



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDCT, RR, ERP, RP, OLC

Introduction

This hearing dealt with the Tenants' joiner Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- an Order to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- an Order for the Landlord to make emergency repairs for health or safety reasons under section 33 of the Act;
- an Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed under section 32 of the Act; and,
- an Order for the Landlord to comply with the Act, regulations, and tenancy agreement under section 62(3) of the Act.

Property manager T.D., legal counsel C.F., legal counsel B.H. attended the hearing for the Landlord.

Tenant A.A. (lead Tenant), former Tenant R.N. attended the hearing for the Tenants.

History of File

This matter has a protracted record in RTB hearings, and the court. Previous hearings leading up to this matter were held on September 10, 2020, October 27, 2020, and January 19, 2021. The arbitrator's original decision was rendered on January 27, 2021.

In preliminary issues for the hearing, in paragraph 6 of the original decision, non-urgent claims were dismissed with leave to re-apply:

All other claims, namely, those made to reduce rent, a claim for compensation (including one made for aggravated damages), and a claim for an order for emergency repairs, are hereby dismissed with leave to reapply.

...

then at the end of the decision, the arbitrator seemingly dismissed the tenants' applications without leave to re-apply.

The reviewing judge found that the arbitrator's decision breached principles of procedural fairness by effectively dismissing without leave to re-apply on the Tenants' non-urgent claims which had earlier in the decision been dismissed with leave. The reviewing judge also found that the decision was patently unreasonable in respect of the two claims dealing with the garbage issues.

The reviewing judge ordered that the two claims about the garbage issues, specifically:

1. the loss-of-service claim focused on the closure of the internal garbage chute;
2. the claim with respect to the outdoor garbage-bin;

and, the claims from paragraph 6 of the original decision (rent reduction, compensation included for aggravated damages, emergency repairs) which were severed with leave to re-apply were remitted to the Residential Tenancy Branch (RTB) to be reconsidered by a new arbitrator.

Service of Evidence

Both parties acknowledged receipt or access to most evidence files uploaded. Some of the evidence files are those uploaded for previous hearings for this matter. The Landlord's legal counsel gave the Tenants' permission to serve them by email. The Tenants sent the Landlord's legal counsel their evidence by email on October 7, 2024. AA stated they received confirmation of receipt from Landlord's legal counsel and CF did not deny receiving the Tenants' evidence.

The Landlord stated they did not have access to one file the Tenants wanted to point to, and the Tenants stated they were fine to go ahead without it. I find that the Landlord was sufficiently served on October 10, 2024 with the Tenants' evidence files in this matter in accordance with section 71(2)(b) of the Act.

Preliminary Matter

Withdrawn files

The BCSC judge noted all the file numbers applicable to the matter in their decision. These file numbers are listed on the cover sheet of this decision.

The RTB contacted all the parties for each file to confirm that they still wanted to participate in the rehearing of this matter. Five of those files wanted to continue with this matter having Tenant AA as their representative. The remaining two applicants stated:

- Tenant OAH (file # XXXXXXXX52) confirmed on June 12, 2024 that *“I am not longer at this address and would like to be removed. Thank you.”*
- Tenant TLJ (file # XXXXXXXX51) was not included in the BCSC judge’s Order Made After Application. The RTB sent two emails to TLJ, but they went unanswered. The RTB contacted TLJ by telephone, and TLJ said they were not interested in pursuing.

Based on the messages from OAH and TLJ, I find that both parties are no longer interested in pursuing this matter. I order that both of these parties are removed from this matter under section 62 of the Act, and their claims are dismissed.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to an Order for the Landlord to make emergency repairs for health or safety reasons?

Are the Tenants entitled to an Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed?

Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

Background and Evidence

I reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This hearing was reconvened after it was adjourned on October 22, 2024. This decision should be read in conjunction with the Interim Decision issued on October 22, 2024. References made to the Tenants' evidence are noted as [Doc XXX-] where 'XXX' is the document number cited by AA.

The Tenants seek:

Compensation	Amount/mn
loss of service/facility-garbage chutes and underground garbage area	\$100.00
unsanitary living conditions	\$100.00
loss of enjoyment compensation	\$100.00

Based on evidence and submissions of the parties, the current state of each Tenant's tenancies are:

- Tenants AAHT – began May 1, 2006, and ended November 30, 2024;
- Tenant RN – began October 1, 2016, and ended March 31, 2019;
- Tenant JA – began May 1, 2014, and is on-going;
- Tenant RA – began April 1, 2016, and is on-going; and,
- Tenant GH – began March 1, 2015, and ended February 1, 2020.

