Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROLAND REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNDCT, AAT, OLC, FFT

Introduction

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

- an order allowing the tenants to reduce rent of $1,900.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for $600.00 for compensation under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 62.
- an order to allow access to or from the rental unit for the tenants or the tenants' guests, pursuant to section 70;
- an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent and the two tenants, tenant RM ("tenant") and "tenant PM" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 59 minutes.

This hearing began at 9:30 a.m. with me, the landlord's agent, and the two tenants present. I asked the tenants to disconnect and call back into the hearing because neither I nor the landlord's agent could hear them properly, due to interference and loud noises coming from their telephone line. The tenants exited the hearing from 10:12 a.m. to 10:14 a.m. I informed the tenants that I did not discuss any evidence with the landlord's agent in their absence. This hearing ended at 10:29 a.m.

The landlord's agent and the two tenants confirmed their names and spelling. The tenant provided his email address and the landlord's agent provided her mailing address for me to send this decision to both parties after the hearing.

The landlord's agent stated that the landlord company ("landlord") named in this application owns the rental unit. She said that she is the property manager for the landlord and that she had permission to speak on its behalf. She provided the rental unit address.

The tenant identified himself as the primary speaker at this hearing and tenant PM agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing. Neither party made any adjournment or accommodation requests.

Preliminary Issue – Service of Evidence

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

The tenant confirmed receipt of the landlord's evidence and said that the tenants reviewed it. He said that the tenants received it by email even though they did not provide their permission to the landlord for same. He stated that the landlord said that all communication had to be done in writing. He claimed that he did not receive a proper RTB form for digital evidence details or a USB drive, CD, or DVD copy of the landlord's digital evidence, as required by the RTB *Rules*. He maintained that the tenants were prejudiced because they did not receive the evidence correctly.

Tenant PM said that the tenants could not open all of the landlord's digital files and she did not tell the landlord's agent, despite being asked, because it was not served properly, since it was emailed, and the landlord asked to communicate in writing only.

The landlord's agent agreed that she served the landlord's evidence by email to the tenants, she offered to help them open the files, and they did not respond. She said that she only told the tenants to communicate in writing regarding family issues, not for tenancy-related issues. She agreed that she did not submit a USB drive, CD, or DVD with the digital evidence to the tenants.

I did not consider the landlord's evidence in this decision because I find that it was not served properly to the tenants, and they could not access all of the digital files. I find that the landlord failed to serve the tenants properly, as the tenants did not provide permission by email, as required by section 88 of the *Act* and section 43 of the *Regulation*. Further, I find that the landlord failed to provide the required RTB digital evidence details form with the details of the digital evidence, and a copy of the digital evidence on an external USB drive, CD, or DVD. This is contrary to RTB *Rules* 3.10.1, 3.10.4, and 3.10.5 noted below.

The following RTB *Rules of Procedure* state (my emphasis added):

> *3.10.1 Description and labelling of digital evidence*
> ***To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.***
>
> ***A party submitting digital evidence must:***
> *• include with the digital evidence:*
> ***o a description of the evidence;***
> *o identification of photographs, such as a logical number system and description;*
> ***o a description of the contents of each digital file;***
> ***o a time code for the key point in each audio or video recording; and***
> ***o a statement as to the significance of each digital file;***
> *• submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and*
> *• serve the digital evidence on each respondent in accordance with 3.10.4.*

3.10.2 Digital evidence uploads
Parties who submit evidence using the Residential Tenancy Branch Online Application for Dispute Resolution or Dispute Access Site must enter the information required under Rule 3.10.1 in the "Details and description" field when uploading evidence. The system will restrict evidence uploads to accepted formats and in accordance with file size restrictions pursuant to Rule 3.0.2.

