Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCEL IN ALL RENOVATINS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, MNDCT, LRE

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which they applied for a monetary Order for money owed or compensation for damage or loss, to cancel a Two Month Notice to End Tenancy for Landlord's Use, and for an Order suspending or setting conditions on the Landlords' right to enter the rental unit.

The female Tenant stated that on July 17, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on July 01, 2022 was sent to the Landlords, via email. The Landlords acknowledged receipt of these documents. As the Landlords acknowledged receipt of the documents, I find that they were sufficiently served to the Landlords and the evidence was accepted as evidence for these proceedings.

On October 24, 2022 the Tenants submitted additional evidence to the Residential Tenancy Branch. Legal Counsel for the Tenants stated that this evidence was served to the Landlord's legal counsel, via email, on October 24, 2022. The Landlords acknowledged receipt of these documents. As the Landlords acknowledged receipt of the documents, I find that they were sufficiently served to the Landlords and the evidence was accepted as evidence for these proceedings.

On August 05, 2022 and August 06, 2022, the Landlords submitted evidence to the Residential Tenancy Branch. The Landlord stated that in August of 2022, this evidence was served to the Tenants, via email, although they cannot recall the exact date of service. The Tenants acknowledged receipt of these documents. As the Tenants

acknowledged receipt of the documents, I find that they were sufficiently served to the Tenants and the evidence 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, with the exception of legal counsel, 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 , with the exception of legal counsel, affirmed they would not record any portion of these proceedings. Legal Counsel for the Tenant assured me she would not be recording the proceedings.

Preliminary Matter

This hearing was scheduled to commence at 9:30 a.m. and to conclude at 10:30 a.m.

At approximately 10:45 a.m. the parties were advised that the hearing could not continue.

Each party was asked if they wanted an adjournment to provide them with more time to present evidence. Both parties advised that they did not need additional time to present evidence. As such, the parties were advised that I would conclude the hearing and base my decision on the evidence before me.

Issue(s) to be Decided:

Are the Tenants entitled to compensation for deficiencies with the rental unit?
Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?
Is there a need to issue an Order limiting the number of times the Landlords and/or their guests can access the property?

Background and Evidence:

The Landlords and the Tenants agree that:

- This tenancy began in June of 2020;
- There is a signed tenancy agreement that names the male Tenant and the company named as an Applicant in the Application for Dispute Resolution.
- The tenancy included use of the house, a barn, and a shed;
- Rent for the house, barn/workshop, and shed is $2,800.00;

- Rent is due by the first day of each month;
- There is also a “Tenant Payment Agreement”, which appears to name all Applicants, albeit the individuals are only identified by their first names;
- The “Tenant Payment Agreement” declares that the Tenants will pay $1,200.00 per month for the use of a riding ring/storage area;
- A Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants, via email, on June 25, 2022 and a copy of it was served, in person, to the female Tenant on June 27, 2022;
- The Two Month Notice to End Tenancy for Landlord's Use declares that the rental unit must be vacated by August 30, 2022; and
- The Two Month Notice to End Tenancy for Landlord's Use declares that the rental unit will be occupied by the Landlord or the Landlord’s spouse.

The Tenants submit that they only received page one and two of the Two Month Notice to End Tenancy for Landlord's Use. The Landlords submit that they served all four pages of the Two Month Notice to End Tenancy for Landlord's Use.

The Tenants are claiming compensation of $16,000.00 in compensation for alleged deficiencies with the rental unit.

The Tenants are claiming compensation, in part, because the heating system was allegedly inadequate.

In regard to the heating system, the parties agree that on October 23, 2020 the Landlord was informed that the baseboards did not provide sufficient heat;

In response to the claim for an inadequate heating system, the Landlords submit that:

- The heating system is old but functioned properly;
- They provided the Tenants with a space heater to supplement the heat;
- The Tenants chose not to use the space heater;
- There was a wood stove in the house that the Tenants could use to supplement their heat;
- There was a fire in the house in early 2022;
- Shortly after the fire occurred, a fire inspector informed him that the wood stove could not be used;
- The chimney was repaired shortly after the fire; and
- The Tenants are still not able to use the wood stove.