Landlord's witness TD, a live-in full time building manager since June 2020, testified that there are 169 units in the residential property, and there are close to 200 people who live in the building. The building has 19 floors.

Tenant AA stated they have over 950 pictures of the garbage situation in the residential property. AA said they only uploaded 339 picture evidence demonstrating the situation in the garbage collection area on the residential property. Most of the pictures were taken by AA, while others had been provided by other residents as attachments to emails sent to AA and the city in furtherance to finding resolution to the garbage problem for this building.

Legal counsel submitted that AA's picture evidence was not an objective presentation of the garbage area, but rather a viewing showing the outdoor garbage area at its worst.

My review of the 2024 pictures uploaded into evidence is that they are a fair split between weekdays compared to weekend days.

Garbage chutes:

AA testified that in December 2005, the garbage chutes were temporarily closed because there had been a fire in the garbage dumpster in the underground garbage area, and a clean up of the underground garbage area, and all garbage chutes and rooms were conducted. The Landlord had uploaded a notice distributed in 2020 stating that the areas would be closed during the clean up procedure [Landlord's evidence #37]. AA did not know if that notice had been posted, sent by email to the residents, or provided to all the tenants in some other way as AA was not living in the residential property yet. AA stated that none of the tenants he knows has ever seen this notice. AA submitted that the Landlord entered this evidence to make it sound like the garbage chutes would be closed forever.

TD stated that in 2005, someone threw a lit cigarette down a garbage chute and it caused a fire in the garbage bin. TD said that the fire department recommended closure of the garbage chutes which the building did. TD said from 2005 to 2016 residents in the building brought their garbage down to the underground garbage area.

AA stated their tenancy began in 2006, and at that time, they had access to the garbage chutes as a place they could dispose of their garbage in the building. Since construction of the new tower in 2016, the garbage chutes were locked, and residents are made to physically bring their garbage to the outdoor garbage area. The residential property has ventilation issues, and when people bring their garbage through the building, down the elevator, to the outside garbage area, the smells from the garbage linger in the building and the elevator.

AA testified that during the 2018 and 2020 hearings, the Landlord said they would place the garbage bins back to the underground garbage area once the new towers were completed.

AA stated that the Landlord told the previous arbitrator that the city ordered them to lock the garbage chutes. AA met with a city district building inspector late in 2018 [Doc 378-], and this person told AA that they could not find any documentation confirming this fact.

Legal counsel submitted that this is not proof that there are no records, just that the city worker was not able to find any records.

Landlord's legal counsel pointed to Tenants' AAHT's tenancy agreement, and under section 3-RENTAL UNITS TO BE RENTED, 'Garbage Collection' is included in the rent [Landlord's evidence #3, 4, 8, 9, 10, 11, 12, 13]. Tenant AA stated when they moved in, they were shown the garbage chutes located in the hallway, and the garbage area including the recycling bins located in the underground garbage area. AA said the building manager at the time explained to them that they could place their garbage in the garbage chute, and it would be delivered to the underground garbage bin. AA confirmed that they were instructed and shown to bring boxes and recycling to the underground garbage area and dispose of them there.

AA stated that 'garbage collection' included the garbage chutes, the underground garbage area, and the recycling bins and is a material term of the Tenants' tenancy agreements. Legal counsel submitted that the lease includes 'garbage collection', and the words, 'garbage chutes' are not contained in any of the uploaded tenancy agreements.

Outdoor garbage area:

AA testified that the underground garbage area was moved to the outdoor visitor parking space area in approximately 2015 and before 2016. TD stated, to their understanding, in 2016 or 2017, the indoor garbage area was relocated to an outdoor garbage area when the Landlord was building a new tower next door.

Tenant RN testified that they are afraid to enter the outdoor garbage area alone. One time they entered there, they ran into a mother raccoon and her babies inside the garbage area. At that time, someone else ran into RN and offered to take their garbage to the bin. After that incident, RN said that they would coordinate trips to the outdoor garbage area with a neighbour, and they would do the trip together. RN said the garbage area is always unclean and they have stepped on needles there. RN testified that they have notified the Landlord about the filthy state of the garbage area and how they feel unsafe going there alone.

RN said they can smell what neighbours are eating because the ventilation in the building is poor. RN said they can smell the odour of garbage in the elevator. RN keeps their organics in their freezer for when it is time to take it down to the recycling container in the outdoor garbage area.

RN said they vacated their rental unit in March 2019, but they still live in the neighbourhood and they continue to have friends who live in the building. RN said when they walk by the building, they can see that the conditions of the outdoor garbage area remain the same.

