Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDCT, FFT; MNDCT, FFT

Introduction

This hearing dealt with the tenants' first application, filed on March 30, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $4,221.48 for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the $100.00 filing fee paid for her application, pursuant to section 72.

This hearing also dealt with the tenants' second application, filed on March 30, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $25,711.50 for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the $100.00 filing fee paid for her application, pursuant to section 72.

The first hearing on December 1, 2022, lasted approximately 71 minutes from 1:30 p.m. to 2:41 p.m.

The second hearing on April 28, 2023, lasted approximately 145 minutes from 9:30 a.m. to 11:55 a.m.

The two landlords, landlord DOZ ("landlord") and "landlord DAZ," and the two tenants, tenant AB ("tenant") and "tenant RR," attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, all hearing participants confirmed their names and spelling. At both hearings, the landlord and the tenant provided their email addresses for me to send copies of both decisions to both parties after both hearings. At both hearings, the landlord and the tenant identified themselves as the primary speakers at both hearings and landlord DAZ and tenant RR agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of both hearings, all hearing participants separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, I informed them that I could not provide legal advice to them or act as their agent or advocate. At both hearings, both parties had an opportunity to ask questions, which I answered. At both hearings, neither party made any adjournment or accommodation requests.

At both hearings, both parties affirmed that they were ready to proceed with both hearings, they wanted me to make a decision, and they did not want to settle both applications. At both hearings, both parties were given multiple opportunities to settle at the beginning and end of both hearings and declined to do so.

At both hearings, I cautioned the tenants that if I dismissed their two applications without leave to reapply, they would receive $0. At both hearings, both tenants affirmed that they were prepared for the above consequence if that was my decision.

At both hearings, I cautioned the landlords that if I granted the tenants' two applications, the landlords would be required to pay the tenants for both of their monetary claims. At both hearings, both landlords affirmed that they were prepared for the above consequence if that was my decision.

Preliminary Issue - Adjournment of First Hearing

The first hearing on December 1, 2022, was adjourned to the second hearing date of April 28, 2023, because the first hearing lasted 71 minutes and it did not finish within the 60-minute hearing time. I noted the following in my interim decision:

> *This hearing did not conclude after 71 minutes and was adjourned for a continuation. The tenant affirmed that she completed her testimony regarding*

her first application. The reconvened hearing is to hear response submissions from the landlords and tenants regarding the tenants' first application, and to hear submissions from both parties regarding the tenants' second application.
…
I informed both parties that they would have full opportunities to present their testimony, submissions, and evidence, and they were not required to rush through their presentations, to avoid any adjournments. I notified them that a further adjournment could be granted if both parties are unable to complete their submissions at the reconvened hearing. Both parties affirmed their understanding of same.
…
I informed both parties of the following information during this hearing. Both parties are directed not to serve any further evidence, aside from the landlords' email proof of service, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing. Neither party is permitted to file any new applications after this hearing date of December 1, 2022, to be joined and heard together with the tenants' two applications, at the reconvened hearing. Both parties affirmed their understanding of same.

At the second hearing, both parties affirmed that the above information was correct.

Preliminary Issues – Service of Documents and Amendment

At the first hearing and in my interim decision, I found the following. The landlord confirmed receipt of the tenants' two applications for dispute resolution hearing packages. In accordance with section 89 of the *Act*, I found that both landlords were duly served with the tenants' two applications.

At the first hearing and in my interim decision, I found the following. The landlord stated that both tenants were served with separate copies of the landlords' evidence package on November 16, 2022, both by way of registered mail. She provided two Canada Post tracking numbers verbally. The tenant said that the tenants did not receive the landlords' evidence. She stated that the tenants did not object to me considering the landlords' evidence in my decision, even if the tenants' applications were dismissed and they were unsuccessful. She agreed that the tenants had an opportunity to object to the evidence and I could make a decision about its admissibility, but the tenants declined to do so.

