Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Association British Columbia, Inc. and RHOME Property Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- disputing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 9, 2022 (the "10 Day Notice") pursuant to section 46; and
- a Monetary Order of $35,000.00 for the Tenants' monetary loss or money owed by the Landlords pursuant to section 67.

The Tenants, ASM and SL, and the Landlord's agent PC attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

PC acknowledged receipt of the notice of dispute resolution proceeding package (the "NDRP Package") and some evidence from the Tenants. PC testified he did not receive any receipts or monetary order worksheet from the Tenants. I find the Landlords were sufficiently served with the NDRP Package pursuant to section 71(2)(c) of the Act. I find the Landlords were also sufficiently served with an amendment form (#RTB-42) and written statements dated August 14, 2022.

The Tenants denied having received the Landlords' documentary evidence. PC testified the Landlords' evidence was sent to the Tenants' email address for service stated on

page 4 of the tenancy agreement. A copy of this email submitted into evidence shows that it was sent on October 27, 2022. ASM testified he had blocked email correspondence from PC since July 2022. PC testified that he received an email notice to vacate from the Tenants on August 31, 2022.

I find the Tenants agreed to service via email as indicated on the tenancy agreement which they signed. I accept PC's testimony and find the Landlords' evidence was sent to the Tenants via email in accordance with section 88(j) of the Act and section 43(1) of the Residential Tenancy Regulation. I find that pursuant to section 44 of the Residential Tenancy Regulation, the Tenants are deemed to have received the Landlords' evidence on the third day after it was emailed, or October 30, 2022. I do not find the Tenants to have demonstrated that fairness requires the deemed receipt provisions to be rebutted in the circumstances, since their reason for being unable to receive the documents was that they had blocked email correspondence from PC.

Preliminary Matter – Naming of Parties

This application initially included ASM as the sole tenant. However, I find SL is also named as a tenant on the parties' tenancy agreement and has attended this hearing. As such and pursuant to section 64(3)(c) of the Act, I added SL as a tenant to this application.

This application initially named PC as the sole landlord. During the hearing, PC testified he is the legal representative for RHOME Property Management.

I find the tenancy agreement states that the landlord is "Associa British Columbia, Inc. - RHOME Property Management (Agent)" and is signed by PC on their behalf. I find the 10 Day Notice is also issued in the name of the Landlords and signed by PC on their behalf.

Section 1 of the Act defines the "landlord" in relation to a rental unit, to include:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> > (i) permits occupation of the rental unit under a tenancy agreement, or
> > (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement; […]

I find it is appropriate in the circumstances to name Associa British Columbia, Inc. and RHOME Property Management as the Landlords. I find RHOME Property Management is the agent division that is responsible for permitting occupation of the rental unit under the parties' tenancy agreement, as well as exercising powers and performing duties under this Act and the tenancy agreement. I find that PC is not acting in his personal capacity but in the course of his employment as a representative for RHOME Property Management. Accordingly, I have removed PC as a landlord on this application and added Associa British Columbia, Inc. and RHOME Property Management as Landlords pursuant to section 64(3)(c) of the Act.

This application also initially listed MW as a landlord. MW is the caretaker of the residential property in which the rental unit is located. PC testified that MW is not an employee of RHOME Property Management, though he "manages" MW. Based on the evidence before me, I do not find MW to be a "landlord" under the Act such that I would have jurisdiction to adjudicate a monetary claim by the Tenants against MW personally. Therefore, I have also removed MW as a landlord pursuant to section 64(3)(c) of the Act. However, I will consider the Tenants' evidence regarding MW's conduct to determine whether the Tenants are entitled to monetary compensation from the Landlords.

Preliminary Matter – Tenancy Has Ended

The parties agreed that the Tenants moved out of the rental unit on September 2, 2022. I find it is therefore not necessary for me to consider whether the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to compensation for unpaid rent?
3. Are the Tenants entitled to compensation of $35,000.00 for monetary loss or money owed by the Landlords?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on April 1, 2022 and ended on September 2, 2022. Rent was $2,300.00 per month due on the first day of each month. The Tenants paid a security deposit of $1,150.00.

Copies of the 10 Day Notice submitted into evidence show that it signed by PC on behalf of the Landlords and has an effective date of August 18, 2022 (corrected from August 16, 2022). It states the Tenants failed to pay rent of $2,845.00 (corrected from $2,645) due on August 1, 2022. The Tenants' application indicates the Tenants received the 10 Day Notice posted to their door on August 8, 2022.

PC testified the Tenants did not pay rent due on August 1, 2022. PC confirmed the Tenants gave written notice to vacate on August 31, 2022 and moved out on September 2, 2022. PC testified the Landlords were out of rent for August and September 2022, as well as fees for parking, storage locker, and late fees/NSF. PC explained that parking was cancelled for September 2022. PC stated the Tenants also owed $200.00 for having two additional occupants living in the rental unit for $100.00 per person in April 2022. PC explained that the extra occupants were discovered in late April 2022 and the Landlords' automatic withdrawals for the additional $200.00 rent did not begin until May 1, 2022. PC testified there was a prior dispute resolution hearing on August 19, 2022 (file number referenced on the cover page of this decision).