AA referred to a city request for access to records document [Doc 372-]. This document pinpoints when the underground garbage area was relocated to the outside garbage area around the end of May 2016. By June 23, 2016, problems with the relocated outside garbage area are noted such as *"People are climbing over it and the dumpsters are often unlocked. Birds are transporting the garbage all through the neighbourhood."*

In 2018 through 2020, reports of garbage being dumped behind the residential property during construction persisted [Doc 370-]. On July 30, 2019, there is a notation in the city request for access to records that *"There are about 50 needles in the lane behind this address, located near the garbage can."* AA submitted since the start of construction, problems with undesirable people and needles being around the outdoor garbage area, as well as rodents and insects, and dirty and unsafe garbage area set up poses an unreasonable and significant interference with living at this residential property.

AA uploaded pictures of the state of the outdoor garbage area just in 2024 [Docs 224-, 225-, 226-, 227-, 229-, 230-, 231-, 272-]. I note two of these days are weekend days, while the other two are weekdays. The garbage area is full of garbage, boxes, recycling strewn on the ground and unorganized, and overflowing bins and recycling containers. AA testified that the amount of trash on the ground made it difficult to reach the garbage bins and recycling containers. AA pointed out that some rental units, including AAHT's, kitchen windows overlook this garbage area and in the summer heatwave months the smells were unbearable. AA submitted that the gated area was always unlocked except during times that the Landlord would be attending hearings at the RTB [e.g. Docs 018-, 024-, 028-, 036-, 353-].

To avoid issues of vandalism and of having to replace broken locks, AA testified that the Landlord resorted to leaving the entry door to the outdoor garbage area unlocked so that street people can gain access to take bottles and other recyclables for return of deposits. Further, AA stated that around the beginning of December 2024, they videoed an addict opening the lock with a key to the large gate into the outdoor garbage area. The person told AA that the Landlord gave them a key so they could pick up bottles for deposit return.

In a June 8, 2020 picture, AA showed how drug addicts were sitting inside the outdoor garbage area with one person injecting drugs in their arm [Docs 180-, 184-, 157-]. AA

stated if someone from the building was throwing out their garbage, this was what they would be met with. A second image shows the police attending, and only one person remains in this picture. A June 19, 2024 picture shows a street person inside the garbage bin, and an August 25, 2024 picture shows a street person going through garbage in front of the recycling bins. AA stated that residents are afraid to go into the garbage bin area so effectively there is a loss of use of the facilities.

AA testified with the uptake of people receiving packages through Amazon, the garbage area sees a lot of boxes, and since 2016, the Landlord has not done anything to improve this problem.

AA points to 179 pictures showing the dirty and unsanitary conditions of the outdoor garbage area. AA uploaded many pictures of homeless street people and addicts sitting in, sifting through the garbage in the unlocked outdoor garbage area, or hanging around the area close to the back door into the building. AA uploaded pictures of addicts passed out in front of the building, and this situation never was an occurrence when the underground garbage area was used. The reason for the multitude of pictures were because the Landlord in the past has stated that on most days the garbage area is clean [Docs 001- to 179- inclusive]. The filth of the garbage area is ongoing and continues to pose issues with mice, raccoons, skunks, and other small insects [Docs 361-, 362-, 262-, 264-, 128-

A written testimonial [Doc 217-] of a tenant in the building reported that:

- They moved into the building in 2010, and wrote about deficiency issues with ventilation, sanitation, and safety issues;
- All garbage chutes were operational when they moved in and the garbage room was indoors – so convenient, sanitary, and safe;
- When the Landlord decided to build a new building next door, the indoor garbage area was moved outside, and the garbage chutes were closed – the tenants were told this was to be temporary until the new building was completed;
- The Landlord did not reopen the garbage chutes, or relocate the outdoor garbage facilities back to the indoor area;
- Taking garbage outside leads to frightening encounters, not only with rats, skunks, raccoons, and coyotes, but also with non-resident people using the area for a variety of unwholesome purposes;
- Often the outdoor garbage area frequently has overflowing bins, and the offensive odours from the garbage are compounded by smells of urine, feces, and vomit from non-residents in the area;

- Pest infestation abounds – bedbugs, cockroaches, ants, silverfish, rats, and mice are common;
- Needles and condoms are left on the ground which creates risk of diseases;
- The outdoor garbage area is located next to the building's outdoor pool;
- The building's only access ramp is situated between the outdoor garbage area and the outdoor pool, and when piles of garbage are left at the base of the access ramp, this leaves the ramp unusable;
- Non-residents wait for more vulnerable tenants to be leaving the building, and they will force their way into the building, jeopardizing the safety of the residents and their belongings in storage; and,
- They were violently shoved off the access ramp landing while in their wheelchair by a non-resident wanting to enter the building. There is no protective railing on this access ramp.