In support of the claim for an inadequate heating system, the Tenants submit that:

- The heating system did not sufficiently heat the rental unit;
- They did not use the space heater provided by the Landlords, as they already had space heaters;

- The were able to use the wood stove to heat the house until late 2021 or early 2022, a fire inspector told them they were no longer permitted to use the wood stove in the house;
- The chimney was repaired shortly after the fire that occurred in late 2021 or early 2022;
- They are still unable to use the wood stove.

In an email sent on October 23, 2020, the Tenants inform the Landlords that the **"**house heater is not moving higher than 20 degrees". In an email sent on December 23, 2020, the Tenants inform the Landlords that they will not be using the space heater provided by the Landlord as it will take too much electricity.

The Tenants submit that the Landlords made a verbal offer to pay for the cost of wood for the wood stove, which the Landlords deny.

The Tenants are claiming compensation, in part, because the roof in the barn/shed was leaking.

In regard to the claim for compensation for the leaking roof, the Landlords and the Tenants agree that:

- On December 23, 2020 the Tenants asked the Landlords to repair the roof in in the barn/shed;
- The Tenants repeatedly asked for the roof to be repair and the Landlords repeatedly declined;
- The Landlords eventually offered to pay the Tenants $1,300.00 to fix the roof;
- On January 22, 2022 the Tenants sent the Landlords an email in which they agreed to fix the roof for $1,300.00;
- The Tenants deducted $1,300.00 from rent due in compensation for roof repairs they were going to make;
- The Tenants subsequently informed the Landlords they were not going to repair the roof; and
- The $1,300.00 rent reduction was repaid to the Landlord.

In response to the claim for the leaking roof, the Landlords submit that:

- The Tenants were told prior to the start of the tenancy that the roof leaked in the barn and the riding ring; and
- The Tenants were not told the roof would be repaired.

Photographs of the roof in the barn were submitted in evidence. When the Tenants were asked if they noticed the apparent holes in the roof, the female Tenant stated that they noticed the holes and were told the roof would be repaired.

The Tenants are claiming compensation, in part, because a hot water tank in the laundry room was leaking.

In support of the claim regarding the hot water tank, the Tenants submit that:

- There are two hot water tanks in the house;
- The hot water tank that supplies hot water to the laundry room and one bathroom was leaking;
- In order to prevent water from leaking, the Tenants shut off the hot water tank and did not have hot water on those areas; and
- The Landlords have not repaired the hot water tank.

In response to the claim regarding the hot water tank, the Landlords submit that:

- There are two hot water tanks in the house;
- The Tenants reported that the hot water tank that supplies hot water to the laundry room and one bathroom was leaking;
- The male Landlord inspected the hot water tank and could find no evidence of a leak; and
- The hot water tank was not repaired because it was not leaking.

The Tenants are claiming compensation, in part, because water was accumulating beneath the laundry room floor, which was creating an unpleasant odor.

In regard to the claim for the accumulating water, the Landlords and the Tenants agree that:

- The issue with the accumulating water was reported to the Landlord in the summer of 2021;
- The Tenants suggested a sump pump should be installed;
- The male Landlord advised that he did not wish to install a sump pump but he would be willing to fix the exterior drainage, which he believed would resolve the issue; and
- The Tenants told the Landlord they did not want the exterior drainage fixed due to the mess that repair would create.

The Tenants are claiming compensation, in part, because there was a rat infestation in the house and on the property.

In regard to the claim for the rat infestation, the Landlords and the Tenants agree that:

- After the infestation was reported to the Landlord, the Landlord had a pest control company address the situation on two occasions;
- After the second visit to the property the Tenants told the Landlords they did not want further pest control visits, as they did not think it would be beneficial; and
- The Landlords did not make any further attempts to resolve the rat infestation.