PC testified that the Tenants owe the following amounts:

Item	Amount
August 2022 Rent	$2,300.00
August 2022 Parking	$50.00
August 2022 Storage	$45.00
September 2022 Rent	$2,300.00
September 2022 Storage	$45.00
Late Fees and NSF	$50.00
April 2022 Rent for Additional Occupants	$200.00
Total	**$4,990.00**

In response, ASM questioned whether the caretaker, MW, is an employee of RHOME Property Management. ASM stated that MW also did not attend the parties' previous hearing on August 19, 2022, which led to the dispute being decided in the Landlords' favour. The Tenants repeated that MW should have attended this hearing.

ASM testified that the Tenants were "bullied" by MW from the first day they moved in, until the Tenants felt that it was no longer safe for them to stay.

ASM testified there was an incident involving a leak in the rental unit. ASM stated that MW rushed to the rental unit, tried to argue with SL at the door, and tried to force herself into the unit to see what was going on. ASM testified that the Tenants' young child was showering in the bathroom and was scared by MW barging in. ASM stated that there was no threat to life or property that would justify MW's entry.

ASM stated the leak was not that bad, someone came to inspect the rental unit and the Tenants were given a bill for $180.00. ASM stated the Tenants were being bullied for damages when there should be insurance coverage.

SL testified that her parents were visiting, and MW questioned them in the elevator. SL stated that her father does not speak English. SL stated that MW "has no right to talk to them" and was disturbing the Tenants' visitors.

ASM stated that MW called the police on him "numerous times for no reason". ASM stated that MW claimed he had broken her things, but there were no witnesses and no evidence.

ASM testified that MW called the police on the day that the Tenants were moving out, claiming that the Tenants had stole the elevator key. SL stated that MW was screaming at the Tenants to get out in front of other tenants. SL stated that MW was trying to attack ASM.

ASM explained that the Tenants are asking in their monetary claim for 12 months' of rent and all of their moving expenses.

The Tenants submitted written statements regarding the leak incident on July 21, 2022 involving MW, which contain the following excerpts (portions redacted for privacy):

> *On July 21, 2022, [MW] came to our unit and started knocking the door very hard and loud. When I opened the door, she started screaming at me about a leak. During this time my 3 years old [child] was taking a bath with the door open, […]*
>
> *Without asking for permission to enter our unit, [MW] walked into our home to check the source of the leak that she was investigating. When [MW] entered the unit, she told me to "take your [child] out of the bath". My [child] was embarrassed and scared […]*

In reply, PC questioned whether the Tenants had attempted to rectify the issues with MW while the tenancy was ongoing. PC referred to a police report submitted into evidence by the Landlords. PC explained that they need to investigate leaks when it is unknown how serious the leak might be. PC stated that the property was in jeopardy, and the leak did go down to the suite beneath. PC stated that it was necessary to ensure the electronic fan in the suite below could operate. PC stated that there was resistance from SL at the time, suggesting that the activity causing the leaking was not going to end. PC testified that eventually everything was cleaned up and they did not need to call emergency restoration services.

Analysis

1. Are the Tenants entitled to cancel the 10 Day Notice?

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

> **Form and content of notice to end tenancy**
> 52 In order to be effective, a notice to end a tenancy must be in writing and must
> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
(e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and I find that it complies with the requirements of section 52 in form and content.

Based on the Tenants' application which acknowledges receipt of the 10 Day Notice posted to the Tenants' door on August 8, 2022, I find the Tenants were served with the 10 Day Notice on that date in accordance with section 88(g) of the Act.

Section 46(4)(b) of the Act permits a tenant to pay the overdue rent or make an application to dispute a 10 day notice to end tenancy within 5 days of receiving such notice. In this case, 5 days after the Tenants received the 10 Day Notice is Saturday, August 13, 2022. According to paragraph b of the definition of "days" in the Rules of Procedure: "If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open". Therefore, I find that the deadline for the Tenants to make an application for dispute resolution was extended to Monday, August 15, 2022. Records of the Residential Tenancy Branch indicate that the Tenants' application was submitted on August 14, 2022. I find this application was made within the deadline stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

I find it is undisputed that the Tenants did not pay rent for August or September 2022.

The legal reasons under the Act for a tenant to deduct from rent are as follows:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))

- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

Based on the evidence before me, I do not find the Tenants to have a legal reason for withholding rent under the Act. Although the Tenants have included a monetary claim in this application, I find the nature of the Tenants' claim for compensation is not one which would entitle them to deduct from the rent without first obtaining an order from the Residential Tenancy Branch.

Therefore, I conclude that the Landlords have established the grounds for issuing the 10 Day Notice. The Tenants' claim to dispute the 10 Day Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to compensation for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

Section 1 of the Act defines "rent" as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

(a) a security deposit;
(b) a pet damage deposit;
(c) a fee prescribed under section 97(2)(k) [*regulations in relation to fees]*;

Section 7 of the Residential Tenancy Regulation lists the non-refundable fees that a landlord may charge, including an administrative fee of not more than $25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent (section 7(1)(d)) and a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement (section 7(1)(g)).