A written testimonial [Doc 220-] of another tenant in the building stated that:

- The Landlord locked the garbage chutes on each floor so now 170 families have to walk the hallways and elevator with their garbage, with no ventilation;
- The smells are awful in the building; and,
- The Landlord said they would return the garbage bins to the underground garbage area, but they never have, and now we have to get wet and encounter drug addicts with needles and trash everywhere.

A written testimonial from a previous maintenance manager [Doc 216-] who wrote that they lived at the residential property in 2021 and 2022. They confirmed that:

- The garbage chute rooms were locked and closed off to the tenants as the Landlord used the rooms on each floor as storage space [Docs 039-, 041-];
- The residents had to walk their garbage out of the building to an outdoor garbage area, and as the ventilation system was broken, the smells of garbage lingered in the hallways and elevator;
- The outdoor garbage area was filthy almost every day;
- The outdoor garbage area had overflowing garbage, used needles on the floor, rats, cockroaches, and sometime addicts shooting up inside the common area;
- The issue was reported to the Landlord, but the Landlord did not remediate the problem;
- Security became a serious issue in the building, addicts got used to going into the mesh-fenced garbage area, gaining access to common areas, entering the

building, breaking into the bike room to steal bikes, and entering the locker room and stealing tenants' belongings;

- Police were called to deal with homeless people sleeping in the stairwells;
- Drug addicts shot up in the common areas of the building, leaving needles in high traffic areas where tenants would step on them;
- Occasionally, the Landlord would hire a cleaning company to clean the mess and then take photos to make it appear like the area was clean; and,
- They still see overflowing garbage in the outdoor garbage area when they walk by the building.

AA confirmed that this maintenance manager resided in the residential property in 2022. AA stated that the maintenance manager vacated their rental unit in August or September 2022.

A sworn affidavit by tenant VM on March 25, 2022 [Doc 201-] of the residential property deposed that:

- In 2016, the Landlord closed the underground parking due to construction on a nearby building;
- When the underground parking was closed, the garbage was moved to an outdoor visitor [parking] spot and the chutes were closed;
- The outdoor garbage was not kept clean. Garbage was frequently left on the ground, and bins were overflowing, in a state of constant filth. To say that the garbage area was absolutely clean on weekdays is false. As a matter of fact I testified during the RTB hearing of October 27 2020 of the opposite, The garbage area has been filthy since 2016 almost every day. 122 photos were provided to the arbitrator that confirm this fact;
- Six months prior to the hearing while I was pregnant, I stepped on a needle in the garbage area; and, with my own eyes I have witnessed addicts injecting themselves with drugs in our common area after the landlord removed our underground garbage disposal; and,
- ...
- This also created many security issues with our building being broken into, our bike room being broken into and bikes stolen, our storage lockers being broken into and belongings stolen. I have had to call the police to report drug addicts in our common area. This had never happened when we had the secure underground garbage area and visitor parking, before the landlord began the construction of the new adjacent tower, restricting our access to these facilities.

A written testimonial from a tenant [Doc 206-] who has lived at the residential property for 11 years. They wrote:

- ... Outdoor garbage area with broken gates, and garbage, used needles the smells of urine. The doors to the underground parking are always broken and easily accessible by outside parties, which is obviously a risk for all tenants and for those who have vehicle parked in spaces that we have to pay a hefty extra fee for the use of.

A written testimonial from a tenant [Doc 209-] who has lived at the residential property since February 2018. They wrote:

- ... the garbage area has deteriorated into a shocking scene of neglect, with overflowing bins spilling their contents onto the ground, creating a festering mound of refuse. The once orderly space was overwhelmed by scattered trash, attracting a disturbing number of drug addicts who congregate amidst the filth during months this year. This unsanitary environment fosters a sense of despair and lawlessness, with every corner of the area bearing witness to the degradation of both the physical space and the community's well-being.

AA submitted a testimonial dated August 20, 2020 from Tenant RA who remains an on-going Tenant in the building [Doc 367-]. RA writes about their concerns with the outdoor garbage area, and safety concerns in the building due to entry of persons who accessed the bike and storage rooms. RA wrote that their quality of life is negatively impacted.