3.10.3 Digital evidence submitted directly to the Residential Tenancy Branch or through Service BC
Parties who submit digital evidence to the Residential Tenancy Branch directly *or through a Service BC Office* ***must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).***

3.10.4 Digital evidence served to other parties
Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43)*.Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.*

3.10.5 Confirmation of access to digital evidence
The format of digital evidence must be accessible to all parties. *For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.* ***Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.***

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting

and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

Preliminary Issue – Severing the Tenants' Monetary Application

The following RTB *Rules* are applicable and state:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

Rule 2.3 of the RTB *Rules of Procedure* allows me to sever issues that are not related to the tenants' main urgent application. The tenants applied for five different claims in this application.

At the outset of this hearing, I informed the tenants that they were provided with a priority hearing date, due to the urgent nature of their claims for an order to comply and an order to allow access. I notified him that these were the central and most important, urgent issues to be dealt with at this hearing. The tenants confirmed their understanding of same.

At the outset of this hearing, I informed the tenants that their monetary application for a rent reduction and for monetary compensation were dismissed with leave to reapply. I notified them that their monetary claims were non-urgent lower priority issues, and they could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB Rules, above. I informed the tenants that they could file a new application, if they want to pursue their monetary claims in the future. The tenants confirmed their understanding of same.

Three of the tenants' five claims were dealt with at this hearing. After 59 minutes, there was insufficient time to deal with the tenants' monetary claims at this hearing. I notified both parties that the maximum hearing time was 60 minutes. Both parties submitted voluminous documents and evidence for the monetary application.

Issues to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to an order to allow access to or from the rental unit for them or their guests?

Background and Evidence

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

The landlord's agent and the tenant agreed to the following facts. This tenancy began on October 1, 2009. Both parties signed a written tenancy agreement, and a copy was provided for this hearing. Monthly rent in the current amount of $2,461.00 is payable on the first day of each month. A security deposit of $1,150.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit.

The tenant testified regarding the following facts regarding the order to comply claim. The tenants were forced to move their boat off the rental property because of noise and dust complaints. They think the complaints have no substance. The landlord says there were disturbances to the neighbours, but it is not possible that there was noise.

The tenants want quiet enjoyment of their property, pursuant to section 28 of the *Act,* allowing them privacy and unreasonable disturbance. The tenants were required to move their boat from the carport to an external property. The tenants agree that the boat is not referenced in their tenancy agreement and is not part of their tenancy agreement or tenancy wit the landlord.

The tenant stated the following facts regarding the allowing access claim. This claim is related to access to common property. The landlord is preventing the tenants' guests from using the pool at the common area of the rental property. The tenants provided a copy of the pool rules, which restrict access. On July 26, 2021, the landlord forbid the tenants' adult daughter and son-in-law from using the pool at the rental property. The general rules state that only a maximum of two guests are allowed at one time and the tenants have to attend with them at the pool. This is contrary to the right for guests to have proper access to common property. Section 28(d) of the *Act*, paragraph 19 of the tenancy agreement, Residential Tenancy Policy Guideline 6 in section B regarding quiet enjoyment, and section 9(2) of the *Regulation* Schedule discuss the tenants' rights regarding occupants and guests. Paragraph 25 of the tenancy agreement deals with common areas and the tenants agree that they signed the tenancy agreement on August 25, 2009. That section states that there are notices, regulations, and rules for common areas and restriction for the tenants and use by their children.

Tenant PM stated the following facts. The pool is only end used from June to September of each year. The pool rules are posted every year at the rental property and every year it is the same rules regarding a maximum of two guests and tenants' supervision. The tenants waited until March 28, 2022, to file this application even though this issue arose of the start of their tenancy. The tenants had other issues in this application, so they added this claim to their application. It is due to the landlord's e-mail prohibiting the tenants' daughter and son-in-law from using the pool at the rental property. The landlord's rules have "tightened" and there are "punishments" regarding children. There were two pools when the tenants moved in, including one for kids and one for adults. There was no problem before because everyone broke the rules, and it was common knowledge. It is an unreasonable restriction on their guests at the rental property.