I noted the following in my interim decision. Pursuant to section 64(3)(c) of the *Act*, I amended the tenants' application to correct the landlord's surname. Both parties consented to this amendment during the first hearing. I found no prejudice to either party in making this amendment.

At the first hearing and in my interim decision, I found the following. I ordered the landlords to re-serve the tenants with the landlords' written evidence package, pages 1 to 64, by December 9, 2022, by way of email to the tenant's mother's email address. I further ordered the landlords to provide proof of service by email, for the above documents, by uploading it to the online RTB dispute access site by December 9, 2022.

At the second hearing, the tenant confirmed receipt of the above landlords' written evidence package, pages 1 to 64, by December 9, 2022. The landlord confirmed that she provided a proof of service by email document on December 3, 2023, to the online RTB dispute access site.

Issues to be Decided

Are the tenants entitled to monetary orders for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the two filing fees paid for both applications?

Background and Evidence

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

The landlord and the tenant agreed to the following facts. This tenancy began on October 1, 2012. Both parties signed a written tenancy agreement. Monthly rent in the amount of $1,491.38 was payable on the first day of each month. A security deposit of $700.00 was paid by the tenants and it was returned in full by the landlords. The landlords obtained an order of possession on August 23, 2019, and effective on August 31, 2019. That order and the eviction were stayed by the Supreme Court of British Columbia ("SCBC"). The tenants vacated the rental unit on March 29, 2022 and they left the keys in the mailbox, which was retrieved by the landlords on March 31, 2020.

Tenants' First Application

The tenant testified regarding the following facts at the first hearing. The landlords owe the tenants money for the gas and hydro utility bills. The bills were in the tenant's name from the beginning of the tenancy to February 18, 2020. The landlord's boyfriend moved in on August 1, 2019, and the landlord did not reimburse the tenants for him living there. The landlord put the utility bills in her name after February 18, 2020. The utility bills were racked up purposely by the landlord, to a shocking amount. The 40% owed by the landlords was not given. There was a previous RTB hearing on April 9, 2020, when the tenants had moved out already, they did not provide evidence of paying the bills, so it was not discussed, and the landlords wanted to give evidence. This issue was severed with leave to reapply. It is the difference of what the bills would have been based on the average. The tenants submitted all of the bills. The balance owed from September 2019 is $815.33, which is 40%, of which $454.12 is for hydro and $361.00 is for gas.

The tenant stated the following facts at the first hearing. The tenants provided evidence of pictures with the windows open. The landlord used plug-in heaters and electric stand-up heaters. The tenants provided 2 witness statements of the alternate form of heat, and the gas fireplace was working. The landlord looked at the furnace, at the tenants' request, and it was not addressed because the landlord said it was in working order. There was no access to the laundry or the power from the heat. The heaters and dryers were used by the landlords not the tenants. There was a higher heat cost. The tenants provided a hydro chart. The tenants provided evidence of emails, calls, and posted notices, where the landlord asked to flip the breakers because they were blown. The electrical sockets were the primary source of heat. The tenants want their costs back. There was a loss of laundry of $720 from September 2019 to March 2020. In a previous RTB hearing from June 6, 2019, the Arbitrator provided the tenants with a rent reduction of $120.00 per month. There was a laundry cost. The laundry was locked, and the laundry machine was removed and returned in September. The tenants continued to pay for laundry because they did not want another RTB hearing.

The tenant testified regarding the following facts at the first hearing. The tenant was assaulted by the landlord 's boyfriend and stopped using the laundry. The police said there was a break-in and there was a fear of safety. The tenants paid for the above costs in good faith, so they would not look bad. The tenants lost the use of the deck, and it was never repaired. There was a penalty of 10 eviction notices against the tenants. There is a video of the water coming in and out. The landlords were given penalties from the Compliance and Enforcement Unit of the RTB ("CEU"). It was

$960.00 for the loss of use of the common area. The tenants did not use the backyard and it was locked. The landlord shouted profanities in front of the tenants' kids.