AA pointed to Tenant GH's testimonial written in August 21, 2020 [Doc 388-]. This submission points several concerns of the building, and specifically to the Tenant's safety concerns due to the new location of the outdoor garbage area. GH wrote that the new location is poorly managed and attracts "*rats, skunks and other undesirable animals to the pool area.*" GH talked about the homeless people sleeping in the garbage area and sifting through the garbage bins. GH vacated their rental unit in January 2020.

AA pointed to several other testimonials submitted by building residents and uploaded these to the Tenants' evidence submission [Docs 211-, 214-, 215-, 216- all from 2024; testimonials from 2018 to 2020 are found in Docs 380- to 392-].

AA testified that they met people in the elevator and they asked them what floor they wanted pressed. AA said the people told them that 'we actually live in the stairwell'. AA stated when they returned to their rental unit, they called the police. AA said this is an

example of the issues that go on in the building since the underground garbage area was not returned to the tenants.

AA submitted that the Residential Tenancy Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises (PG#1) clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of the residential property, and obligations with respect to services and facilities. PG#1 states that the Landlord is responsible for ensuring that rental units and property meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

PG#1 states that the Landlord is responsible for:

SECURITY

...

7. *In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.*

SERVICES AND FACILITIES

1. *A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.*
2. *If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce 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.*

AA submitted that the residential property includes the garbage disposal area in the building. AA testified that there was no notice provided that the Landlord was going to close the garbage chutes, or the underground garbage area, and no compensation was provided for the loss of these services or facilities breaching section 27 of the Act. Tenants used the new garbage facilities, and their mental health, and physical health were negatively impacted and put at jeopardy. In 2019 when the new tower was

completed, the underground garbage area was given to the new building occupants, and the Tenants were made to continue with the unsanitized and unsafe garbage services and facilities in the residential property.

AA submitted that the Landlord breached sections 7, 28, and 32 of the Act.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

...

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.*

Landlord and tenant obligations to repair and maintain

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

...

- (5) *A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

TD said that in the outdoor garbage area, the building has one large garbage bin, one large garbage bin for recycled cardboard, one recycling container for organic materials, two containers for glass, two containers for plastic materials, and two or three containers for paper.

AA cross-examined TD and asked them if the number of garbage bins was sufficient for 200 people. TD replied that the same size and number of bins are utilized at other similar properties, and anyways, it is the only amount of bins that the Landlord can fit in the garbage enclosure.

TD stated that the garbage collection schedule is five days per week, Monday to Friday, except on long weekends. The same company that picks up the garbage, also picks up the recycling. TD did not believe that this company offers weekend pick up. TD testified that the garbage and recycling were not picked up when it had snowed a lot because this made it difficult to open the gate and pull out the recycling bins.

TD said that during the period from July 2, 2024 to July 15, 2024, the building's garbage pick up stopped because the company was renegotiating a new contract. During this period, the Landlord contracted with a third party that picked up the garbage daily. TD stated that the garbage area can get fuller in the afternoons and on the weekends before the cleaners come in. TD also said that tenants sometimes did not place garbage in the correct bin, or they just left it on the ground in front of the bins even if the bins are not completely full.

In the January 27, 2021 decision, the arbitrator noted that the Landlord's agent 'added that the garbage bins are cleaned and emptied six days per week'.

TD testified that the Landlord has a full time cleaner who cleans the exterior around the building including the outdoor garbage area. The cleaner will pick up items that are on the ground and place them in their proper garbage bins or recycling containers. The cleaner will sweep the garbage area, and they pressure wash the garbage area a couple times per year.

TD stated that the Landlord contracts with a pest control service provider that comes twice per month. They will place traps and bait and other pest control methods around the garbage area, the pool, and front and back of the building.

TD confirmed that the Landlord built a cage around the garbage area which can only be accessed with a key, and only the tenants of the residential property are provided with copies of these keys. Initially, it was a regular lock and key installed on the door into the garbage enclosure, but it was found that there were problems with tampering with this locking mechanism, so the lock was replaced with a padlock on the gate in August 2020 for added security. Also, in 2020, the Landlord installed a barbed wire fencing around the top perimeter of the fence enclosure.

TD testified that there have been a few instances where tenants forget to lock the padlock on the gate, and this has allowed access to the garbage area by homeless people. TD stated they have posted notices in the building to alert residents to always lock the padlock on the garbage enclosure to keep it secure.

TD stated that the previous maintenance manager that the Tenants previously referred to did not reside in the residential property in 2022. At that time, TD stated they were the building manager while that maintenance manager was employed by the Landlord. TD said that their first day of employment was September 22, 2021, and their last day of employment was December 15, 2021.