The landlord stated the following facts. Regarding the order to comply claim, the landlord issued a notice to the tenants to remove their boat from the residential property. The boat and boat construction are not part of the tenancy agreement, this tenancy, or any documents related to this tenancy. There was noise from the construction of the boat and other occupants are entitled to their quiet enjoyment of the

rental unit, not just the tenants. There was an entire year of trying to deal with this issue, but the landlord had to ask the tenants to remove their boat from the property. There is no boat or other storage allowed on the property. There is a small shed at the front of the rental unit for two garbage cans. There are two parking spots for vehicles but only motor vehicles that are insured, not boats, as per the tenancy agreement. Item number 20 on the tenancy agreement discusses storage at the rental property.

The landlord stated the following facts. Regarding the allowing access claim, the landlord never restricted the tenants by saying their family was not allowed to use the pool. During the July 26, 2021 incident, the tenants were out of the country for an extended period of time in Europe and the landlord said that the tenants' children could not attend at the pool without the supervision of the tenants. Item 19 on the tenancy agreement discusses occupants and invited guests, under reasonable circumstances, in the rental unit only, not common areas. Guests must be accompanied by the tenants at the pool due to safety issues. Item 22 E of the Residential Tenancy Policy Guideline regarding common areas states that it is not subject to section 27 of the *Act* and the landlord can restrict restrict guest use of common areas. Tenant PM helped maintain the pool during covid, so she understands what the rules are.

The tenant stated the following facts in response to the landlord's submissions. Section 20 of the tenancy agreement discuss the storage at the rental property. The tenants do not have any disagreement regarding the storage compartment for garden tools at the front of the rental unit. Section 20 of the tenancy agreement refers to the carport for parking of motor vehicles and cars, not boats. It is not reasonable to disallow the tenants' adult children and grandchildren to be at the pool. The tenants agree that they were away in Europe for an extended leave during the July 26, 2021 incident. Safety is irrelevant to the pool issue because the tenants' children are a professional adult couple and they should be allowed to attend the pool without supervision.

Tenant PM stated the following facts in response to the landlord's submissions. Other people store their boats in their carports at the rental property. She agrees that she assisted the landlord during covid restrictions at the pool. There was a mutual agreement that rules could be broken regarding the pool, as it was only the health rules during covid, that could not be broken. Regarding swimming and guests, those rules are consistently broken by other people at the rental property.

Analysis

Burden of Proof

At the outset of this hearing, I informed the tenants that as the applicants, they had the burden of proof, to prove this application, on a balance of probabilities. The tenants confirmed their understanding of same and stated that they wanted to proceed with this hearing.

The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide evidence of this application. The tenants received an application package from the RTB and provided a copy of these documents to the landlord. The tenants were provided with a "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, which contains the phone number and access code to call into this hearing. The tenant confirmed that he had this document in front of him during this hearing.

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

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

I informed the tenants that a legal, binding decision would be issued within 30 days after this hearing date. This information is contained in the NODRP above. The tenants confirmed their understanding of same.

The tenants were provided with a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the tenants to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants, as the applicants, to provide sufficient evidence of this application, since they chose to file this application on their own accord.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the tenants did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

I informed the tenants that they spoke for the majority of this hearing, as compared to the landlord, who only spoke for a brief time. During this hearing, I provided the tenants with ample and additional time to look up their documents, to look up information about the *Act, Regulation*, and Policy Guidelines, and to organize their evidence. I was required to repeatedly ask the tenants about their application and evidence, since their testimony was unclear and inconsistent throughout this hearing.

This hearing lasted approximately 59 minutes, so the tenants had ample time to properly present this application, submissions, and evidence. The tenants filed this application on March 28, 2022, and this hearing occurred over 3.5 months later on July 15, 2022, so they had ample time to prepare for this hearing.

Order to Comply

During this hearing, the tenants stated that they wanted quiet enjoyment of their rental unit and they should not have had to move their boat out of the carport at the rental property.

The tenants referenced the following two subsections of section 28 of the *Act*, dealing with the tenants' right to quiet enjoyment (my emphasis added):

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

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

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

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, without leave to reapply.

