Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, RP, RR, LRE, LAT, OLC, CNR-MT, MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- more time to make an application to cancel the Notice pursuant to section 66;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $12,000 pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

This matter was reconvened from a prior hearing on February 15, 2022. I issued an interim decision setting out the reasons for the adjournment on that date (the "**Third Interim Decision**"). That hearing was reconvened from a prior hearing on July 12, 2021, following which I issued two interim decisions (the "**First Interim Decision**" and the "**Second Interim Decision**"). This decision should be read in conjunction with all prior Interim Decisions.

All parties attended the hearing and both sides were represented by counsel. Each were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Jurisdiction and Tenants' Leaving the Rental Unit

On August 2, 2021, the tenants vacated the rental unit in advance of an order of the BC Supreme Court made August 16, 2021 (the "**BCSC Order**") ordering them to vacate the rental unit. I note that, despite the court making this order, it did not find that it had jurisdiction over the dispute. The court wrote the following as a term of the order:

> The plaintiffs are at liberty to file further materials to allow court to determine if it has jurisdiction, and such materials should include the relevant Residential Tenancy Branch file.

I note that, in the Second Interim Decision, I found that the Residential Tenancy Branch (the "**RTB**") has jurisdiction over this dispute. I understand that the tenants did not appeal the BCSC Order. However, both counsels indicated that they were prepared to proceed with this application before the RTB and neither raised jurisdictional objections. As such, I will adjudicate the remaining issues.

As the tenants no longer reside at the rental unit, the bulk of the relief they seek is no longer required. Accordingly, I dismiss all parts of the tenants' application, without leave to reapply, expect for its claim for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $12,000.

Issues to be Decided

Are the tenants entitled to a monetary order of $12,000?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

1. The Tenancy Agreement

The parties fundamentally disagree on the terms of the contractual arrangement between them. Before setting out each side's view of what the terms were, I must describe the residential property and the circumstances leading to the tenants taking up occupancy.

The residential property is a one-story mixed-use commercial/residential building with a basement (the "**Building**"). The front portion of the building is occupied by a commercial storefront (including a washroom) operated by the landlord (the "**Storefront**") and a small front bedroom in which the landlord resided on a full-time basis until 2019. Two suites are located in the rear of the Building. The tenants' suite consists of two bedrooms, a bathroom, a kitchen, a living room, and stairs to the basement (the "**Rental Unit**"). The other suite is rented by an individual who is not a party to this application (the "**Second Unit**").

A door joins the Rental Unit and the Storefront. The Rental Unit is also accessible from the exterior of the Building by way of a back entrance (sometimes referred to as a side-entrance) as well as by a door from the Second Unit.

The Basement is only accessible via the stairs inside the Rental Unit.

The basement contains the Building's hot water tank and breaker panel, as well as all of the commercial supplies used by the landlord in the course of running the storefront, including cooking oil, potatoes, pots, and pans.

On October 1, 2019, the landlord rented the rental unit to SF and GF, the mother and stepfather of tenant NK. In his affidavit, the landlord described this tenancy agreement as follows:

> This was not a standard tenancy arrangement because I required continued use of various portions of the rental suite, including the basement, the common area, all of the exits, the bathroom shower, and occasionally the kitchen.

The landlord attached a copy of the tenancy agreement between himself, his wife (as landlords) and SF and GF (as tenants) into evidence. It uses the standard form RTB #1 tenancy agreement. Rent was $1,000 and SF and GF were to pay 50% of utilities, water, and gas. They paid a security deposit of $500. This tenancy agreement contained a one-page addendum, with the following terms:

- new flooring
- new paint in main living area
- tenant responsible for yard accepts $25 penalty must be done by 12 noon every Saturday
- 50% utilities, gas, sewers
- basement and stairway is property of landlord
- this is a shared building

In his affidavit, the landlord wrote that "the front bedroom did not have a proper lock, and the doorway between the [Rental Unit] and the [Storefront] was always open to allow me to access the basement, use the bathroom, use the kitchen suite, and go out the back door if necessary."

The tenants submitted a letter from GF and SF which paints a different picture. In it, they state:

> [The landlord] often entered the suite without knocking or announcing his entry and without benefit of notice, through the door which locked on the suite's side, from his commercial kitchen.

The parties agree that, in February 2020, the tenants moved into the Rental Unit with GF and SF, and that GF and SF's rent was raised to $1,400, by consent, as a result. The tenants and GF and SF cited the COVID-19 pandemic as the reason for this co-habitation (I note that February 2020 was the very early days of the pandemic, and the

lock-down and other measures taken by the Provincial Government did not start until the following month).

