this part of the claim.

P.L. spoke generally to the above noted 8 items, but she did not articulate how, specifically, the items impacted the Tenants' quiet enjoyment or what the magnitude of such impact was. I find P.L.'s explanation on the loss of quiet enjoyment lacked sufficient clarity and detail, such that I could be satisfied there was any meaningful breach of section 28 of the Act. P.L. did not establish that there was a substantial interference with the Tenants' ordinary and lawful enjoyment of the premises, due to the Landlord's alleged actions, conduct or negligence.

There is no question that the parties suffered a breakdown in their relationship part way through 2020. However, in this case, the onus is on the Tenants to sufficiently explain and support their claim for loss of quiet enjoyment. With respect to item #1, I find P.L. did not articulate how and when the Landlord "unlawfully" entered their rental space. P.L. was unclear and vague about dates and number of incidents and could not point out which points of her evidence related to this issue. With respect to item #2, I note the Landlord presented the Tenants with a new tenancy agreement in or around August 2020, for a significantly higher rent. However, the Tenants did not sign this and were aware they did not have to sign the document, and I find they have failed to sufficiently

demonstrate how this incident substantially interfered with their ordinary and lawful enjoyment of the space. With respect to item #3, I note the Tenants observed the Landlord moving some cannabis plants and this made them feel unsafe. However, I am not satisfied this was a substantial interference with their enjoyment of their living space.

With respect to item #4, I note the Landlord delivered letters to the Tenants with respect to ending the tenancy in the Fall of 2020. I also accept that this is not an appropriate or proper way to give a notice to end tenancy to the Tenants, as it does not comply with form and content requirements under section 45 of the Act. It appears the Landlord issued letters to the Tenants, ultimately followed up with a Notice to End Tenancy on the approved form issued in December 2020. However, other than pointing out that the Landlord issues some invalid Notices (letters), P.L did not sufficiently explain what impact this had on the Tenants' quiet enjoyment, nor could she clearly present what was laid out in their written documentation.

With respect to item #5, I find P.L. has failed to explain or point to relevant evidence which shows it is more likely than not that the Landlord intentionally turned the power off to the Tenants' home site. The Landlord specifically denies doing this and stated that the breaker would occasionally trip, as all of the power to the home site was through a single breaker. In any event, I find there is insufficient evidence that this issue was intentional, and that the frequency and duration of any power outage led to a substantial interference in the Tenants' enjoyment of the home site.

With respect to item #6, again, I find there is insufficient evidence that the refusal of in person document service by the Landlord represents a substantial interference in the Tenants' quiet enjoyment. The Tenants could have utilized other methods of service, given the relationship was already challenged at that point.

With respect to item #7, I note the Landlord was entitled to issue a Notice to End Tenancy for Cause under one of the applicable grounds, just as the Tenants were entitled to dispute that Notice if they felt it was improper or unfounded. The Tenants could have remained in the rental unit, until a decision was made on that Notice at dispute resolution. However, it appears they moved out before the merits of the Notice were discussed. I do not find P.L. sufficiently explained how the receipt of a Notice to End Tenancy had a significant impact on their quiet enjoyment.

With respect to item #8, I find there is a notable lack of explanation from P.L. specifying how any mitigation attempts they felt were necessary, due to the Landlord's alleged

breaches of the Act, impacted their quiet enjoyment. P.L. was asked to clarify this and elaborate but she asked to move on, rather than clarify this portion of the claim.

Overall, I find the P.L. failed to demonstrate a loss of quiet enjoyment on any of the points she presented above. Her presentation lacked sufficient clarity and organization, and was difficult to follow. This item is dismissed, in full, without leave.

2) $1,800.00 – Lost Government Support

I have reviewed the evidence presented by the P.L. on behalf of the Tenants as well as the evidence from the Landlord. Although I accept the parties had an increasingly uncomfortable and somewhat dysfunctional relationship at the time the TRS program was rolled out in the Spring of 2020, I find the Tenants were responsible for initiating the TRS application (as per the Fact Sheet provided into evidence), which they never did. Although the Tenants had concerns their application to the TRS program could exacerbate relationship challenges with the Landlord, and compromise their tenancy, I am not satisfied that their concerns were such that they could not have applied for this program and provided a simple and reasonable explanation to the Landlord as to what they were trying to obtain by applying for the TRS program.