While the tenants are upset that they have been asked to remove their boat from the rental property, this complaint is not necessarily subject to intervention by the landlord. Residing at a multi-unit residential property can sometimes lead to disputes between occupants. The other occupants at the rental property are entitled to quiet enjoyment of their units, including completing activities of daily living and using their units for different purposes. The tenants cannot decide how or when the other occupants' units are to be used and for what purposes. The rights of all occupants must be balanced.

When concerns are raised by one tenant, the landlord must balance its responsibility to preserve the tenant's right to quiet enjoyment against the rights of the other occupants in the rental building, who are entitled to the same protections, including the right to quiet enjoyment, under the *Act*. A landlord may try to mediate such disputes if it can, but sometimes more formal action is required.

I find that the tenants failed to provide sufficient evidence that the landlord failed to comply with the *Act*, *Regulation* or tenancy agreement. I find that the landlord has fulfilled its obligations pursuant to section 28 of the *Act*.

During this hearing, the landlord's agent and the tenant agreed that the tenants' storage of their boat in their carport at the rental property, is not part of their written tenancy agreement. They both agreed that the tenancy agreement does not reference the storage or construction of boats at the rental property. They both agreed that the use of the tenants' carport is for parking motor vehicles only, not boats, as per the tenancy agreement.

Section 6 of the tenancy agreement has a handwritten note stating: "2 parking spots only." Section 20 of the tenancy agreement, which the landlord's agent and tenant read aloud during this hearing, references storage of "bicycles" in "designated areas only." Section 20 permits "motor vehicles" that are "licensed and insured for on-road operation" and that "only vehicles listed in the tenancy application" are permitted to be "parked, but not stored, on the residential property."

I informed the tenants at this hearing, that their claim was dismissed without leave to reapply. I notified them that storage of their boat at the rental property is not part of their tenancy agreement. I cannot issue an order requiring the landlord to allow the

tenants to store their boat at the rental unit, when it is not part of the tenancy agreement. I do not find that this is an infringement on the tenant's right to quiet enjoyment, as other tenants' rights to quiet enjoyment at the rental property must be balanced by the landlord, who said that the construction of the tenants' boat for one year was disturbing other neighbours.

Tenant PM testified that since everyone else at the rental property stores their boats in their carports, the tenants should be allowed to do so, as well. I do not find this to be a reasonable or valid argument. The tenants are well aware that boat storage is not included or permitted in their tenancy agreement but want permission to do what they believe others are doing, which I cannot accept or grant.

Order to Allow Access

In their online RTB application, the tenants applied for the following claim:

> *"I want the landlord to allow access to the unit or site for me and/or my guests"*

In the online RTB details of dispute for the above claim, the tenants noted the following:

> *"The landlord has issued notices and warning to tenants concerning a common property (swimming pool). These notices and warnings do not comply with the RTA as they are a significant interference with our quiet enjoyment of common areas."*

The above details state that the tenants applied for a claim related to a common area, not the rental unit. At this hearing, the tenants testified that they applied for a claim related to a common area, not the rental unit.

A "unit" above is a rental unit, pursuant to section 1 of the *Act*. A "site" above is defined as a manufactured home site in a manufactured home park, as defined by the *Manufactured Home Park Tenancy Act,* which does not apply here, since this is a rental unit pursuant to the *Act*.

Section 28 of the *Act*, which was referenced by the tenants during this hearing, states the following (my emphasis added):

> *Protection of tenant's right to quiet enjoyment*

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

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

During this hearing, the tenants referenced the following provision in section 9 of the Schedule in the *Regulation* (my emphasis added):

Occupants and guests

9(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act [terminating or restricting services or facilities], ***the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.***

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

During this hearing, the tenants referenced the following provision in section 19 of the tenancy agreement:

19. OCCUPANTS AND INVITED GUESTS: The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests. If the number of occupants in the rental unit is unreasonable, the landlord may discuss

> *the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Act.*

I note that the above provision in the tenancy agreement is almost the exact same wording as sections 9(1), 9(2) and 9(3) of the *Regulation* schedule, above.