AA uploaded email evidence of a discussion with TD. AA sent TD an email on January 11, 2023 saying there were two homeless people having sex in the common area right next to AA's rental unit. AA wrote that the two people were performing the act completely naked, and asked if TD would send someone to remove them ASAP. TD wrote back 6 minutes later saying, "*Thanks for letting me know, myself and [maintenance employee] went up and kicked them out.*"

TD's recollection of this event was that they went up to investigate, and it was another tenant on that floor with a female friend. The person had left their keys at the bar. TD stated that these people were not living in the stairwell of the building, and they had never seen anybody living in the stairwell of the building. TD confirmed that the response AA received on January 11, 2023 was from them.

Regarding the garbage issue at the residential property, the Tenants submitted that the Landlord has not provided enough evidence that there are sufficient services and facilities for a building of this size. The Tenants submitted their evidence, photographs, city and councillor reports, and resident testimonies that solidly support that the outdoor

garbage services and facilities implemented by the Landlord outside the building do not adequately, safely, or provide a healthy alternative to the garbage services and facilities compared to the underground parking area. The Tenants want these services restored back to the underground area as they were told would happen.

AA submitted that they had access to the garbage chute at the start of their tenancy up to 2016. AA stated they provided testimonials and witness statements that they had access to the garbage chutes as part of the garbage collection in the residential property. The garbage chutes had not been decommissioned in 2005, rather the repairs and restoration of the garbage chutes was only a temporary shutdown of the garbage chutes.

The Tenants seek monetary compensation and a rent reduction due to loss of services and facilities in garbage collection, and for a breach of quiet enjoyment of the residential property due to the violation of safety and health issues established by the Tenants. The Tenants seek repairs:

- to the filthy outdoor garbage area; and,
- for relocation of the outdoor garbage area back to the underground garbage area as the Landlord said they would do once the construction was completed.

Legal counsel submitted that the garbage chutes were decommissioned in 2005, and that none of the Tenants had access to them.

Legal counsel submitted that the picture evidence uploaded by the Tenants is either a regular state of the garbage area or they are a series of photos showing an unfortunate state that happens in the garbage area and the Landlord is endeavouring to keep the area clean.

Legal counsel submitted that the garbage collection contractor comes each weekday, and during sometimes when there is snow on the ground, they will come the next day when they can, and they will return to do a double load.

Legal counsel stated that the Landlord hired an interim garbage collector when a renegotiation of the garbage collection contract between the Landlord and the garbage collection company was going on. The Landlord hired a full-time caretaker to sweep and inspect the garbage area everyday.

Legal counsel submitted that the Landlord invested in security measures for the outdoor garbage area such as a padlock for the gate, and barbed-wire fencing along the top

perimeter of the fence around the garbage area. The Landlord hired a pest control company to deal with rodent issues when, they say, the Tenants are not properly disposing of their garbage or they are leaving the door open.

Legal counsel stated that TD confirmed that the Landlord sends notices to the residents about issues with the garbage and asking them to follow the rules. Finally, the Landlord has not failed to provide services and facilities and is upkeeping the residential property according to their responsibilities.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility, that is essential to the tenant's use of the rental unit as living accommodation or the provision of the service or facility is a material term of the tenancy agreement.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

Legal counsel submitted that because the tenancy agreement does not state 'garbage chutes' under Garbage Collection or as another separate item included in the rent, the garbage chutes were not a service or facility included in the rent under the tenancy agreements.

Tenant AA testified that when first entering their tenancy agreement, the building manager at the time showed them to throw their garbage down the garbage chute, which would be collected in the underground garbage bin. AA stated they were instructed that other garbage items (e.g. boxes, recycling) were to be brought down to the underground garbage area, and deposited into the proper bins for their disposal.

I find that Garbage Collection includes the whole system of garbage disposal – the garbage chutes, the garbage bins in the underground, now outside, garbage area, and all the recycling bins and containers that service the whole residential property. AA was

shown to use the garbage chutes, and was instructed to bring items that cannot go down the chutes directly to the underground garbage area by the building manager at the time. I find that garbage collection is a material term of the tenancy agreements of the parties and includes all essential garbage facilities and related services tied to it as defined in the Act.

AA's testimony, and other resident testimonials speak about the garbage chutes being a service that assisted with the garbage collection of the building and their use included a time after the 2005 temporary closure of the chutes to deal with the fire resulting in the garbage bin in the building.

I put little weight on TD's evidence that 'the fire department recommended closure of the garbage chutes [in 2005]' as TD's employment with the Landlord began in June 2020 and they would not have received those instructions at that time. Additionally, I find TD's evidence that from 2005 to 2016, residents in the building brought their garbage down to the underground garbage area lacks credibility as they were not a resident building manager at that time.