The landlord testified regarding the following facts in response at the second hearing. Both of the tenants' applications are past the August 23, 2019 end of tenancy date and the August 31, 2019 order of possession date. These are past disputes of the RTB and the CEU. The criminal information is untrue, as per the evidence. The landlord thought both of the tenants' applications were "thrown out" because they are past the 2-year deadlines. The CEU fined the landlords $5,000.00. The past decisions already dealt with the tenants' issues and this is "double jeopardy," so the tenants cannot claim it again. The landlords paid over $14,000.00 already. Regarding the tenants' first application regarding rent, devaluation, amenities, and outstanding bills, the landlords' evidence says that the amenities were paid out and the landlords paid a CEU fine of $10,000.00. The tenants were given leave to reapply after the judicial review and they abandoned it. This is a criminal issue for the police, not the RTB.

The tenant stated the following facts in response at the second hearing. The tenancy ended April 1, and the landlord got the keys back. The tenants had two years from that point. There were abuse and health issues. There was a loss of quiet enjoyment and hearings for evictions. The tenants did not abandon the judicial review. They received compensation, as per the previous RTB decision from June 2019, for the laundry, which the tenants were ordered to pay again when they got the facilities. There was $100.00 per month for the loss of the use of the deck, until repaired, but the tenants paid again when it was not repaired. The fines from CEU were not given to the tenants, it was for not following the rules, and the tenants did not receive anything from the landlords. There was a loss of amenities and quiet enjoyment. Regarding the criminal issues, the police told the tenants that because it was a landlord and tenant issue, the police could not deal with it and told the tenants to go through the RTB. The tenants suffered abuse 2 years after they moved out. Their tires were shoved under their car, which was vandalism.

Tenants' Second Application

The tenant testified regarding the following facts at the second hearing. The tenants want to be reimbursed for the cost of each RTB case and eviction notice that was argued and fabricated by the landlords, which was inconvenient and costly for the tenants. The tenants had to defend each case at their own cost. The first 10 items on the tenants' monetary order worksheet are judicial review costs and RTB hearing costs, including ink, paper, copying, printing, and mailing. Everything was harassment by the

landlords, including financial. The ninth eviction was a *res judicata* issue, the tenants messed up the times of the hearing, they attended at 11:00 a.m. and missed the hearing. The landlords fabricated the bylaw issue from the previous hearing. The stop-payment fee cost $50.00 because the tenants had to cancel their rent cheque since the landlord said she did not receive it. There was a devaluation in the tenancy and a loss of quiet enjoyment. There was a cost for the house alarm because the landlords threatened the tenants that they would come into the house. Each month of the tenancy was devalued from November 2018 to March 31, 2020, due to harassment by the landlords, so the tenants seek reimbursement for rent each month.

The tenant stated the following facts at the second hearing. Both parties got along before the conflict, as they were friends and had a good rapport. The tenants used to give 4 to 6 postdated cheques at a time to the landlord. The landlord asked for $400.00 extra per month in rent, to keep the house, because of her divorce. The tenants said that it was illegal, they could not afford it, and they refused the illegal rent increase, so things went downhill after. In September and November there were eviction threats. The landlord refused the keys and there is a video of the tenants trying to return the keys. The landlord claimed that no rent was received in the second eviction notice from December 4. The tenants provided witness statements. The tenant's mother cannot provide verbal testimony as a witness because she passed away. On January 2nd, there was a third eviction notice, as the tenants forgot to pay rent until the second day, but the Arbitrator dismissed it as false. February 2 was the fourth eviction notice where the landlord did not accept the tenants' e-transfer until February 2, so the Arbitrator waived it. There were a pattern of eviction causes fabricated from November. On February 12, it was the fifth eviction and the landlord said she would use the property and issued a notice to end tenancy for that. The eighth eviction in July was for the landlord to use the property. The sixth eviction was April 26. The seventh eviction was April 30, regarding a bylaw violation where there was an illegal suite, and it was a secondary legal suite, but the tenants were occupying the primary suite. The ninth eviction was regarding the bylaw, but the tenants missed the hearing, so they went to judicial review.

