Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant with the initials “NR” stated that on November 24, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on November 24, 2021 was sent to the Landlords, via registered mail. The Landlords acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On May 01, 2022 and May 02, 2022, the Tenants submitted additional evidence to the Residential Tenancy Branch. “NR” stated that this evidence was served to the Landlords, via registered mail, on May 01, 2022. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On May 28, 2022 the Tenants submitted additional evidence to the Residential Tenancy Branch. “NR” stated that this evidence was served to the Landlords, via registered mail, on May 28, 2022. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On June 07, 2022 the Landlords submitted evidence to the Residential Tenancy Branch. The Landlord with the initials “RR” stated that this evidence was served to the

Tenants, via registered mail, on June 07, 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

There was insufficient time to conclude the hearing on June 21, 2022 so the hearing was adjourned. The hearing was reconvened on November 10, 2022 and was concluded on that date.

Issue(s) to be Decided:

Are the Tenants entitled for loss of quiet enjoyment of the rental unit, costs associated to moving, and aggravated damages?

Background and Evidence presented on June 21, 2022:

The Tenants and the Landlords agree that:

- the tenancy began on August 30, 2019;
- rent, at the end of the tenancy, was $1,750.00;
- the tenancy was the subject of a previous dispute resolution proceeding, on April 16, 2021;
- at the previous dispute resolution proceeding, the parties mutually agreed to end the tenancy on April 17, 2021; and
- the rental unit was vacated on April 17, 2021.

The file number for the previous dispute resolution proceeding was provided during the hearing and is recorded on the first page of this decision. I viewed that file during the hearing on June 21, 2022 and determined that the issues in that dispute included an application for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, a monetary Order for issues similar to those in

dispute at these proceedings, and to recover the fee for filing that Application for Dispute Resolution. Residential Tenancy Branch records show that the Arbitrator adjudicating that Application for Dispute Resolution severed the application for a monetary Order, which leaves the Tenants free to pursue a monetary claim at these proceedings.

In their list of monetary damages, the Tenants claimed a rent refund for one day, in the amount of $58.34. At the hearing on June 21, 2022, "NR" withdrew this claim.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlords "allowed our backyard to be monopolized and damaged for a dangerous illegal cannabis growop". At the hearing "NR" stated that this impacted their quiet enjoyment because another tenant with whom they share the backyard erected a "drying tent".

"NR" stated that the "drying tent" was approximately 10'X14' which covered almost the entire backyard. He stated that backyard is approximately 200 square feet in size. He contends this prevented them from fairly sharing the yard.

"RR" stated that the tent was approximately 8'X8' and that it took up approximately 10% of the back yard. He stated that the backyard is approximately 2,000 square feet in size.

The Landlords and the Tenants agree that the Tenants' concern about the tent in the back yard was not reported to the Landlord until January of 2021 and that the tent was removed from the yard in November of 2020.

"NR" stated that the presence of the tent damaged the grass and that the other tenants left the yard in a mess, with tarps and items strewn about. "RR" stated that the damage to the grass was not caused by the tent; that the grass is typically damaged in the winter due to water; and that the grass is typically re-seeded in April of each year. "RR" does not agree that the yard was a mess, although he agrees that tarps were covering lawn furniture.

"RR" stated that the lawn was re-seeded in April of 2021. "NR" stated that it was re-seeded on April 03, 2021.

The Landlords and the Tenants agree that exhibit 27, which is a video of the rear yard, fairly represents the condition of the yard in January of 2021.

"RR" stated that the Tenants did not report a concern about the rear yard being unusable until they served the Landlords with their first Application for Dispute Resolution.

"NR" stated that concern about their inability to use the lawn was first expressed in a letter, dated March 22, 2021 (Exhibit 57) "RR" acknowledged receiving this letter.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlords did not address a safety issue with the electricity.

The Tenants and the Landlords agree that the Landlords pay the hydro costs for the residential complex.

The Tenants and the Landlords agree the Landlords expressed concern to the Tenants about an observed increase in hydro consumption. The Tenants submit that this was presented to them as a safety concern and that the Landlords did not subsequently ensure the electrical system was functioning properly, which caused them to fear for their safety.