The Tenants are claiming compensation, in part, because the Landlords failed to replace some rotting plywood on the walls of the barn.

In support of the claim for failing to replace the plywood, the Tenants submit that prior to the start of the tenancy, the Landlords promised to replace some plywood siding on barn walls.

In response to the claim for failing to replace the plywood, the Landlords submit that prior to the start of the tenancy, the Landlords did not promise to replace some plywood siding on barn walls.

The Tenants are claiming compensation, in part, because the Landlords failed to repair a broken window in the barn. The parties agree that this repair was promised at the start of the tenancy and that the window was not replaced.

The Tenants are claiming compensation, in part, because the Landlords were using electricity paid for by the Tenants.

The Landlords and the Tenants agree that the Landlords were using power in an outbuilding for lighting and, periodically, for a fridge. The Tenants contend that the Landlords promised to install a separate power meter so they could compensate the Tenants for electricity used by the Landlords. The parties agree that the Landlords subsequently agreed to pay a set amount for electricity consumption.

The Tenants are seeking an Order restricting or setting conditions on the Landlords' right to access the property.

The Tenants acknowledged that they were told that the Landlords will be accessing an area behind the rental property. They submit that people access that area on a regular basis, without warning. They are asking for an Order requiring the Landlord to provided "proper notice" before coming onto the property and for an Order that limits the number of times the Landlords or their guests can access that area.

The Landlords submit that the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants because the Landlords intend to live in the rental unit. In support of this submission that male Landlord stated that:

- Prior to serving this Two Month Notice to End Tenancy for Landlord's Use, the Landlords were living in another home they owned elsewhere in this same community;
- They entered into a contract to sell the home they were living in;
- The sale of their previous home completed on June 17, 2022;
- The new owners took possession of the Landlord's previous home on September 10, 2022;
- They are temporarily renting a basement suite from a friend;
- They did not serve the Two Month Notice to End Tenancy for Landlord's Use in an attempt to avoid their obligation to maintain or repair the residential property; and
- They made several repairs to the property during the tenancy, including replacing appliances, installing a gate, repairing the chimney.

The Tenants do not dispute that the Landlords sold their previous home or that they are living in a friend's basement suite. The female Tenant stated that the Two Month Notice to End Tenancy for Landlord's Use was disputed, in part, because she doubts the Landlords will move into the unit. The Tenants do not dispute that appliances were replaced, that a gate was installed, and that the chimney was repaired.

Analysis:

Although neither party submitted a photograph of the house that is the subject of the tenancy, on the basis of the testimony of the parties, I find it reasonable to conclude that this is an older home.

When making a claim for damages or loss under the *Residential Tenancy Act (Act),* the party making the claim has the burden of proving their claim. Proving a claim for damage or loss 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 the Tenants are seeking financial compensation, the Tenants bear the burden of proving their claim.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment 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 the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make a rental unit suitable for occupation, which requires that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because deficiencies with the unit could interfere with the tenant's ability to comfortably occupy the rental unit.

I find that the Tenants have submitted insufficient evidence to establish that the heating system in the house was inadequate. In reaching this conclusion I was heavily influenced by the absence of any independent evidence that corroborates the Tenant's submission that it was not functioning properly or that refutes the Landlord's submission that it was functioning properly.

In an email sent on October 23, 2020, the Tenants informed the Landlords that the "house heater is not moving higher than 20 degrees". It is my general understanding that a comfortable room temperature is between 20-24 degrees Celsius. As the Tenant's evidence shows that the hearing system is able to keep the house at 20 degrees, I find that the heating system is functioning reasonably.

While I accept that the heating system was not functioning as well as one would expect in a newer home, this home was equipped with a wood stove which the Tenants could use to supplement the heat provided by the heating system.

I find that the Landlords responded reasonably to the report that the Tenants found the home cold, when they provided the Tenants with a space heater which enabled the Tenants to supplement the heat provided by the heating system.