In his affidavit, the landlord wrote:

> Throughout this time [after February 2020], the doorway between the [Rental Unit] and the [Storefront] and my bedroom remained open, with shared use by all parties. The tenants use the commercial space now and then, and also traded dishwashing work for my business for free meals. The tenants to use the washrooms in the [Storefront] on a daily basis. I continued to use the basement, bathroom and kitchen in the rental suite.

In support of this assertion, the landlord attached a copy of a text message chain from March 2020 between the landlord and SF in which she acknowledged eating cinnamon buns that the landlord had left on the sandwich cooler in the Storefront. It stated:

> SF: Hey [Landlord]… apparently there was a huge cinnamon bun that was here… and I never got a taste it went so fast...but… there was requests for more!! do you have any of them left?
>
> Landlord: maybe look in the sandwich cooler. And the icing is there too not sure where lol good luck
>
> SF: Thanks [landlord]! she said the caramel on the bottom was over the top and it didn't need any

The landlord argued that this indicated that SF, GF, and the tenants had free access to Storefront, and that this implied the inverse was also true.

The landlord wrote that, in August 2020, he started to make efforts to sell the Building. He communicated this to SF and submitted text messages between himself and SF into evidence supporting this.

The parties agree that, in October 2020, SF and GF moved out of the Rental Unit, but that the tenants remained. The landlord stated that he agreed SF and GF could assign their tenancy agreement to the tenants. He wrote:

> Prior to leaving, [GF and SF] requested that the tenancy agreement they signed in October of 2019 be assigned to the [tenants]. They communicated to me that they wanted [NK and CJ] to be able to live there until the [Building] got sold, or until they found another place to live. I agreed to this sub-letting arrangement because I was getting along with [CJ] at the time and because the rent had been paid. Also, the space sharing arrangement was working out in a satisfactory way as it had for all of 2020 to date.

> As an example of this cooperation and agreement, I had a drum kit that was stored in the basement of the property. In the fall of 2020 [CJ] asked if he could use it and I allowed him to bring it up from the basement to the main floor. [CJ] said that he would give drum lessons to my son. This did not occur, but this sharing of chattels and space at that time was characteristic of our relationship.

I note that there is a fundamental difference between an assignment (where SF and GF would no longer have obligations to the landlord) and a “sublet” (where they would continue to be liable to the landlord under the tenancy agreement).

SF, GF, and the tenants set out a substantially different version of events.

In her letter, SF wrote:

> It was discussed and agreed that [NK and CJ] would sign their own Residential Tenancy agreement with [the landlord], to start on October 01,2020,which was signed on September 11,2020.

In her affidavit, NK stated:

> On September 11, 2020, I entered a residential tenancy agreement with the [landlord] […] with the following key terms:
>
> 1) The tenancy was to commence on August 1, 2020,
> 2) Monthly rent of $1,000 was due on the 28th day of each month, and
> 3) The landlord and tenants were to share the basement and its side-entrance.

NK attached a copy of a tenancy agreement to her affidavit. It uses the standard RTB 1 form and has a hand-written addendum including the following terms “Landlord shares basement and side entrance”. The tenancy agreement appears to be signed by the tenants and the landlord.

In his affidavit, the landlord claims this tenancy agreement was a forgery. He wrote:

> 97. First, I never signed another tenancy agreement as alleged. The document at Exhibit "A" to the affidavit of [NK] does not bear my signature or any of my handwriting. It is not a contract between the parties.
>
> 98. My true signature always has a loop in the top of the letter "g" in [my last name]. This one does not. The signature in Exhibit "A" appears to be a crude tracing of my signature.
>
> 99. Furthermore, I have always used a witness when I sign tenancy agreements, and I ensure that additional terms are initialed by the tenant. This is always my practice. None of that is present on the document at Exhibit "A" of the affidavit of [NK].

> 100. Furthermore, I always do a walk-through (and a walk out) with new tenancies and I take digital photographs. This occurs at the beginning of a new tenancy and at its end. In this case, the tenancy was assigned from [SF and GF] to the [tenants] and the premises were never vacated. So no walkthrough or walk out happened with the [tenants]. I never returned the damage deposit to [SF and GF]. I never collected a new damage deposit from the [tenants]. It does not make sense that there would be another tenancy agreement.
>
> 101. I have noted that there is an official looking stamp stating "RECEIVED SEP 14 2020" on the copy of the document at Exhibit "A" to the affidavit of [NK]. I believe that this document is something that the [tenants] likely sent to a government agency in order to get more social assistance. I certainly have no stamp that looks like this, and I did not receive this document on September 14, 2020. I never saw this document until it was provided through this RTB proceeding.