The Tenants uploaded city access to records documentation that discloses that the underground garbage area was relocated to the outside garbage area at the end of May 2016. I find AA's evidence, several testimonials, and the city access to records document confirms that the garbage chutes and the underground garbage area were closed in 2016 when the Landlord began construction on the new tower beside the residential property.

I find that none of the Tenants' testimonials provide evidence that the Landlord gave written notice that the garbage chutes would be closed, and that the underground garbage area would be relocated to the outside garbage area. I find that none of the Tenants received a rent reduction that reflected the reduction in the value of their tenancies due to the loss of use of the garbage facilities and related services, and the underground garbage area being moved outside.

Based on the evidence from the parties, I find the Tenants have established their claim for a reduction in the value of their tenancy agreements resulting from the Landlord's termination and restriction of the garbage facilities and related services. I find the Landlord has not complied with section 27 of the Act, and under section 65(1)(f) of the Act, I grant the Tenants' past rent reductions of \$45.00 per month which I find is an equivalent reduction in the value of their tenancy agreements. I find for the Tenants whose tenancies are on-going, they are entitled to a \$90.00 rent reduction starting May 1, 2025.

I order that:

- Tenants AAHT are entitled to 102 months rent reduction totaling \$4,590.00;
- Tenant RN is entitled to 30 months rent reduction totaling \$1,350.00;
- Tenant JA is entitled to 132 months rent reduction totaling \$5,940.00 up to April 30, 2025. Tenant JA's rent reduction starting on May 1, 2025 continues at \$90.00 per month as long as their tenancy lasts, or until that time that the Landlord relocates the garbage back to the underground garbage area, and re-opens the garbage chutes;
- Tenant RA is entitled to 105 months rent reduction totaling \$4,725.00 up to April 30, 2025. Tenant RA's rent reduction starting on May 1, 2025 continues at \$90.00 per month as long as their tenancy lasts, or until that time that the Landlord relocates the garbage back to the underground garbage area, and re-opens the garbage chutes; and,
- Tenant GH is entitled to 59 months rent reduction totaling \$2,655.00.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenants must satisfy the following four elements on a balance of probabilities:

- Proof that the damage or loss exists;
- 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;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and,
- Proof that the Tenants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants seek compensation due to the filthy outdoor garbage area they have been forced to use since the Landlord relocated the underground garbage area to the outdoor garbage area. The Tenants uploaded many pieces of picture evidence demonstrating the state of the outdoor garbage area. I find that the state of the outdoor garbage area has not changed since the time of the original hearing in 2020. I find the garbage area still exceptionally dirty, and it continues to attract the same ilk of people and rodents as was the case in 2020.

Section 32(1) of the Act obligates landlords to repair and maintain the residential property in a state of decoration and repair that complies with health, safety, and housing standards required by law. The Tenants and other residents of the building gave evidence and wrote testimonials about the serious safety issues in their ventures to dispose of their garbage at the outdoor garbage area. Whether it was needles from drug users, aggressive wayward people, having to step over piles of garbage, and/or animals attracted to the garbage, I find all of these encounters are events that Tenants of the residential property should not be subjected to. I find the Landlord has breached their section 32(1) obligations under the Act.

TD gave evidence that the Landlord employs a caretaker for the residential property, but I find this person is not able to maintain a healthy, safe, or continuous level of tidiness around the outdoor garbage area. The fenced area's lock is not reliably maintained, and continues to let in homeless people who breach the Tenants' quiet enjoyment of the residential property.

I find the Landlord's neglect in dealing with the garbage situation outside the building has not been temporary or even intermittent. It has been steady for the last nine years and I find the Tenants' quiet enjoyment due to the outdoor garbage area has been an ongoing and unreasonable disturbance in the Tenants' residency at this building.

I find the Tenants have substantiated their claim for compensation for the Landlord breaching the Tenants' section 28 rights under the Act, and breaching their own obligations to repair and maintain the residential property. I find the Tenants have substantiated their monetary loss claim under section 67 of the Act, and I grant the Tenants \$45.00 per month for the damage or loss they experienced over this time. I award the Tenants monetary compensation as follows:

- Tenants AAHT are entitled to 102 months monetary compensation totaling \$4,590.00;
- Tenant RN is entitled to 30 months monetary compensation totaling \$1,350.00;
- Tenant JA is entitled to 132 months monetary compensation totaling \$5,940.00 up to April 30, 2025;
- Tenant RA is entitled to 105 months monetary compensation totaling \$4,725.00 up to April 30, 2025; and,
- Tenant GH is entitled to 59 months monetary compensation totaling \$2,655.00.