"RR" stated that:

- the Landlords noticed unusually high levels of hydro consumption in November and December of 2020;
- they spoke with all the occupants in the residential complex in an attempt to discover the cause;
- the drying tent in the back yard was removed in November of 2020 because there was a concern that the tent was contributing to the excessive consumption;
- although removing the tent reduced consumption levels, it did not entirely resolve the problem;
- the Landlords continued to investigate potential causes, including asking the Tenants if they were mining for bitcoin, which the Tenants denied;

- they inspected all of the rental units in the residential complex and they were unable to ascertain any other reasons for increased hydro consumption;
- in January of 2021 hydro consumption was still high but was at a “reasonable” level;
- they were not concerned that the excessive consumption posed a safety hazard; and
- if they were concerned about safety, they would have hired an electrician to inspect the system.

The Tenants submit that in a letter dated January 19, 2021 (Exhibit 27), the Landlords identified the excessive consumption as a safety hazard. The Tenants submit that because the Landlords have identified the excessive consumption as a safety hazard, they should have hired an electrician to establish that the system is functioning correctly.

“RR” stated that the Tenants were informed that hydro consumption had returned to a reasonable amount, although he cannot recall when they were provided with that information. The Tenants stated they were not informed that hydro consumption had been reduced until they were provided with a spreadsheet of usage, which was provided to them as evidence for the previous dispute resolution proceeding.

The Tenants are seeking aggravated damages and compensation for moving costs as a result of the aforementioned issues. The Tenants contend that they had “to flee for our safety, and we have PTSD as a result of the prolonged threat we lived with”.

“NR” stated that they mutually agreed to end the tenancy at the hearing on April 16, 2021 because they did not wish to wait 30 days for the Arbitrator’s decision and the Landlords’ “negligence” made them feel “unsafe”.

Background and Evidence presented on November 10, 2022:

The Tenants referred to exhibits 93 and 95, which they submit support their submission that they have PTSD. “NR” stated that these medical reports were prepared by a psychiatrist, that he still suffers from PTSD, and that he was had 8 free counselling sessions, which is all he can afford.

“RR” stated that he believes the medical reports were written by a general practitioner,

that “NR” has a history or previous mental health issues and recreational drug use, and that the medical reports are simply a “drug prescription”.

In their list of monetary damages, the Tenants claim compensation because the Landlord “failed to provide included internet access”. The Tenants are claiming compensation of $779.60 for the cost of paying for their own internet service for the period between September 01, 2020 and April 30, 2021.

The Landlords and the Tenants agree that internet was provided with the tenancy.

The Tenants submit that internet service was provided to them via a router that was located in another rental unit in the residential complex. They submit that the router frequently stopped working and needed to be re-set, which they could not re-set on their own because they did not have access to the router.

The Tenants submit that they communicated with the occupant who had physical control of the router in an attempt to have the router moved to a different location in the residential complex but that occupant would not acknowledge their request.

The Tenants submit that they purchased their own internet service in September of 2020 due to the unreliable internet access provided with the tenancy.

The Tenants submit that they brought their concerns about inadequate internet service to the Landlords’ attention in August of 2020, but the Landlords did not address their concerns. The Tenants were asked if they had documentary evidence to support this submission, which they were unable to provide. They did refer to exhibit #3, which is simply text messages sent on August 31, 2022 in which they inform the Landlords of their intent to purchase their own service.

“RR” stated that on one occasion the Tenants informed the Landlords of the need to re-set the router but they did not inform them of on-going problems with internet service until January of 2021. He stated that the Tenants informed the Landlords that they were getting their own internet service on August 31, 2020, but they did not explain why they opted to purchase their own service.

In support of their claim for internet service the Tenants referred to exhibit #2, which is a series of text messages between the Tenants and the other occupant of the residential complex. In these text messages the Tenants inform the other occupant that the router

needs to be re-set on various dates in August of 2020. The parties agree that these text messages were not given to the Landlords until January of 2021.

In the Application for Dispute Resolution the Tenants declare that the Landlords "tried to frame us for the electrical expenses involved, and for their own usage". At the hearing "NR" explained that this claim relates to the Landlords' investigation of increased hydro consumption and that the Landlord did not charge them for excessive use because the Tenants "thwarted" that attempt.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlords did not change the locks to the rental unit as requested. "NR" stated that the Tenants believed another occupant of the residential complex had been in their unit because that individual knew they had purchased a new computer and the only way he would have known that is if he had entered their unit without authority. "NR" stated that they expressed this concern to the Landlords, who "did nothing".

"RR" stated that the Tenants never informed him that they believed another occupant of the residential complex had been in their unit without authority.

The Landlords and the Tenants agree that on January 18, 2022 the Tenants asked to have the locks to the rental unit changed. The parties agree that on January 19, 2022 the Landlords agreed to change the locks and that they made two subsequent offers to change the locks, but the Tenants never responded to the offers. "NR" stated that they never responded to the offers because the Tenants concluded that new locks would not address their concern that another occupant had entered the rental unit.