I note that this tenancy agreement was available to the tenant prior to the first hearing between the parties and was the topic of discussion at the first hearing on July 12, 2022. At that hearing, the landlord did not suggest that the document in question was a forgery or otherwise not a genuine tenancy agreement between himself and the tenants. In the Second Interim Decision, I wrote:

> The parties entered into a written tenancy agreement whereby the tenants must pay the landlord monthly rent of $1,000. The tenancy agreement has an addendum which includes the following term:
>
> > Landlord shares basement and side entrance
>
> The landlord testified that he understood this term to mean that the agreement is not subject to the Act, as the point of entry into the rental unit is shared.

At this hearing, landlord's counsel advised me that the tenant had misspoke at the July 12, 2022 hearing, and that he does not concede that the tenancy agreement between the parties is genuine.

2. Tenants' Monetary Claim

The tenants seek a monetary order of $12,000 against the landlord, which amounts to compensation for the following:

1) Retroactive rent reduction due to landlord's trespass;
2) Retroactive rent reduction due to landlord shutting off water an electrical utilities;
3) Retroactive rent reduction due to landlord's failure to address rat infestation;
4) General damages for landlord's failure to comply with the Act;

5) General damages for the steps the landlord took at the BC Supreme Court and failure to provide documents as directed in the First Interim Decision for me to rely upon when writing the Second Interim Decision; and
6) Administrative penalty due to the aforementioned breaches.

The tenants did not break down how it apportioned the $12,000 sought between these items.

I must note that I do not have the authority to issue administrative penalties under the Act. That authority is delegated to the RTB's Compliance and Enforcement Unit. As I cannot grant the relief sought, I will not provide further details on the sixth point listed above.

Additionally, the section 7 of the Act permits an arbitrator to award monetary compensation for a party's failure to comply with the Act, its regulations, or the tenancy agreement. It does not grant me the authority to award such compensation to the other party for breaches of orders I have made, or steps taken in the BC Supreme Court which may have contravened orders I have made. Accordingly, I do not include details of the fifth point listed above.

1. Trespass

The tenants argued that the tenancy agreement they signed with the landlord did not give the landlord the right to enter into the Rental Unit without giving proper notice. They argue that, despite this, the landlord frequently entered via the doorway connecting it to the Storefront, in order to access the Basement. In order to prevent such conduct, the tenants installed a lock on the adjoining door in November 2020.

The tenants testified that despite installing this lock, the landlord continued to access the rental unit without first giving notice. In her affidavit, NK stated:

> On January 2, 2021, [the landlord] entered the suite without notice and aggressively knocked on my bedroom door with sufficient force to cause material damage.
>
> Further to the foregoing, I demanded [the landlord] leave the suite. He refused, but he did retreat to the kitchen. My brother [JK], who is then a guest in the suite, intervened and compelled the [landlord] to leave. The police subsequently attended at the property in response to this incident.
>
> The incident caused me significant stress and anxiety, and immediately following the incident I sought mental health and support services from [redacted], a non-profit society that provides temporary safe shelter and support for adult women and their dependent children.

NK attached photographs to her affidavit but she says show the condition of the door to her room after the incident referenced above. There appear to be cracks in the doorframe caused by stress, and abrasions caused by a dead bolt chafing against the frame.

In their letter, SF and GF wrote:

> We witnessed [the landlord] enter the apartment from his door connected to his commercial kitchen on numerous occasions without due and proper notice on many occasions while [NK and JK] were tennants proper. We attended the appartment on one such occasion, it was around 9 am and had just left. [The landlord] had known he was going to enter the suite and phoned the police prior. Knowing that they would take their time to attend, he utilized the opportunity to agreessively enter, punching the first bedroom door repeatedly, causing quite a bit of damage and berated [NK and CJ] about unfounded costs and unsubstantiated accusations, and then shoving the dishwasher at [NK], who had started to place it front of the connecting door in hopes of deterring him from entering. When the police arrived he greeted them in a friendly manner, totally different from his previous 20 minutes of raging, and told them he needed access to the basement and that the tenants were blocking his access in addition to wanting them out immediately. [NK and CJ] told the police they had a signed lease agreement and that [the landlord] did not in fact live there and had never given proper written notice to vacate. The police deferred the complaint and told [the landlord] to follow due process as set out by the RTB. And told [NK and CJ] to utilize the process through the RTB.
>
> [as written]