Are the Tenants entitled to an order for the Landlord to make emergency repairs for health or safety reasons?

Section 33(1) of the Act defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing:

- major leaks in pipes or roof;
- damaged or blocked water or sewer pipes or plumbing repairs;
- primary heating system;
- damaged or defective locks that give access to a rental unit;
- electrical systems; or,
- in prescribed circumstances, a rental unit or residential property.

The Tenants bear the burden to prove that they have emergency repairs to be completed which the Landlord has not completed in a reasonable time frame after being notified by the tenant in accordance with section 33 of the Act.

AA testified that homeless and other wayward individuals are gaining access to the residential property. I expect this is a function of the Landlord moving the garbage collection area to the outside of the building which has attracted these people. One tenant's testimonial spoke about how they were pushed off the only wheelchair access ramp into the building by a non-resident who pushed their way into the building. There was no evidence provided that locks were damaged or defective allowing people to access the residential property.

I find that the Tenants have not proven that emergency repairs are required in any of the rental units or the residential property, and I decline to make any orders for emergency repairs.

Are the Tenants entitled to an order for the Landlord to make repairs to the residential property?

Section 32 of the Act states that a landlord must 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.

The Tenants bear the burden to prove that they have repairs to be completed which the Landlord has not completed in a reasonable time frame after being notified in writing from the Tenants.

I find that the Tenants have proven that the Landlord's outdoor garbage area is a deplorable mess, and the Landlord is in breach of section 32(1) of the Act.

The Tenants seek to have the outdoor garbage area put back into the underground garbage area. AA testified that none of these problems arose when the garbage area was situated in the underground area of the residential property. I find that relocating the garbage area back to the underground area will relieve all the issues that the unhealthy, and unsafe outdoor garbage area presents. Additionally, at that time the garbage chutes can be reinstated.

Under section 62(3) of the Act, I order the Landlord to relocate the outdoor garbage area back to the underground garbage area. When this relocation is complete and the garbage chutes are re-instated, the Landlord can apply to the RTB for authorization to charge Tenants JA and RA their full rent amounts.

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 62 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Tenants did not present any additional evidence for this part of their claim. As the ongoing rent reduction and monetary compensation is in place until the Landlord relocates the outdoor garbage area back to the underground garbage area, I decline to make any further orders at this time.

Conclusion

Tenants AAHT are entitled to a past rent reduction totaling \$4,590.00 and monetary compensation totaling \$4,590.00. I grant Tenants AAHT a Monetary Order in the amount of \$9,180.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

Tenant RN is entitled to a past rent reduction totaling \$1,350.00 and monetary compensation totaling \$1,350.00. I grant Tenant RN a Monetary Order in the amount of \$2,700.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

Tenant JA is entitled to a past rent reduction totaling \$5,940.00 and monetary compensation totaling \$5,940.00. I grant Tenant JA a Monetary Order in the amount of \$11,880.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

Tenant JA is entitled to an on-going rent reduction of \$90.00 per month starting May 1, 2025 until the tenancy is ended or the Landlord relocates the garbage to the underground garbage area and re-instates the garbage chutes. The Landlord is required to apply to the RTB for 1) a determination that all repairs have been completed, and, 2) authorization that they can charge full rent to Tenant JA once all repairs are completed.

Tenant RA is entitled is entitled to a past rent reduction totaling \$4,725.00 and monetary compensation totaling \$4,725.00. I grant Tenant RA a Monetary Order in the amount of \$9,450.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

Tenant RA is entitled to an on-going rent reduction of \$90.00 per month starting May 1, 2025 until the tenancy is ended or the Landlord relocates the garbage to the underground garbage area and re-instates the garbage chutes. The Landlord is required to apply to the RTB for 1) a determination that all repairs have been completed, and, 2) authorization that they can charge full rent to Tenant RA once all repairs are completed.

Tenant GH is entitled to a past rent reduction totaling \$2,655.00 and monetary compensation totaling \$2,655.00. I grant Tenant GH a Monetary Order in the amount of \$5,310.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims

Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

The Tenants' claim for emergency repairs is dismissed.

I order the Landlord to relocate the outdoor garbage area back to the underground garbage area and re-instate the operation of the garbage chutes in the residential property.

The Tenants' claim for an order that the Landlord to comply with the Act, regulation and tenancy agreement is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 23, 2025

Residential Tenancy Branch