The Tenants are seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlords "slandered" the Tenants when they told another occupant of the residential complex that the Tenants had accused him of selling drugs.

"RR" stated that he did not tell the other occupant that the Tenants had accused him of selling drugs. Rather, he told the occupant that the Tenants had accused him of "running a drug operation" which was a reference to the cannabis the occupant had been growing in the backyard. The Landlords and the Tenants agree that the Tenants did tell the Landlord that they believed the occupant was growing cannabis in the backyard.

At the conclusion of the hearing the parties were each given an opportunity to raise

issues that had not been addressed during the hearing. Both parties advised that they had no additional evidence to present.

Analysis:

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. As this is the Tenants' Application for Dispute Resolution, the Tenants bear the burden of proof.

Section 28 of the *Act* entitles tenants to the quiet enjoyment of the rental property including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

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.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

On the basis of the undisputed evidence, I find that other occupants of the residential complex, who shared the rear yard with the Tenants, erected a tent in the yard. Even if this tent prevented the Tenants from sharing the yard in an equitable manner, I cannot

conclude that that Tenants are entitled to compensation as a result of the tent because they did not inform the Landlords that the tent was interfering with their use of the yard until after the tent was removed. As the Landlords were not aware that the tent was an issue until after it was removed, there can be no reasonable expectation that the Landlords could have addressed the issue in a timelier manner. As outlined in the policy guideline, a landlord can only be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem. As the Landlords were not aware that the tent was an issue until after it was removed, I cannot conclude that the Tenants are entitled to compensation as a result of other occupants erecting a tent in the rear yard.

On the basis of the video evidence in exhibit 27, I find that in January of 2021 the rear yard was messy and the grass was in a state of disrepair.

On the basis of the testimony of "NR" and the letter, dated March 22, 2021 (Exhibit 57), I find that the Tenants did not express concern about the condition of the rear yard until March 22, 2021. On the basis of the undisputed testimony, I find that the lawn was re-seeded on April 03, 2021. I find that the Landlords responded to the Tenants' concerns about the condition of the rear yard in a timely manner. As the Landlords addressed the Tenants concerns about the rear yard in a timely manner, I cannot conclude that they are entitled to compensation as a result of the condition of the rear yard.

On the basis of the undisputed evidence, I find that the Landlords noticed an unusual spike in the hydro consumption at the residential complex. I find that the Landlords took reasonable steps to investigate the source of the unusual levels of consumption, including speaking with the occupants of the residential complex and inspecting the units.

Although the Landlords determined that a drying tent had contributed to the unusual levels of hydro consumption, I find that they were unable to ascertain other causes for the observed increase. Regardless, I find that the Landlords were satisfied that the consumption had returned to "reasonable" levels and it was reasonable for them to let the matter rest.

It is commonly understood, I believe, that increased hydro consumption is typically associated to the manner in which it is used. Even though a landlord is unable to determine why hydro consumption in a residential complex has increased, I find it reasonable for the landlord to assume the consumption levels are related to actions of

people living in the complex. For example, an occupant could turn up the heat and leave all the windows open. If the occupant does not disclose that information to the landlord, it would be very difficult for the landlord to determine the cause of the increase in consumption.

In these circumstances, I find it reasonable for the Landlords to conclude that the increased hydro consumption was related to the actions of one or more of the occupants of the residential complex. Given that there were no other signs that there was a problem with the system, I cannot conclude that the Landlords had an obligation to hire an electrician to ensure the system was safe.

Although I accept the Tenants' submission that they were concerned that the high levels of hydro consumption posed a threat to their security, I find that the Tenants submitted insufficient evidence to establish that the concern was reasonable. In reaching this conclusion, I was heavily influenced by the absence of any evidence that supports their concern that the high consumption levels were related to a problem with the electrical system. Given that the Tenants bear the burden of proof at these proceedings, I find the Tenants bear the burden of proving the electrical system was unsafe.

In considering the electrical system, I have placed little weight on the letter dated January 19, 2021 (Tenants' Exhibit 27). In that letter the Landlords wrote, in part, that "if we see a spike in Hydro, as landlords we are obligated for the safety of all tenants to explore where that spike is coming from by reaching out to all tenants". I find that this letter does not establish that the Landlords believe there is a problem with the safety of the electrical system. Rather, I interpret this letter to mean that the Landlords are intending to investigate the spike in hydro consumption in the event hydro is being used in an unsafe manner. For example, an increase in hydro consumption could be the result of someone growing cannabis in a manner that is dangerous to the property and the occupants.