The tenants submitted a letter from NK's cousin ("**CK**") dated May 8, 2021, in which she wrote:

> In October 2020 [NK] and I were sitting in the living area as I was breastfeeding when I heard someone knocking frantically on a door sharing access between [NK's] private residence and a food based business run by [the landlord]. [NK] unlocked the door from her side and [the landlord] came through angry that it was locked and said that it must never be locked as he required 24 hour access to her home in order to reach an electrical panel only accessible through the 2 bedroom residence related to equipment in the business front. [NK] was visibly uncomfortable and the situation caused her anxiety along with loss of peaceful and quiet enjoyment in her home.
>
> In December 2020, [CJ] had taken a kitchen help job with [the landlord] in his food based business. While I was visiting with my children, [the landlord] again came into the residence with no notice demanding to know where [CJ] was. It is my understanding that [the landlord] had come into the private residence to ask

> for help with his business from [CJ] although [CJ] was not scheduled to work anymore for that day and at the expense of [NK and CJ's] privacy and peaceful and quiet enjoyment of their home.

The tenants argue that these intrusions amount to a loss of their quiet enjoyment they are entitled to under the Act, and they should be entitled to compensation by way of a retroactive rent reduction.

The landlord does not deny that he entered the Rental Unit without notice so that he could access the basement, and to "occasionally" use the kitchen and bathroom located in the rental unit. He denied acting in an aggressive manner towards the tenants as alleged.

In his affidavit, he wrote:

> 49. All throughout 2020, I used the rental unit suite for accessing the basement for storage retrieval, and for accessing the back door to get to the backyard when needed.
>
> 50. I also throughout 2020 used the rental suite kitchen for overflow work when I needed an extra burner: usually for the 40 litre soup pot, which works better on the flat infrared glass burner in the rental suite then on the electric coil elements that I have in the commercial kitchen.
>
> 51. I also, throughout 2020, occasionally used the rental suite bathroom, for a shower or when the commercial kitchen bathroom is occupied.
>
> […]
> 66. I cannot operate my business without accessing through the suite to the basement where I store food and other supplies.

The landlord argued that the tenancy agreement between himself and SF and GF permitted him access to the rental unit without notice. He relies on the term contained in the addendum which states that "this is a shared building". Landlord's counsel argued that "shared building" should be interpreted to mean "shared suite". In support of this, he pointed to the landlord's affidavit in which the landlord stated that the door between the store front and the rental unit was always opened, and that SF and GF would enter it for their own use (for example, to retrieve a cinnamon bun).

The landlord further argued that, as SF and GF's tenancy agreement was assigned to the tenants, he maintained the same right of access when the tenants resided in the rental unit.

Accordingly, the landlord argued that the tenants were not entitled to any compensation due to the landlord's entry into the rental unit, as the landlord was within his contractual rights to do so.

2. Utilities

In her affidavit, NK stated:

> On April 23, 2021, the [landlord] disconnected the property's electrical and water utilities without notice. These utilities remained shut off for May, June, and July of 2021. At this time the [landlord] forcibly entered our suite and removed its stove.

The tenants attributed this action to dispute between them and the landlord over responsibility to pay for utilities. In her affidavit, NK stated that the landlord demanded payment for utilities. She stated that the tenancy agreement the tenants signed with the landlord does not require them to pay utilities.

This became a source of friction between the parties.

In repose to NK's affidavit, the landlord wrote that he contacted SF and asked her to "exercise some influence over the [tenants] because [NK] is her daughter. This did not work."

He submitted a copy of the text message chain into evidence he sent to SF. The contents of the exchange is not significant. However, of particular note is the fact that the landlord twice referenced the tenants' lack of security deposit. He wrote:

> I am owed a lot of money and they won't discuss it **they have not even paid a deposit** so please don't force the issue unpaid rent and utilities makes it really clear.
>
> […]
>
> No they have not paid the deposit and they [message cut off]

I will return to these statements later.

In his affidavit, the landlord claimed that neighbors of his told him that the tenants were "selling drugs from the property and using the property to chop up bicycles (for resale)". He submitted a copy the handwritten note he received from these neighbors setting out these accusations.