During this hearing, the landlord referenced the following provision at section E of Residential Tenancy Policy Guideline 22 (my emphasis added):

> *E. GUEST USE OF COMMON AREAS*
>
> ***Under section 9 (2.1) of the Residential Tenancy Regulation, a landlord may restrict guest use of common areas of a rental property.*** *A restriction of guest use of a common area that is not defined as a facility in section 1 of the Act is not subject to section 27 of the Act, and no notice or rent reduction is required.*

During this hearing, the tenants read aloud the following provision in section 25 of the tenancy agreement (my emphasis added):

> *25. COMMON AREAS: the tenant must not misuse or damage common areas of the residential property,* ***but must use them prudently and safely and must conform to all notices, rules or regulations posted on or about the residential property concerning the use of common areas, including restriction of their use to tenants only and restriction on use by children****. All such use will be at the sole risk of the tenant or the tenant's guests.*

The tenants testified that they signed the written tenancy agreement with the landlord on August 25, 2009, which is almost 13 years prior to this hearing date on July 15, 2022. The tenants were aware of the above provisions in their tenancy agreement, regarding use of common areas, since prior to beginning their tenancy on October 1, 2009. The tenants agreed that they did not file RTB applications or raise any issues regarding use of the common area swimming pool, prior to filing this application on March 28, 2022. They said that they added it to this application because they already had other claims and issues with the landlord. The tenants agreed that there are notices posted every year at the rental property regarding use of the common area swimming pool, that the tenants' supervision is required for a maximum of two guests, and that this policy has been the same since their tenancy began in 2009.

I find that the tenants' express and implied conduct demonstrate that they agree to abide by the landlord's rules regarding use of the pool. The tenants are aware of the pool rules, see the rules posted every year at the rental property, agreed to abide by them in writing as per their tenancy agreement, and have not raised any issues with these pool rules until almost 13 years after their tenancy began, because they have a dispute regarding separate issues with the landlord. I also note that both the landlord's agent and tenant PM agreed during this hearing, that tenant PM helps the landlord to clean the pool and is aware of the pool rules.

Tenant PM testified that since everyone else at the rental property "breaks the rules," the tenants should be allowed to do so, as well. I do not find this to be a reasonable or valid argument. The tenants are well aware that violating the pool rules is a breach but want permission to do what they believe others are doing, which I cannot accept or grant.

Further, the tenants only identified one instance, where their daughter and son-in-law were prevented from using the pool on July 26, 2021, which is almost a year prior to this hearing date on July 15, 2022, and almost 8 months after filing their application on March 28, 2022. They also agreed with the landlord's agent that they were away on an extended leave in Europe and not present to supervise their guests, as required by the pool rules.

I find that the landlord has complied with section 28(d) of the *Act* and has permitted the tenants to use the common area pool for reasonable and lawful purposes, free from significant interference. I do not find the landlord's pool rules to be unreasonable. I do not find that the landlord has unreasonably restricted access to the pool by the tenants or their guests. I find that the limit of two guests and the tenants' requirement to be present to supervise their guests, to be reasonable for safety and liability reasons, as per section 9(2.1) of the Schedule to the *Regulation,* Residential Tenancy Policy Guideline 22, and section 25 of the parties' tenancy agreement. The landlord has not terminated or restricted the use of the pool further than what was established at the beginning of this tenancy almost 13 years ago in 2009 and the pool is not a material term of the tenancy agreement, requiring a rent reduction pursuant to section 27 of the *Act*.

Accordingly, the tenant's application for an order to allow access to or from the rental unit or the common area swimming pool for the tenants or their guests, is dismissed without leave to reapply.

Filing Fee

As the tenants were unsuccessful in their application for an order to comply and an order to allow access, I find that they are not entitled to recover the $100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' application for an order allowing them to reduce rent of $1,900.00 for repairs, services, or facilities agreed upon but not provided, and a monetary order for $600.00 for compensation under the *Act, Regulation,* or tenancy agreement, is dismissed with leave to reapply.

The remainder of 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 *Residential Tenancy Act*.

Dated: July 15, 2022

Residential Tenancy Branch