The tenant testified regarding the following facts at the second hearing. The person downstairs moved out due to harassment and the tenants provided a statement from her, "witness BR." The tenants provided a video from witness BR, where the landlord was yelling at her. She asked the tenant to be present during her walk-through. The tenants provided a daily harassment chart. The new tenant moved in downstairs on August 1, 2019, "occupant V." On August 4, he assaulted the tenant while she was trying to move the barbeque. The tenants provided videos, a police report, and pictures

showing the bruises to the tenant's neck, chest, and back. The police were called for uttering threats again. The landlords' emails told the tenant not to approach occupant V. The tenant requested the removal of occupant V from the property, but the landlord's response was that the tenant could move out for safety. The landlord was using occupant V to intimidate the tenant and disturb the quiet enjoyment. The landlord is supposed to ensure the tenant's safety. The landlord was sharing the tenant's feelings and statements with occupant V, who sent a "cease and desist" statement to the tenant. The tenants lost the use of the common area, as the tenant was assaulted in the backyard, so the tenants could not go there, and the landlord "banned" the tenant with a lock. Witness BR was not allowed to come to the property by the landlord even though she traded childcare with the tenant.

The tenant stated the following facts at the second hearing. The landlord refused to do repairs, which the previous RTB Arbitrator ordered for the fridge, laundry, and deck, as per the previous RTB decisions. The tenants want the cost of $1,122.41 for the house alarm, as per the monetary order worksheet. The tenants had to monitor on an ongoing basis. The estimate for the loss of the use of the fridge is $135.00 because the tenants did not have use of the fridge for 23 days and they had to live out of their cooler. The hot water was nonexistent, and the longest period was 3 to 10 days without it. The tenant had to shower her kids at her mom's place, her friend's place, and the pool. The landlord made a complaint to the child ministry, which was dismissed. This caused anxiety and heart palpitations, so the tenant had to go to her doctor and get medications. She produced less breast milk, which she was giving to her child and her niece. Her daughter and her mother provided witness statements. There was 2 years of mental, emotional, and physical harassment. It was third-party harassment. The tenant's daughter had lice and she had to go to the laundromat to wash her clothes. The tenants want their rent back from November 2018 to March 31 2020, for $21,000.00 total.

The landlord testified regarding the following facts in response at the second hearing. These are criminal reports, which are fabricated. The tenant assaulted occupant V. The landlord was trying to reclaim her property. The tenants did not move out and chose to stay. The previous RTB hearings dealt with the same arguments from the tenants at both of these current hearings. The landlord is entitled to serve a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenants. The tenants' video camera did not record the landlord doing anything, so if she did anything, it should have been recorded by them. The landlord paid for her own video camera. The tenants want their rent back from 2018 to 2020, for the past 2 years but they filed these claims on March 30, 2022. Criminal issues are dealt with by the police or Small Claims Court.

The CEU apologized to the landlord saying that the first hearing should never have been adjourned because the tenants' applications are past the 2-year deadline, so they should have been "thrown out." The loss of quiet enjoyment was already awarded and decided. This is repetitive of past RTB disputes. The deck looks the same from when the tenants were there.

Landlord DAZ said that the tenants' applications are past the 2 year mark and the tenants are trying to take advantage.

The tenant stated the following facts in response at the second hearing. The keys were returned to the landlords on March 31 and the walkthrough was supposed to be on April 1, but the tenants were advised not to go, so they left the keys in the mailbox. The tenants provided videos showing that there was no assault on occupant V by the tenant.

Analysis

I find that I have jurisdiction to decide both of the tenants' applications because the tenants filed them both on March 30, 2022. I find that this tenancy ended on March 31, 2020. Both parties agreed that the tenants left the keys in the mailbox and the landlord retrieved them on March 31, 2020. Therefore, I find that both of the tenants' applications were filed within the 2-year deadlines, as per section 60 of the *Act*.

Burden of Proof

The tenants, as the applicants, have the burden of proof, on a balance of probabilities, to present and prove both of their applications, claims, and evidence, in order to obtain a monetary order. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide sufficient evidence of their claims.