At that point, it would have been incumbent on the Landlord to complete his portion of the application. The Landlord was never given an opportunity to assist the Tenants in obtaining this funding, since the Tenants never actually applied for it. I do not find there is sufficient evidence that the Landlord ought to be responsible for this item. I dismiss this item, in full, without leave.

3) $3,375.82 – Invoice for Services Rendered

I have considered the testimony and presented evidence for this item. I note this item was applied for to recover all costs and amounts listed on an invoice the Tenants drafted and gave to the Landlord for work they allege was completed by one of the Tenants, B.L. I note the Tenants have access to a tractor and have the skill and ability to perform a variety of heavy equipment related tasks. There is no dispute that the Tenants performed work on the Landlord’s property during the first part of the tenancy.

This property, generally, appears to be land which is partly used for farming/agriculture, and partly used for residential (for both the Landlord and Tenant). However, the areas and uses are not clearly delineated, aside from a poorly labelled hand drawn map attached to the tenancy agreement. It is not clear if there are areas that are exclusively

for farm/business operations, and which areas may be shared use (farm/business as well as residential).

In any event, I find there is insufficient evidence to show what exactly the Landlord and the Tenants agreed to in terms of work that was to be done by the Tenants, before the actual work was competed. The Landlord appeared surprised by many of the costs and items on the invoice, which was given to him after he served the Tenants with a Notice to End Tenancy. Without a clear contract or agreement specifying what work was to be done, when, and at what cost, it is difficult to ascertain whether or not there was a meeting of the minds about work the Tenants were going to do, voluntarily, and what the Landlord had agreed to have done, and pay for.

As an aside, I also not there is no evidence that the Tenants completed “emergency repairs”, pursuant to, and in compliance with, section 27 of the Act, such that they ought to be entitled to reimbursement for any such costs or as part of this invoice.

Furthermore, even if there was an enforceable contract and agreement for services rendered between the parties, I am not satisfied that recovery of all of the amounts listed on the invoice fall within the jurisdiction of the Act. It appears that if an agreement or contract for work did actually exist, and that payment is due to the Tenants, that this was either a type of auxiliary work/employment or some other type of contracted labour, and the litigation of such a contract or agreement would likely fall outside the Act. I note that several of the items on the Tenants’ invoice do not appear to be directly related to rights and obligations under the Tenancy Agreement itself. During the hearing, I find that P.L. did a poor job explaining which portions of the invoice may have pertained to rights and obligations under the Act or the tenancy agreement, and which were for other unrelated matters (ie- “pulling a vehicle out of the ditch”).

For the reasons above, I dismiss this item, in full, without leave.

4) $2,375.00 – Moving Costs

I have reviewed the evidence and testimony pertaining to this item, and I accept that the Tenants move was not simple or easy, given the type and quantity of their belongings, the location of the property, the health conditions of the Tenants in conjunction with the pandemic (notably B.L.), and the compressed timelines to make a decision as to whether to move, or to stay and dispute the Notices to End Tenancy issued by the Landlord. I also accept that the expenses incurred by the Tenants to move were significant, as detailed in the invoices provided.

I note the Tenants filed this application around December 21, 2020, and it was filed to dispute the 1 Month Notice they received 10 days earlier. A hearing was scheduled regarding the 1 Month Notice for March 2021. Subsequently, there was an issue with the payment of rent, and the Tenants received a 10 Day Notice for Unpaid rent around January 22, 2021, while they were awaiting the hearing for their 1 Month Notice. There appears to have been some disagreement around services rendered, and rent owing around that time.

The Tenants appear to have consulted with their advocate and, rather than continue the tenancy, pursue their dispute of the 1 Month Notice, and file an amendment to that application to also dispute the subsequent 10 Day Notice, the Tenants chose to end the tenancy and move out before the effective date of the 10 Day Notice. The Tenants moved out swiftly by February 1, 2021, and subsequently amended their application to pursue monetary compensation sometime in March 2021, rather than to proceed with the dispute of the Notices to End Tenancy at the hearing in March 2021. The Tenants chose to move out rather than continue the tenancy until such time as a decision could be made regarding the merits of the Notices they felt were invalid, at the upcoming hearing.