In his affidavit, the landlord wrote:

> 121. In specific response to paragraph 26 of [NK's affidavit], by April of 2021 the utilities at the Property were being abused: I learned that the [tenants] were

> charging their acquaintances ten dollars each for hot showers at the [Rental Unit]. I received a bill for $798.00 for gas and I was not being paid by the [tenants]. I did not have the money to sustain this situation. Therefore, I had to shut off the water to the bathroom.
>
> 122. All this was occurring when no utilities had been paid and rent was being paid only sporadically and then ceased.
>
> 123. As for the electricity, in April, 2020 I threatened to shut it off but I never did. That would have impacted the other tenant. If various circuits were tripped however, I had no ready access to the basement because I was locked out. This left the suite with certain outlets that would not work. This was simply a result of the [tenants] barring me from access to the shared space. As soon as I obtained possession of the Property in August of 2021 I was able to flip these switches to re-establish power supply to the three or four circuits that were tripped.

3. Rats

The tenants allege that the building was infested by rats and mice, and that the landlord did nothing to deal with this infestation. They suggested that the reason for the infestation where the condition in which he kept the Storefront and the exterior of the Building. In her affidavit, NK wrote:

> 14. In November of 2020, I advised the respondent of a growing rodent infestation in the property period to mitigate our discomfort, [CJ] and I regularly set traps, resulting in 10 rats caught per week. The infestation cause damage to personal property, damage to the suite and the spread of rodent feces […]. This caused me considerable stress and anxiety.
>
> 15. In response to the foregoing, the respondent never made a good faith effort to exterminate the rats, remove food waste and related attractants created by the commercial kitchen[…]
>
> 16. On December 5, 2020, I advised the respondent that I would not meet him for an in person meeting regarding the foregoing matters. In response, the responded forcefully entered the sweet, entered my bedroom, and attempted to hand me several lined pages of handwritten notes. During this confrontation, the respondent alleged that [CJ] and I owed him unpaid utilities.

NK attached a copy of this handwritten note to her affidavit which states, in its entirety, “due to non payment of rent and bills I am forced to provide you with a notice of eviction”. She attached two photographs of the exterior of the building which show a barbeque, a propane tank, a sealed bucket, a box labeled potato (I cannot tell if it is empty or full) and an open pot of an unidentified fluid. She also attached several photos of what she claims are rodent feces. I cannot say if they depict such feces as claimed is

the copies provided are black and white. It may be that they are feces, but it may also be dirt or other debris.

The landlord attributed the presence of rats on the residential property to the tenants' living conditions, and not due to any negligence on his part. In his affidavit, the landlord wrote:

> 76. On or around January 1, 2021, I returned to the [Building] and I found two dead mice in the [storefront] kitchen area.
>
> 77. Due to this discovery, I realized that I would have to implement further rodent control measures including more traps and possibly fumigation.
>
> 78. In order to investigate, I attempted to enter the [Rental Unit] in the normal manner, which is through the shared doorway. To my surprise I found it locked. This door is normally always open. Once or twice the [tenants] had locked this door in December of 2020 but I had spoken to them and explained my requirement to be able to access the basement and the suite.
>
> 79. Therefore, I could not get through the normal doorway that leads from [the Storefront] to the [Rental Unit] and the basement stairs. I discovered shortly thereafter that it had been bolted shut by the [tenants].
>
> 80. Therefore, I went around to the back door which was standing ajar (in winter). I knocked and there was no answer. I could see into the suite and I could see that it was a total disaster. The stench was beyond toleration. I entered the suite and I observed the following:
>
> (a) Dozens of piles of what appeared to be dog feces, all over the living room and kitchen floors;
> (b) Dirty dishes everywhere;
> (c) Laundry, clothing, jackets and other apparel strewn around the floor and furniture;
> (d) Assorted power tools and hand tools that I assumed were stolen (both of the Claimants say they are disabled, neither work, neither has a job, and neither apparently have any money);
> (e) [JK] was sleeping in one of the rooms;
> (f) [NK and CJ] were sleeping in one of the rooms.
>
> 81. I woke the [tenants] up and demanded that they clean up the premises and pay the rent. I also inspected the bolted door which I saw had been fastened crudely with screws and a chain from the suite side of the doorway.

[…]

105. In specific response to paragraph 14 of [NK's affidavit], the truth is that mice were caught from time to time at the Property. Because of my business, I have to be hyper-vigilant about rodents and insects and I always take proactive steps to eliminate pests. The mice only became a significant problem after January 2, 2021 because then I could no longer come into the suite or the basement to set traps and lay poison. I also offered to fumigate twice but the [tenants] refused to leave the building so that this could happen.