Based on the above, I do not find the fees for parking and storage, as well as late fees and NSF fees to be "rent" for the purposes of section 55(1.1).

I accept the Landlords' evidence that the Tenants owe $200.00 additional rent for additional occupants living in the rental unit in April 2022. I find the Landlords' authority to collect this amount pursuant to the parties' tenancy agreement was confirmed in the decision from the parties' previous dispute resolution proceeding.

In addition, Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states:

> If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

I find the tenancy ended on September 2, 2022 when the Tenants vacated the rental unit, and that unpaid rent owing up to this date was $200.00 (April 2022 additional rent) + $2,300.00 (August 2022 rent) + $2,300.00 × 2/30 days (pro-rated September 2022 rent) = $2,653.33.

Based on the foregoing, I conclude the Landlords are entitled to recover $2,653.33 in unpaid rent from the Tenants under section 55(1.1) of the Act.

The Landlords are at liberty to claim the fees for parking, storage, late fees, and NSF, as well as loss of rental income for the remainder of September 2022 in their own application.

3. Are the Tenants entitled to compensation of $35,000.00 for monetary loss or money owed by the Landlords?

The Tenants indicated on their application as follows:

> *I would like the landlord to return my security deposit, pay for 12 months of my rent, pay for my move-in and move-out costs because the building manager has made living in the building very hard for us and we no longer can enjoy our time and our space in this building.*

I find the Tenants' basis for their monetary claim to be a breach of quiet enjoyment caused by the building caretaker, MW.

Section 28 of the Act states:

> **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.

Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment states:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. 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.
>
> […]
>
> **Compensation for Damage or Loss**
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of

> the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Section 67 of the Act states:

> **Director's orders: compensation for damage or loss**
> 67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states as follows:

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

In this case, I find the July 21, 2022 leak incident did not result in a breach of the Tenants' quiet enjoyment. Under section 29(1)(f) of the Act, a landlord may enter a rental unit if an emergency exists and the entry is necessary to protect life or property. I find that water actively leaking into the suite below to be an emergency for the purposes of this section. I find that entry into the rental unit to investigate the source of the leak was necessary to protect the Landlords' property. I find PC's uncontradicted testimony

suggests that the leak was caused by the way the Tenants were using their bathroom. Furthermore, I find there is insufficient evidence to suggest that MW's entry into the rental unit was prolonged or for any reason other than to investigate the leak. Therefore, while I accept that there was interference and inconvenience to the Tenants caused by MW's entry on that day, I do not find the interference to be "substantial" or the inconvenience "unreasonable" such that I would find the Tenants' quiet enjoyment to have been breached in the circumstances.

On the whole, I find the Tenants have not provided sufficient evidence to prove that MW substantially interfered with or unreasonably disturbed the Tenants during the tenancy. I find the Tenants have not provided sufficient details to demonstrate that MW made unfounded calls to the police about the Tenants. I find the Tenants did not submit any proof to show that MW had given false statements. The Tenants also did not clearly identify the dates or number of times that these incidents are said to have occurred.

In addition, I do not find it was inappropriate for MW to speak with the Tenants' visitors in the elevator, especially since there were concerns about the Tenants having additional occupants in the rental unit.

I accept that the Tenants and MW did not get along well with each other at all, and that there may have been heated arguments, including on the day that the Tenants moved out. However, I do not find the evidence to show that there was unprovoked, one-sided, or malicious conduct by MW towards the Tenants that occurred on a "frequent and ongoing basis" so as to deprive the Tenants of their quiet enjoyment.

I further note that I do not find MW's attendance in this hearing to be critical because the Tenants would have been first-hand witnesses of any interactions between themselves and MW. If the Tenants believed that MW possessed specific information which was necessary for this hearing, the Tenants could have requested a summons prior to the hearing under the Residential Tenancy Branch Rules of Procedure, but this was not done. In any event, I find the Tenants' own evidence and testimony to be insufficient to make out a claim for loss of quiet enjoyment, even in the absence of direct challenge by MW. I find the Tenants' descriptions of MW's conduct to be lacking in necessary details and independent corroborative support.

Based on the foregoing, I conclude the Tenants have not proven on a balance of probabilities that their right to quiet enjoyment during the tenancy was breached. Since the first step for obtaining compensation under section 67 of the Act is to demonstrate a

breach or non-compliance, I find the Tenants are not entitled to compensation from the Landlords.

The Tenants' claim under this part is dismissed without leave to re-apply.

Conclusion

The Tenants' application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55(1.1) of the Act, the Landlords are entitled to recover $2,653.33 in unpaid rent from the Tenants to September 2, 2022.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenants' **$1,150.00** security deposit in partial satisfaction of the amount awarded in this decision.

I grant the Landlord a Monetary Order of **$1,503.33** for the balance. This Order may be served on the Tenants, filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 07, 2022

Residential Tenancy Branch