I note the Tenants were entitled to dispute any of the Notices to End Tenancy that were issued to them. Pending the outcome of a hearing on those matters, the Tenants were not required to move out. I find it was the Tenants' decision to move out, rather than to stay where they were, dispute the Notices, and seek sufficient remedies to continue the tenancy.

I note the Tenants have highlighted the negative interactions with the Landlords in the months leading up to the end of the tenancy for several issues. Although not a complete list, some of the issues raised related to rent increases, "unlawful entry" by the Landlords onto their part of the property, interference with their enjoyment and alleged harassment by the Landlord, the Landlord having cannabis plants on the property, the Tenants health concerns (notably B.L) in conjunction with the pandemic and the Landlord's entry onto their property, disputes over access to various areas of the property, land use, and work invoices from the Tenant B.L. for unpaid work he performed for the Landlords. I accept that this would have created a stressful and contentious environment given both parties lived on the same property. However, I do not find there is sufficient evidence to demonstrate that these issues were such that the Tenants only option was to move out, rather than dispute the Notices to End Tenancy

and seek the appropriate remedies and continue the tenancy. I find the Tenants are not entitled to recover moving expenses they incurred, and this item is dismissed, in full

5) $5,000.00 – Non-Pecuniary Damages (Aggravated Damages)

I have reviewed the testimony and presented evidence on this matter related to aggravated damages. I note an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.)

Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

It appears that the Landlord and the Tenants had a cordial and somewhat symbiotic relationship at the start of the tenancy. The Tenants moved onto the property with the understanding that work was required to make the home site more suitable for their tenancy. It appears both parties were involved with this work to varying degrees. However, this relationship clearly degraded over the following months. This degradation appears to be multifactorial in nature. On one hand, some of the issues that developed, such as issues with improperly set up electricity, water, and fencing, and issues relating to improper rent increases appear largely related to the Landlord’s inexperience and lack of understanding of current tenancy laws and inexperience with this type of living arrangement. However, on the other hand, some of the issues that developed between the parties appear to be materially related to external factors. For example, the COVID pandemic significantly impacted the rights and responsibilities of Landlords and Tenants (payment of rent, how a tenancy ends, rent increases). This pandemic began early in 2020, which isn’t far from the time the parties began to experience some conflict and tension.

Further, I accept that the Tenant, B.L., likely experienced significant stress due to the conflict with the Landlord, moving, and being hospitalized on numerous occasions. However, it is noteworthy that the Tenant had a history of hospitalizations for chronic and pre-existing conditions before the conflict occurred. Even if B.L. may have been

hospitalized for his conditions more after the conflict started with the Landlord than before, I find there is insufficient evidence that this was directly caused by the Landlord's conduct.

Further, although the Landlord made mistakes along the way with respect to navigating this tenancy, I am not satisfied his actions were sufficiently negligent, egregious, or high handed such that the Tenants would be entitled to compensation for aggravated damages. In making this determination, I note that alongside some of the mistakes that were made by the Landlord (for example - informal letters, rather than proper Notices to End Tenancy, attempted improper rent increases, poor home site utility set up and site planning) the Landlord appears to have made some attempts to partially mitigate impacts on the Tenants. Although the Tenants feel this was out of self interest, I note the Landlord appears to have attempted to reach a mutual agreement to balance out both parties interests towards the end of the tenancy (rent owing, services rendered, delayed move-out). I also note the Landlord has his own medical and psychological challenges, and required the assistance of an advocate/legal counsel to help come to a mutually acceptable outcome, despite the ongoing escalating dispute.

Overall, I do not find that any mistakes the Landlord made along the way, or that his conduct was sufficiently egregious, negligent, intentional, or high handed such that he ought to pay the Tenants for aggravated damages to compensate for the pain and suffering they assert they experienced during the latter part of this tenancy. I decline to award compensation for aggravated damages.

I decline to award the recovery of the filing fee, as the Tenants were not successful in the application.

Conclusion

The Tenants' 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 *Manufactured Home Park Tenancy Act*.

Dated: October 25, 2021

Residential Tenancy Branch