For these reasons, I find that the Tenants have failed to establish that the Landlords breached section 32(1) of the *Act* when they did not make repairs to the heating system.

On the basis of the undisputed evidence, I find that sometime in late 2021 or early

2022, a fire inspector concluded that the wood stove could not be used. On the basis of the undisputed evidence, I find that the Landlords have not repaired the wood stove since that time and, as such, the Tenants were unable to use the stove to supplement the heat in the house.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. I find that a wood stove is a "service or facility" as that term is defined by section 1 of the *Act*.

As the wood stove was not the primary source of heating the home, I cannot conclude that the stove was a service or facility that was essential to the use of the home or that it was a material term of the tenancy agreement. As such, I cannot conclude that the Landlords were obligated to replace or repair the wood stove, pursuant to section 27(1) of the *Act*.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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.

As the Landlord did not repair the wood stove after the Tenants were advised that they could not use it, I find that the Landlords were obligated to reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the loss of use of the stove.

I am aware that determining the reduction in value of a tenancy resulting from the loss of use of a wood stove is highly subjective, however I am obligated to do so. I find that being without the wood stove reduced the value of this tenancy by $100.00 per month for the colder months of January, February, March, April, October and November of 2022 and by $50.00 for the warmer months of May, June, July, August, and September of 2022. In determining that compensation should not be greater, I was influenced by the fact the stove was not the primary source of heat in the rental unit and that the unit could continue to be heated with the heating system and space heaters. In determining that compensation should not be less, I was influenced by the fact the stove likely contributed significantly to the Tenants' ability to comfortably heat the home.

As the only evidence before me is that the Tenants were not able to use the wood stove since the end of 2021 or the start of 2022, I find that compensation for being without the stove should commence of January 01, 2022 and should run to November 30, 2022. I therefore find that the Tenants are entitled to compensation $850.00 for being without a functional wood stove for 11 months.

I find that the Tenants submitted insufficient evidence to establish that the Landlords promised to provide wood for the wood stove. In the absence of evidence to corroborate the Tenants' submission that this verbal promise was made or that refutes the Landlords' submission it was not made, I find the Tenants have failed to meet their burden of proving this was a term of the tenancy. As such, I cannot conclude that they are entitled to compensation for the cost of firewood.

I find that the Tenants have submitted insufficient evidence to establish that the Landlords promised to repair the roof in the barn and/or riding ring prior to the start of the tenancy. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Tenants' submission that this repair was promised prior to the start of the tenancy. Specifically, I was unable to find an email in the evidence submitted, in which the Tenants specifically declare that the Landlord promised to fix the roof in the barn and/or riding ring. Conversely, in an email dated December 23, 2020, the Landlord declares there was never a promise to repair the rooves. I find that this email corroborates the Landlords' submission that a roof repair was not promised prior to the start of the tenancy.

As the leaks were in the roof of the riding ring and barn, I find that the Landlords were not obligated to repair the leaks pursuant to section 32(1) of the *Act*, as the leaks were not required to make the rental unit "suitable for occupation by a tenant". I find that leaking roofs in outbuildings did not rent the house unsuitable for occupation. Had the roof been leaking in the house, the Landlord would have had an obligation to repair the roof, pursuant to section 32(1) of the *Act*, even if there had been no previous promise to repair the roof.

In the event the Tenants were told that a fully functional roof on the riding ring and/or barn would be provided with the tenancy, I would conclude that the Landlords would be obligated to repair the leaking roof, pursuant to section 27(1) of the *Act*, or to compensate the Tenants for living with the leaking roof, pursuant to section 27(2) of the *Act*. As the Tenants have failed to establish a fully functional roof on the riding ring

and/or barn would be provided, I cannot conclude that they are entitled to any compensation for the leaking roof.