The tenants received an application package from the RTB. The tenants were provided with multiple "Notice of Dispute Resolution Proceeding" ("NODRP") documents from April 7, 2022 and December 2, 2022, after filing both applications and after both applications were adjourned from the first hearing to the second hearing. The NODRP documents contain the phone numbers and access codes to call into both hearing.

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

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

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

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

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

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

I find that the tenants did not sufficiently present and prove their applications, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during both hearings, as per Rules 7.17 and 7.18 of the RTB *Rules.*

Both hearings lasted approximately 216 minutes, which is 3 hours and 36 minutes. The tenants spoke for the majority of both hearings, for hours without interruption, as compared to the landlords. The tenants had ample time to present their claims, submissions, and evidence at both hearings. I repeatedly asked them if they had any other information to present and to respond to the landlords' evidence.

Although the tenants submitted a voluminous number of documents and evidence with both applications, I find that they failed to provide sufficient documentary and testimonial evidence to prove both applications.

The tenant repeatedly asked me at both hearings whether I had reviewed all of the tenants' evidence. I repeatedly informed her that the tenants were required to direct me to their evidence, the names of their documents, and the page numbers, in order for me to locate the information on the online RTB dispute access site. The tenants submitted hundreds of pages of documents in multiple parts and individual documents. I informed them that the information was disorganized and difficult to find.

The tenants were not permitted to call witnesses at the second hearing because they confirmed that they did not want to call any witnesses at the first hearing, when given the opportunity. The second hearing was a continuation of the first hearing, and the tenants were informed of same at both hearings. The tenant attempted to read aloud witness statements at the second hearing, but she did not call these witnesses to testify as to the authenticity and contents of their statements, and they were not available for cross-examination by the landlords.

At the second hearing, the tenant confirmed that she tried to find an advocate to assist her but was unable to do so. She said that she wanted a free advocate and none of them deal with monetary applications, only end of tenancy issues. She agreed that the tenants previously retained a lawyer for their judicial review application, related to this tenancy. She agreed that she received multiple notices of hearing, for both of the tenants' applications, which state that parties can have agents represent them at hearings. She agreed that the tenants had ample time to find an agent, advocate, or lawyer to represent them at both hearings.

The tenants filed both applications on March 30, 2022, the first hearing occurred on December 1, 2022 (over 8 months later), and the second hearing occurred on April 28, 2023 (over 13 months later). The tenants had ample time to prepare for both hearings, obtain advocates, agents, and lawyers to represent them, to submit sufficient evidence, and to present their applications.

Credibility

I found the 2 landlords to be more credible witnesses than the 2 tenants. The landlords provided their testimony in a direct, forthright, calm, convincing, credible, consistent, and clear manner. Their testimony did not change based on my questions. They did not get upset or agitated when asked questions or when providing their submissions.

Conversely, I found the 2 tenants to be less credible witnesses than the 2 landlords. The tenants provided their testimony in an unclear, confusing, and inconsistent manner. Their testimony changed based on my questions. They became upset and agitated when asked questions and when providing their submissions.

The tenant provided irrelevant information throughout both hearings, despite the fact that I cautioned her repeatedly regarding same. I repeatedly asked the tenant to provide a summary of evidence, but she continued to provide a day-by-day account of each event that happened on each day during the period from November 2018 to March 2020.

The tenant could be heard humming and talking to tenant RR during her testimony, during both hearings. I provided the tenants with ample and additional time during both hearings to search through their documents, review information in those documents, and locate the names of the documents uploaded to the online RTB dispute access site, so that they could reference and direct me to same.

The tenant claimed at the second hearing, that she could not recall much from the first hearing because it was 2 days before her mother's celebration of life. The tenant refused to allow tenant RR to speak for her during the second hearing, despite the fact that I offered her the opportunity to do so, since she claimed that it was difficult for her to properly present the tenants' applications.