106. There have never been any rats in the [Building] while I have occupied it. Only mice from time to time which are attracted to warm spaces during the cold winter months.

107. In specific response to paragraph 15 [NK's affidavit], the truth is that I leave spent food oil for pick up periodically at the road side by [a neighboring business] who uses it for biofuel-diesel conversion. It is in sealed plastic 16 gallon pails that cannot be accessed by vermin. The second photo of an open pot with oil is simply oil that was left outside for 20 minutes to cool down as it had just come out of the deep fryer. There is no food waste left around the premises ever. I could not operate a restaurant if I violated these very basic precepts. I would have bears, deer, raccoons and vermin all over the [Building] if what the [tenants] say was true.

4. Landlord's Response

The landlord argued that prior to SF and GF vacating the rental unit, there was no issue with him entering the rental unit without notice. Once they left, however the relationship between the tenants and the landlord began to rapidly deteriorate. The tenants installing the lock on the door joining the Storefront and the Rental Unit strained their relationship. The tenants' failure to pay rent and their share of the utilities bill strained the relationship the landlord also alleged that the tenants (or people the tenants let enter the rental unit) stole personal property belonging to the landlord from the basement.

The landlord argued that such conduct amounted to breaches of the Act, and that they was the basis for his entering into the Rental Unit (on the dates set out in his affidavit) and shutting off the hot water to the bathroom.

The landlord stated that the tenants caused significant damage to the rental unit during the tenancy the repair costs which exceed $35,000. He attached photos of the Rental Unit to his affidavit which show holes in the drywall torn up floorboards, graffiti on the walls, and water damage in the kitchen cabinets.

Furthermore, JG argued that the picture painted of the tenants as bad actors by the landlord (as supported by the letter from his neighbor, the text messages between him and SF, and the photographs of the rental unit after the tenancy ended) is in accordance with preponderance of probabilities, and that this means that, where the

landlords and the tenants evidence disagrees, the landlord's evidence should be preferred.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Policy Guideline 6 sets out how damages are to be calculated for losses of quiet enjoyment:

> **Compensation for Damage or Loss**
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The tenants of frame their claim for compensation in two ways:

1) A retroactive rent reduction as compensation for:
    a. the loss of quiet enjoyment caused by the landlord’s breaches of the Act (trespass and failure to address rat problem); or
    b. the termination of services (water and electric); and
2) General damages as compensation for these breaches of the Act.

These claims for compensation are duplicative. The tenants have not provided documentary evidence as to specific monetary loss caused by any of the landlord’s alleged breaches of the Act. This is a requirement of the four-part test set out above. As

such, I find that the mode of compensation set out at Policy Guidelines 6 is the appropriate mode to apply to this application.

Credibility

Landlord's counsel suggested that the matter in which the landlord has established the tenants conducted themselves towards the end of the tenancy, as set out in his affidavit corroborated by photographs of the rental unit at the end of the tenancy and by the letter from the neighbor, should cause me to find that the tenants are not credible in their evidence.

I disagree.

While making no findings on the issue of damaged caused to the landlord by the tenants (as I understand the matter of the tenants alleged damage to the rental unit is before the BC Supreme Court), I note that even if the tenants caused significant damage to the rental unit, acted in a disruptive manner towards their neighbors, and engaged in illegal activities in the Rental Unit, this does not necessarily mean that the landlord has not also acted in ways that are not permitted under the Act. It is not a requirement that one side or the other have clean hands. It is possible that both sides have unclean hands.

I do not find the landlord's evidence regarding the circumstances by which the tenants came to be the sole occupants of the rental unit to be credible. I base this on the landlord's lack of objection to the existence of the written tenancy agreement between him and the tenants at the first hearing (the non-existence of which featured so prominently in his affidavit and the submissions of his counsel at this hearing).

I also rely on the fact that in his affidavit he asserted that the tenancy was "assigned" from SF and GF to the tenants and pointed to the fact that he "never returned the damage deposit" to SF and GF or "never collected a new damage deposit" from the tenants to support this. Despite this, in the text messages he attached to the affidavit, the landlord brings up the fact the tenants "have not even paid a deposit".

In the context of these text messages (the landlord is reaching out to SF to see if she can intervene and get the tenants to pay rent and utilities), I understand this comment to mean that the tenants should have paid, or could have been required to have paid, a security deposit. These comments do not make sense, if the landlord still held SF's security deposit in trust due to the tenancy agreement being assigned to the tenants.