In an email dated January 16, 2022, the Landlords declare that the roof and the riding ring will be “repaired soon”, although no specific date is provided. As there was no specific promise to provide these areas with a fully functional roof by a specific date was subsequently provided for the repairs, I cannot conclude that the Tenants are entitled to compensation for the leaking roof(s), pursuant to section 27(2) of the *Act*.

Although the evidence shows that the Landlords offered to pay the Tenants to make roof repairs, this does not, in my view, establish that they were obligated to do so. I find it entirely possible that they offered to do so because they simply wished to upgrade their property and/or they were attempting to accommodate the requests of the Tenants.

I find that the Tenants have submitted insufficient evidence to establish that the hot water tank was leaking in the laundry room. In reaching this conclusion I was influenced by the absence of any clear evidence, such as a photograph, that corroborates the Tenants’ submission that it was leaking. I find such evidence would have been very compelling and very easy to submit. I was further influenced by the absence of any evidence to refute the Landlords’ submission that the male Landlord could see no evidence of a leak when he investigated the report.

In an email sent by the Tenants on January 21, 2022, the Tenants refer to a need to repair the boiler/plumbing in the laundry room. Although this may be a reference to a need to repair a hot water tank, it may also be a reference to the need for a sump pump which will be discussed in further detail. Even if it is a reference to the hot water tank, it is not sufficient, in the face of the Landlords denial, to establish that the hot water tank needed repair.

As there is insufficient evidence to establish that the hot water tank needed repair, I cannot conclude that the Tenants are entitled to compensation for the Landlords’ failure to repair it.

On the basis of the undisputed evidence, I find that in the summer of 2021 the Landlords were advised that water was accumulating beneath the laundry room floor, which was creating an unpleasant odor. I find that the Landlords breached section 32(1) of the *Act* when they did not address this issue in a timely manner.

The Landlords were not obligated to install a sump pump, as the Tenants suggested, however they were obligated to remedy the situation. In the event the Landlords concluded that replacing the exterior drains were the appropriate repair, the had the right to make that repair even if the Tenants objected to the mess it would create. Regardless of the repair they chose, the Landlords had an obligation to remedy the situation.

As the Landlords did not remedy the situation, I find that the Tenants are entitled to compensation of $20.00 per month for living with the smell of the accumulating water. As the parties could only say that the issue was reported in the summer of 2021, I find that the compensation should begin effective August 01, 2021 and continue until November 30, 2022, for a total of $300.00.

In determining that compensation should not be greater than $20.00 per month, I was influenced by the undisputed evidence that the Tenants told the Landlords that they did not want the Landlords to relace the exterior drains. This, in my view, suggests that the smell emanating from the water was not unbearable and that the Tenants were willing to live with the issue rather than experience the discomfort of a repair.

On the basis of the undisputed evidence, I find that when the Landlords were informed of a rat infestation, they complied with section 32(1) of the *Act* when they hired a pest control company. On the basis of the undisputed evidence, I find that the Landlords did not continue to address the issue of the rat infestation, because the Tenants told them they did not want the pest control company to continue to address the situation. I therefore find it was reasonable for the Landlords to stop addressing the infestation.

Section 7(2) of the *Act* stipulates, in part, that a party who claims compensation for damage or loss that results from the other party's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

As the Tenants' request that the pest control company refrain from addressing the rat infestation, I find that the Tenants did not properly mitigate the impact that infestation had on their tenancy. As such, I find that the Tenants are not entitled to compensation as a result of the rat infestation.

I favour the submission of the Tenants, who submit that the Landlords promised to replace some plywood siding on barn walls over the submission of the Landlords, who

submit that this promise was never made. In reaching this conclusion I was heavily influenced by the email, dated December 23, 2020, in which the Landlords acknowledged that they promised to fix "a wall panels". I find the email corroborates the version of events provided by the Tenants.

On the basis of the undisputed that the plywood siding was not replaced, I find that the Landlord failed to repair some siding on the barn as promised.

On the basis of the undisputed evidence, I find that the Landlords promised to repair a window in the barn, which was never repaired.