Legislation and Policy Guideline

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *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.*
>
> …
> *D. AMOUNT OF COMPENSATION*
> *In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element.* ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a***

landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Findings

On a balance of probabilities and for the reasons stated below, I dismiss both of the tenants' applications, totalling $29,932.98, without leave to reapply.

I find that the tenants did not provide sufficient testimonial or documentary evidence to substantiate their significant monetary claims and they failed to satisfy the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

I note that the tenants waited 2 years, almost to the date, to file both applications, to obtain monetary compensation from the landlords.

Tenants' First Application

I dismiss the tenants' first monetary application, totalling $4,221.48, without leave to reapply.

The tenants' application for hydro and gas costs of $1,696.48 total, is dismissed without leave to reapply. I find that the tenants were unable to prove that the landlords intentionally increased the utility costs in order to make the tenants pay for more. I also note that the tenants arbitrarily added interest of 20% to many of the above costs, claiming that the landlords did not pay for the utilities at the time in 2019, when the tenants did not even pursue these costs against the landlords until they filed this application years later in March 2022. The tenants waited years to pursue these claims dating back to 2019, rather than diligently pursuing them at the time they occurred, so they waived their rights and accepted the above.

The tenants' application of $2,525.00 for the loss of the laundry, deck, and common area at the rental unit, is dismissed without leave to reapply. I find that the tenants are not entitled to compensation for their laundry or deck costs because they were given a past and future rent reduction in a previous RTB hearing in June 2019, by a different Arbitrator. I find that the tenants chose to continue paying the above costs despite not receiving working, functional appliances, services, facilities, as noted above. I cannot override, alter, or change an order from a previous Arbitrator, and I cannot issue compensation separately or retroactively, when the tenants were ordered to deduct the above costs from rent at that time in 2019. I also note that the tenants waited until

March 2022, to pursue these claims dating back to 2019, rather than diligently pursuing them at the time they occurred, so they waived their rights and accepted the above.

A previous RTB hearing between both parties regarding this tenancy, occurred on June 6, 2019, after which a decision, dated June 19, 2019, was made by a different Arbitrator. The file number for that hearing appears on the cover page of this decision. That decision states the following in the "conclusion" section, in part:

> *I have awarded the tenants' compensation totalling $840.00 for loss of laundry facilities and loss of use of the sundeck up to and including the months of June 2019. The tenants are authorized to deduct this amount from a subsequent month's rent. If the tenancy ends before the award is fully satisfied the tenants may enforce the balance outstanding by way of the Monetary Order that I provide to the tenants with this decision.*
>
> *For months after June 2019, the tenant are authorized to reduce their monthly rent payment by $120.00 per month until such time they are provided functional laundry machines and the tenants are authorized to reduce their monthly rent by $100.00 until such time the sundeck and stairs are repaired or replaced and suitable for ordinary use as a sundeck.*

As the tenants were unsuccessful in their first application, I find that they are not entitled to recover the $100.00 filing fee from the landlords. This claim is also dismissed without leave to reapply.

Tenants' Second Application

I dismiss the tenants' second monetary application, totalling $25,711.50, without leave to reapply.

The tenant alleged that occupant V assaulted her, she had police reports and photographs to support same, and the landlord did not evict occupant V. The tenants also alleged that the landlords harassed them throughout their tenancy. I note that the RTB does not have jurisdiction to deal with criminal offences, such as harassment and assault, pursuant to the Criminal Code of Canada. Only the police and the Courts deal with these matters.

The tenants' application for costs related to RTB hearings and Court judicial review proceedings, is dismissed without leave to reapply. This includes costs of $1,599.81

total, for $563.45 for mail post receipts, $380.88 for printing evidence, $280.00 for judicial review costs, $50.00 for the review cost, and $325.48 for ink, paper, and USB drive costs.

During the second hearing, I informed both tenants, that they were not entitled to recover any hearing-related costs for these two RTB hearings, any previous RTB hearings, or the judicial review before the Court. I notified them that the only RTB hearing-related costs that are recoverable under section 72 of the *Act* are for filing fees, which the tenants have already applied for in both of these applications. Further, I notified them that any judicial review costs from the Court are to be sought from the Court only, during those proceedings, and the tenants had a lawyer who provided legal advice to them and represented them during the judicial review hearing, so they could have pursued same at that time with their lawyer, in that venue.