As the Tenants have submitted insufficient evidence to establish that the Landlords did not properly investigate the spike in hydro consumption, I find the Tenants are not entitled to any compensation related to their concerns that the electrical system was unsafe.

As I have concluded that the Tenants have failed to establish that there were reasonable safety concerns, I cannot conclude that the Tenants needed to vacate the rental unit. Rather, I find that the parties mutually agreed to end the tenancy on April

17, 2021 and that they vacated the rental unit on the basis of that agreement. The Tenants were not obligated to enter into a mutual agreement to end the tenancy. Rather, they could have remained in the rental unit and they could have sought an Order requiring the Landlords to address any safety issues.

On the basis of the undisputed testimony, I find that internet service was provided to the Tenants as a part of their tenancy and that in August of 2020 they opted to purchase their own service. On the basis of the Tenants' undisputed submission, I find that the Tenants opted to purchase their own internet service because the router frequently required re-setting and it needed to be re-set by another occupant of the residential complex.

Although I accept the Tenants' submission that there was inconsistent internet service, I find that the Tenants have failed to establish that they properly informed the Landlord of the problems they were experiencing. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenants' submission that the Landlords were informed of the problem in August of 2020 or that refutes "RR"'s testimony that they were not informed of the problem until January of 2021.

As the Tenants have failed to establish that the Landlords were aware of the problem with internet service until January of 2021, I find that the Tenants are not entitled to compensation for purchasing their own internet service. Had the Landlords been made aware of the issue in a timely manner, I find it is entirely possible that they could have resolved the issue by having the router moved to a different location in the residential complex. By the time they were made aware of the problem, the Tenants had already purchased their own internet service and there was no need for the Landlord to intervene. I therefore find the Landlords are not obligated to compensate the Tenants for the cost of having their own internet service.

As previously stated, I find that the Landlords took reasonable steps to investigate the source of the unusual levels of consumption, including speaking with the occupants of the residential complex and inspecting the units. I find that the Tenants have submitted insufficient evidence to establish that the Landlords "tried to frame us for the electrical expenses involved, and for their own usage". As such, I find that no compensation is warranted as a result of the Landlord's investigation into hydro consumption.

I find that the Tenants have failed to establish that another occupant of the residential complex entered their unit without lawful authority. I find that their conclusion that the

unit was entered is mere speculation which is based on the fact the occupant knew the Tenants had purchased a new computer. I find there are other reasonable explanations for the occupant being aware of the purchase, such as they were observed carrying the computer into their unit.

Regardless, I find that the Landlords took reasonable steps to ensure the Tenants felt secure in their home when they offered to change the locks to the rental unit. On the basis of the undisputed evidence that the Tenants did not respond to the three offers to change the locks, I find it reasonable for the Landlords to conclude that changing the locks was not necessary. As the Tenants did not follow up on the offers to change the locks, I find they are not entitled to compensation as a result of the locks not being changed.

I find that the Tenants have submitted insufficient evidence to establish that "RR" told another occupant of the residential complex that the Tenants had accused him of selling drugs. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates this submission or that refutes the Landlords' denial of the allegation.

On the basis of the undisputed evidence, I find that "RR" told another occupant of the residential complex that the Tenants had accused him of "running a drug operation" which was a reference to the cannabis the occupant had been growing in the backyard. As the Tenants did tell the Landlord that they believed the occupant was growing cannabis in the backyard, I cannot conclude that this was a slanderous statement or that it breached the Tenants' right to quiet enjoyment. Rather, I find that the Landlord was simply investigating information provided by the Tenants. As such, I find that the Tenants are not entitled to compensation for this statement.

As the evidence shows that the Tenants mutually agreed to end the tenancy and I am not satisfied that the Tenants had to move out of the rental unit for any legitimate safety reason, I cannot conclude that the Tenants are entitled to any compensation for costs related to moving.

I find that the Tenants have failed to establish that the Landlords acted inappropriately during this tenancy and I cannot conclude that the Tenants are entitled to aggravated damages or compensation for loss of quiet enjoyment. Although I accept the medical evidence that establishes the Tenants have reported mental health issues which they attribute to their living arrangement, I find there is insufficient evidence to establish their perceptions of the situation are accurate.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their claim to recover the fee paid to file this Application.

Conclusion:

The Tenants' Application for Dispute Resolution 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: November 11, 2022

Residential Tenancy Branch