I cannot conclude that the failure to repair the siding and the window was a breach of section 27 of the *Act*, as siding/windows are not considered a "service or facility" as that term is defined by section 1 of the *Act*. I also cannot conclude that this was a breach of section 32(1) of the *Act*, as the siding/window repair was not required to make the rental unit "suitable for occupation by a tenant". As previously stated, section 32(1) does not require a landlord to make repairs to outbuildings, as an outbuilding in a state of disrepair does not render the living accommodations uninhabitable.

I find that the Landlords failure to repair the siding and to repair the window constitutes a breach of the Tenants' right to the quiet enjoyment of the rental property. Specifically, I find that the failure to make the repairs to the barn siding and window made the barn <u>somewhat</u> less suitable for use.

Residential Tenancy Branch Policy Guideline #6 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 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. A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Although the Landlord failed to repair the siding/window in the barn, I cannot conclude that this had a particularly significant impact on the Tenants. Even if some of the siding and the window had been repaired, the Tenants would have merely had the use of a relatively old building with a leaking roof. I therefore find that the lack of siding/window repairs reduced the value of this tenancy by a total of $300.00 and I grant the Tenants compensation in that amount.

On the basis of the undisputed evidence, I find that the Landlords were using power in an outbuilding and that, at some undisclosed time, the Landlords began compensating the Tenants for their consumption. As the power was used for lighting and a refrigerator and the parties did not identify the total compensation paid, I cannot conclude that the power consumption was excessive or that the compensation provided by the Landlord was not reasonable. In the absence of evidence to show that the Landlords' consumption was greater than the compensation paid, I cannot conclude that the Tenants are entitled to additional compensation.

The Tenants submit that the Landlords promised to install a separate power meter so they could properly compensate the Tenants for their power usage. Given the cost of installing a separate power meter and the relatively limited power that would be used to operate lights and a refrigerator, I find that installing a separate power meter is unreasonable. Even if the Landlords offered to install one when power consumption became an issue, I find that it would have been reasonable for them to reconsider that offer, given the costs and benefits of the meter.

On the basis of the Tenants' acknowledgement that prior to the start of the tenancy they were told the Landlords would be accessing an area behind the rental property, I cannot conclude that the Tenants had any reasonable expectation of complete privacy. As the Tenants understood that the Landlords would be accessing that area, I find there is no need for the Landlords to provide prior notice of their intent to access the area nor is there a need to limit the number of times the Landlords can access that area. I therefore dismiss the Tenants' application for an Order suspending or setting conditions on the Landlords' right to access an area behind the rental property.

I specifically note that the Landlords remain obligated to comply with section 29 of the *Act* when they wish to enter the rental unit. Section 29 reads:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
(i)the purpose for entering, which must be reasonable;
(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
(d)the landlord has an order of the director authorizing the entry;
(e)the tenant has abandoned the rental unit;
(f)an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 49(3) of the *Act* permits a landlord who is an individual to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that the Tenants received at least the first two pages of the Two Month Notice to End Tenancy for Landlord's Use that was served to them in June of 2022, in which the Landlords informed them the tenancy was ending pursuant to section 49(3) of the *Act*. When a tenant disputes a Two Month Notice to End Tenancy for Landlord's Use, the landlord bears the burden of proving there are grounds to end the tenancy pursuant to section 49(3) of the *Act* and that the Two Month Notice to End Tenancy for Landlord's Use has been served to the tenant.

Section 52(e) of the *Act* stipulates that to be effective, a notice to end tenancy given by the landlord must be “in the approved form”. I find that a Two Month Notice to End Tenancy for Landlord's Use, which is a four page document, is the “approved form” and that all four pages must be served to the tenant.