The tenants' application for a rent reimbursement of $20,928.28 total (which was reduced by $2,525.00 from $23,453.28 for the tenants' first application rent reduction above), from November 2018 to March 2020, is dismissed without leave to reapply. The tenants alleged that they suffered a loss of quiet enjoyment and they had to attend multiple hearings for multiple eviction notices issued to them by the landlords. The tenants claimed that the landlords did not complete repairs, and they did not have full use of the common areas, services, and facilities at the rental unit.

The tenants continued to occupy the rental unit from November 2018 to March 31, 2020, despite the above complaints. The tenants continued to occupy the rental unit with their children. They did not move out or seek other accommodation. They had use of the rental unit during the above time period.

Section 26 of the *Act* requires the tenants to pay rent in full to the landlord, regardless of whether the landlords comply with the *Act*, unless the tenants have an order from an Arbitrator to deduct their rent or the tenants completed emergency repairs, according to the procedure in section 33 of the *Act*. I find that neither of the above apply, except where a decision was made by a different Arbitrator at a previous RTB hearing in June 2019, to allow the tenants to reduce their rent in accordance with those orders. This decision cannot relitigate the same rent reduction, as it is *res judicata,* since it has already been dealt with at a previous RTB hearing, as noted above.

While the tenants claimed that they lost quiet enjoyment due to the landlords' multiple eviction notices and attending multiple RTB hearings, I find that the landlords were exercising their legal rights under the *Act* to issue notices to end tenancy to the tenants.

RTB hearings are to determine whether the above notices are sufficient, if both parties do not reach their own agreement. RTB Arbitrators cannot preclude one party from issuing a notice to end tenancy to another party. The tenants continued to occupy the rental unit, despite numerous notices to end tenancy and RTB hearings, which was their choice. The tenants chose not to file RTB applications regarding same, until almost 2 years to the day, after their tenancy ended.

The tenants' application for $1,122.41 for purchasing a house alarm at the rental unit and $84.00 for PO Box address protection, is dismissed without leave to reapply. It was the tenants' choice to purchase the house alarm and PO Box address protection, they were not required or forced to do so by the landlords, and the landlords are not responsible for these costs.

The tenants' application for $50.00 for a stop payment fee is dismissed without leave to reapply. The tenants claimed that the landlord denied receiving their rent cheque, so they had to put stop payment on it. The tenants could have paid rent using other methods, such as e-transfer, which is free, which they agreed they used later to pay rent to the landlords. The tenants were not required to pay rent by cheques and therefore their choice to put a stop payment on their cheque was their own cost and the landlords are not responsible for this bank fee.

The tenants' application for tenant RR's lost wages of $1,792.00 for "unnecessary litigation attendance x 8" is dismissed without leave to reapply. Tenant RR did not reference or testify about any pay stubs, employment records, or other financial information during both hearings, regarding his wage loss. Tenant RR was not required to attend any RTB hearings, he could have had an agent, advocate, lawyer or the tenant attend on his behalf. The tenant claimed that she did not require tenant RR to speak, and she elected herself as the primary speaker for the tenants at both hearings. As noted above, the only RTB hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

The tenants' application for an estimate of $135.00 for "no fridge 23 days, 2-3 grocery trips weekly, more eating out" is dismissed without leave to reapply. The tenants claimed to have incurred these costs years ago, so they should have provided and referenced exact costs and receipts, rather than estimates, for this claim. I find that the tenants failed to provide sufficient documentary and testimonial evidence that they paid for the above cost.

As the tenants were unsuccessful in their second application, I find that they are not entitled to recover the $100.00 filing fee from the landlords. This claim is also dismissed without leave to reapply.

Conclusion

Both of the tenants' applications are dismissed in their entirety, 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: May 23, 2023

Residential Tenancy Branch