I also note that the letter from SF and GF is unsigned by either of them and, oddly, refers to SF and GF in the third person throughout. SF and GF were not called to give evidence at this hearing to confirm the letter's authenticity or to be subject to cross examination. Accordingly, I assign their letter little weight.

For this reason too, I assigned the letters of CK and of the landlord's neighbour little weight.

Standard of Proof

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the tenants must prove it is more likely than not that the landlord breached the Act so as to deprive them of quiet enjoyment of the rental unit or to of a service the landlord was obligated to provide them under the tenancy agreement.

Monetary Claim

1. Rats

The parties agree that there were rodents in the Building. The tenants bear the onus to prove that the presence of these roads was caused by the landlord's failure to maintain the rental unit in this condition suitable for habitation. In support of this they have provided two photographs of items located outside the building. One of these items apparently contains cooking oil.

The landlord has suggested that the rats were attracted to the Building due to the condition the tenants kept the Rental Unit. He is provided photographs of the interior of the rental unit after the tenants vacated. I find that these photos suggest that the Rental Unit was not well maintained during the tenancy.

As such, I cannot determine the cause of the presence of the rats. It may be it was caused by landlord's improper food practices or it may be that it was caused by the condition in which the tenants kept the rental unit. I would note that, if the landlord did engage in improper food practices, I would have expected there to be a substantial history of rat infestation in the building. There is no evidence to suggest this.

The tenants have not discharged their evidentiary burden to prove this part of their claim. Accordingly, I dismissed this part of the application without leave to reapply.

2. Utilities

The tenants have not provided any documentary evidence supporting their assertion that the landlord shut the water off to the entire rental unit or terminated the electricity to the rental unit. Such evidence should have been relatively simple to obtain (for example the video of faucets failing to work or a toilet failing to flush, a copy of a text message or other correspondence sent by them to the landlord demanding the reinstating of these facilities, coupled with the landlord's response).

I do not find that they have provided sufficient evidence to discharge their evidentiary burden to show that the landlord acted as they alleged.

The landlord, admitted that he cut the *hot* water off to the bathroom of the rental unit. I am uncertain how the landlord accomplished cutting the hot water off to a particular room in the rental unit and he did not provide evidence as to how this was done. However, cutting the hot water off to the Rental Unit entirely is something that is easily done.

It is not disputed that the tenants had not paid the landlord any amount of money for utilities or hot water. The landlord believes he was entitled to receive these monies. Even if this were true, this would not justify his turning off the hot water. This amounts to a “self help” remedy which the Act does not permit. The proper course of action would be to issue a notice to end tenancy for non payment of utilities, and/or make an application to the RTB seeking an order that the tenants are obligated to pay for utilities pursuant to the governing tenancy agreement.

I find that, by cutting off the hot water, the landlord breached section 27(2) of the act which states:

> **Terminating or restricting services or facilities**
> 27(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Accordingly, I find that the landlord must pay the tenant an amount equivalent to the value of the terminated service. The landlord stated he terminated the hot water in April, 2021. He did not specify the exact date or indicate if he re-instated the service. The tenants claimed the landlord terminated utilities (including water) for May, June, and July 2021.

Based on this, I find that the tenants were without hot water for approximately three months. I find that they are entitled to a 10% reduction for this deprivation service. I

accept that their monthly rent was $1,000 as claimed by the tenants and I find they are entitled to $300 for the termination of their hot water.

The tenants have not provided any evidence corroborating their allegation that their electricity was terminated, or if it was, that it was due to the landlord's actions. As such, I find that they have failed to discharge their evidentiary burden. I accept the landlord's evidence that he was unable to access the electrical panel during the months of May, June, or July 2021 given that it was located in the basement, which was only accessible via the rental unit.

As such, I cannot see how the landlord could have terminated the electricity to the tenants unit specifically, given that a general termination of electricity would have also caused the termination to the services provided to the Second Unit (of which there is no evidence). Accordingly, I dismiss this portion of the tenant's application.

3. Trespass

As stated above, I do not find the landlord's account of how the tenants came to reside in the Rental Unit by themselves to be particularly credible. Where the landlord and NK's affidavit evidence differs on this point, I prefer the evidence of NK.

As such, I accept that the landlord entered into a written tenancy agreement with the tenants on September 11, 2020, and that this tenancy agreement contained the following addendum:

> Landlord shares basement and side entrance.

The landlord did not make any submissions as to how this clause ought to be interpreted. Rather, they denied the authenticity of this clause altogether.