I find that there is insufficient evidence to determine if the Tenants received all four pages of the Two Month Notice to End Tenancy for Landlord's Use when the Notice was served in June of 2022, as the Landlords submit, or if they received only the first two pages of the Two Month Notice to End Tenancy for Landlord's Use, as the Tenants submit. While the onus is on the Landlords to prove that they properly served the Two Month Notice to End Tenancy for Landlord's Use, I recognize the difficulty of that burden when the other party simply says all pages were not received.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used. Even if the Tenants did not receive the last two pages of the Two Month Notice to End Tenancy for Landlord's Use, there is nothing before me that would cause me to conclude that those forms were withheld in an attempt to mislead the Tenants.

Even if the Tenants did not receive the last two pages of the Two Month Notice to End Tenancy for Landlord's Use, I cannot conclude that they were significantly disadvantaged by the absence of the last two pages. Rather, the Tenants obtained the assistance of legal counsel, were able to dispute the Two Month Notice to End Tenancy for Landlord's Use in the appropriate time period, and they appear to be aware of their legal rights in regard to the Notice.

Even though the Tenants were not significantly disadvantaged by the absence of the last two pages, I must conclude that if the last two pages of a Two Month Notice to End Tenancy for Landlord's Use are not served to a tenant, it does affect the substance of the Notice. The last two pages of the Notice contains highly relevant and important information.

On August 06, 2022, the Landlords submitted a full copy of the Two Month Notice to End Tenancy for Landlord's Use. Even if the Tenants did not receive a complete copy of the Two Month Notice to End Tenancy for Landlord's Use in June of 2022, I am satisfied that they received a complete copy of this document sometime in August of 2022 when it was served to them as evidence for these proceedings.

Section 49(2) of the *Act* stipulates that a landlord may end a tenancy pursuant to section 49(3) of the *Act* by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice, the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

As the rent for this tenancy was due by the first day of each month, I find that the effective date of a Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenants in June of 2022 could be no earlier than August 31, 2022. I find that the effective date of the Two Month Notice to End Tenancy for Landlord's Use that was received by the Tenants in August of 2022 could be no earlier than October 31, 2022. The Two Month Notice to End Tenancy for Landlord's Use that is the subject of these proceedings incorrectly identifies the effective date of the Two Month Notice to End Tenancy for Landlord's Use as August 30, 2022.

Section 53(1) of the *Act* stipulates that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. If I had been able to conclude, on the balance of probabilities, that the Tenants received the complete Two Month Notice to End Tenancy for Landlord's Use in June of 2022, I would have concluded that the deemed effective date of the Notice would be changed to August 31, 2002, pursuant to sections 53(1) and 53(3) of the *Act*. As there is insufficient evidence that the Tenants received the complete Two Month Notice to End Tenancy for Landlord's Use until sometime in August of 2022, I find the effective date of the Two Month Notice to End Tenancy for Landlord's Use is deemed to be changed to October 31, 2022, pursuant to sections 53(1) and 53(3) of the *Act*.

I find that the Landlords ended this tenancy because they sold their previous home and they intend to move into the rental unit. In reaching this conclusion I was influenced, in part, by the male Landlord's testimony that the Landlords intend to move into the rental unit.

In reaching this conclusion I was further influenced by documents submitted in evidence relating to the sale of the property which were submitted in evidence by the Landlords. I find these documents strongly support the Landlords' submission that the sale of their previous home completed on June 17, 2022. I find that the evidence of the sale of their

home lends significant credibility to the Landlords' submission that they intend to move into the rental unit.

The fact that the Two Month Notice to End Tenancy for Landlord's Use is dated June 25, 2022, which is shortly after the June 17, 2022 completion date of the Landlords' previous home is persuasive. I find the timing of these events serves to corroborate the Landlords' submission that they intend to move into the rental unit because their previous home has been sold.

On the basis of the undisputed testimony that the Landlords are temporarily residing in a friend's basement suite. I find the fact the Landlords have not secured a permanent residence serves to corroborate their submission that they intend to move into the rental unit.

I find the Landlords' testimony regarding their intent to move into the rental unit was consistent and forthright, and I have no reason to discount it. Conversely, I find that female Tenant's testimony that she does not believe the Landlords will move into the rental unit is highly speculative.

In addition to proving that a landlord intends to move into a rental unit when they are ending the tenancy pursuant to section 49(3) of the *Act,* a landlord must also establish that they intend to do so "in good faith".

In regard to the issue of "good faith" Residential Tenancy Branch Guideline 2A reads as follows:

In Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case. If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

There was no evidence presented that suggest the Landlords have a comparable rental unit to move into now that they have sold their previous residence. There was no evidence presented that show the Landlords have previously ended a tenancy without occupying it for at least six months. There is no evidence before me that suggest the Landlords intend to re-rent the unit for higher rent without living in the it for at least six months. I therefore cannot conclude, on the basis of those issues, that the Landlords acted in bad faith when they served this Two Month Notice to End Tenancy for Landlord's Use.

I find, on the balance of probabilities, that the Landlords served this Two Month Notice to End Tenancy for Landlord's Use because they intend, in good faith, to move into the rental unit. In reaching this conclusion, I am satisfied that the Landlords did not end this tenancy for an ulterior or dishonest motive. Specifically, I find that the evidence does not support a finding that the Landlords are ending this tenancy to avoid a legal obligation to maintain and/or repair the residential property.

Although I have found that the Landlords failed to repair a barn window, to affix some plywood to the barn siding, and to repair a wood stove, I find it highly unlikely that the Landlords would have incurred the inconvenience of selling their home and moving simply to avoid making these repairs. I find the cost of these repairs would have been relatively minor in comparison to the costs associated to moving.

Although I have also found that the Landlords failed to repair the issue with water beneath the laundry room, I find that failure was attributable to the Tenants expressed desire to not live with the inconvenience of the repairs rather than the Landlords unwillingness to make the repairs. The evidence shows that the Landlords told the Tenants they would repair the exterior drains and the Tenants asked them not to. Repairing exterior drains is an expensive repair and, in my view, the offer refutes the

suggestion that the Landlords were not willing to repair and maintain the unit.

Although the Landlords ultimately did not repair the issue with the water beneath the laundry room, I find that is more indicative of their attempts to please the Tenants rather than an attempt to avoid a legal obligation.

I find that the Landlords made various repairs during this tenancy, including replacing appliances, installing a gate, and responding to a rat infestation until they were asked to abandon those attempts. I find that the repairs/efforts the Landlords made during the tenancy suggests that the Landlords are not moving into the rental unit because they are avoiding their legal obligation to maintain the unit.

I find that the primary dispute between the Landlords and the Tenants was the need to repair roofs in the outbuildings. The Tenants were repeatedly asking for those repairs and the Landlords were repeatedly refusing to make the repairs. These requests began in December of 2020 and are still on-going.

In January of 2022 the Landlords relented and offered to pay the Tenants to repair the roof. The Tenants initially agreed to make the repairs and then retracted their agreement. The Landlords offer to make these repairs, in light of their belief they were not required/promised. In my view, this offer shows the in early 2022 the Landlords were still attempting to please the Tenants and does not support a finding that the Landlords are moving into the property for an ulterior motive.
Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the Two Month Notice to End Tenancy for Landlord's Use that the Tenants received in August of 2022 complies with section 52 of the *Act* and I have dismissed the application to set aside the Two Month Notice to End Tenancy for Landlord's Use, I must grant the Landlord an Order of Possession. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion:

The Tenants application to cancel the Two Month Notice to End Tenancy for Landlord's

Use is dismissed, without leave to reapply.

The Landlords are granted an Order of Possession that is effective on November 30, 2022. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenants have established a monetary claim of $1,450.00 as compensation for being without certain repairs, and I am granting a monetary Order in that amount. In the event the Landlords do not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants' application for an Order suspending or setting conditions on the Landlords' right to access an area behind the rental property 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 22, 2022

Residential Tenancy Branch