The tenants merely stated that the basement was "shared" by the tenants and the landlord to b used as a "shared storage space". They made no submissions as to the significance up the fact that the tenancy agreement stated the landlord also shares the "side entrance".

It is on this particular provision, that I find the issue of trespass turns.

As I understand the geography of the Building, there are three doors out of the Rental Unit: a door from the interior of the Rental Unit directly to the exterior of the Building; a door connecting the Storefront and the Rental Unit; and a door connecting the Rental Unit and the Second Unit.

I do not understand that any "common area" exists in the interior of the Building beyond the door from the exterior into the rental unit (that is, if somebody were to enter that

door, they would find themselves in a foyer from which they could either enter the storefront, or the rental unit).

As such, I understand the term causing the “side entrance” to be shared to mean that the landlord can use that entrance to enter the rental unit. I find it most likely that the “side entrance” referred to in the tenancy agreement is the entrance from the exterior of the Building into the Rental Unit. However, I note that if any of the three entrances into the rental unit were “shared” with the landlord, this would necessarily imply that the landlord would have the right to use the entrance to enter the Rental Unit. I can think of no other reasonable explanation why an entrance would be “shared” other than to use it gain access to a Rental Unit.

Accordingly, I find that the landlord has a right to access the rental unit via the side entrance and has a right to access basement. Common sense would dictate that there is a link between these rights, just as there is a link between these locations. I think it reasonable to conclude that the landlord would be granted the right to enter the rental unit for the reason of accessing the basement, which he is also granted the right to use.

It would make little sense to interpret the tenancy agreement to bestow these rights on the landlord in an unconnected manner: that is, that the landlord would have the right to open the side entrance door without notice; and also have the to access the basement, but only after having given 24 hours written notice to the tenants. Instead, I find it more likely that the parties agreed that the landlord would be able to use the side entrance of the rental unit for the purposes of entering the rental unit and accessing the shared basement.

I do not find that this arrangement necessitates the landlord giving 24 hours written notice. Were this the case, the side entrance would not need to be designated as “shared”.

Nowhere in the tenancy agreement does it state that the landlord may use the kitchen or bathroom located in the rental. Accordingly, the landlord would be in breach of the tenancy agreement anytime he did this. However, the tenants did not allege that the landlord did this during their tenancy. It was only SF and GF who alleged that the tenants did this during the preceding tendency. Additionally, the landlord only admitted to doing this during SF and GF’s tenancy, and not during the tenants’ tenancy. As such the tenants are not entitled to any compensation for loss of quiet enjoyment due to the landlord using the Rental Unit’s bathroom or kitchen.

Additionally, I do not find that by describing the side entrance as “shared” this meant the landlord had the right to enter the rental unit at for any reason he wanted. Rather, I understand the parties intended to restrict this right solely for the purpose of accessing the basement.

This clause in the addendum was imperfectly drafted and troublingly imprecise. However, I find that the interpretation set out above is the interpretation most likely intended by the parties when they entered into the tenancy agreement.

I do not find such a provision unconscionable. The tenants occupied the rental unit prior to the start of the tenancy, so they would have known the disruption the landlord's access to the basement would cause and the scope of the landlords right of access was limited to a specific purpose. The unique nature of the building necessitated that such compromises be made in order to allow for the existence of the Rental Unit. Absent this right, I do not think the landlord would have rented out the Rental Unit.

As such, I decline to order the landlord pay the tenants any amount as compensation for the times he entered the Rental Unit for the purposes of accessing the basement. He was within his rights to do this.

The tenants also alleged that the landlord forced his way into the rental unit on at least one occasion to confront them about non payment around or other problems with the tenancy, or to "rummage" through their personal property. I do not find that they have provided sufficient evidence to corroborate this allegation (such as police reports, audio or video recordings, or text messages sent to the landlord complaining of the intrusions). As such, I am not satisfied that they have discharged their evidentiary burden and I decline to award them any compensation on this basis.

Conclusion

The tenants have established that the landlord, in breach of the Act, turned off the hot water to the rental unit for approximately 3 months. Pursuant to section 67 of the Act, I order that the landlord pay the tenants $300 in compensation.

The tenants have failed to establish on a balance of probabilities that the landlord was not entitled to enter the rental unit for the purposes of accessing the basement, trespassed into the rental unit, caused an infestation of rats, or terminated the tenants' cold water or electrical for any period of time. They are entitled

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

Dated: June 17, 2022

Residential Tenancy Branch