Residential Tenancies Tribunal

Application 2024-0137-NL

Seren Cahill
Adjudicator

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1. Introduction

2. Hearing was initially held on 16-April-2024 at 9:04 am and continued on 6-December-2024 at 9:02 am.

3. The applicant, [redacted]., hereinafter referred to as the landlord, was represented at the hearing by their counsel [redacted] as well as [redacted], both of whom attended via teleconference.

4. The respondent, [redacted], hereinafter referred to as the tenant, was represented at the hearing by their counsel [redacted], who also attended via teleconference.

5. The landlord called as a witness, [redacted], owner and operator of [redacted] as well as [redacted].

6. The tenant called as a witness, [redacted], the property manager for [redacted], which includes [redacted].

2. Preliminary Matters

A. Service

7. The tenant acknowledged that they were properly served notice of the hearing more than 10 days in advance of the initial hearing date.

B. Jurisdiction

8. The tenant raised the issue of jurisdiction. Specifically, they argued that the rental agreement made between the parties was exempted from the application of the *Residential Tenancies Act*, 2018 (the *Act*) by s. 3(4)(c), which states that the *Act* does not apply to "living accommodation used or occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care."

9. The relevant agreed-upon facts are that on 5-July-2018 a lease agreement (pages 2-10 of the landlord's book of exhibits) was signed between the parties. Part 3 of the agreement states that when the phrase "the Act" is used in the agreement, it refers to the *Residential Tenancies Act*, RSNL 1990 (the *Act*), and that the agreement is subject to all provisions of said *Act*. The agreement states that the premises will be rented from the landlord to the tenant for use as an independent living arrangement for up to one client of the tenant at any given time. The tenant would modify the premises as necessary for the care of the client and would take responsibility to restore the premises to the original condition before giving up possession to the landlord. Parties agree that the tenant issued a notice of termination to be effective for 31-January-2023. The intent of this notice was that the client would be vacated on or before this date and that the tenant would then begin restoration of the premises. Subsequently, a sewer backup occurred in the premises. The landlord's case is built on the theory that the tenant was negligent in monitoring the property at the time of the backup, which lead to further damage that otherwise might have been avoided.

10. Counsel for the tenant submits that the lease was for the benefit of their clients who were receiving care, and that this usage exempts the lease from the function of the *Act* under s. 3(4)(c), as above.

11. Counsel for the landlord took the position that even if the original use of the premises falls under s. 3(4)(c) of the *Act*, that this rental agreement was terminated by the tenant via the termination notice on 31-January-2023. They say that at no point after this date were the premises used for a "living accommodation" for the purposes of s. 3(4)(c), nor for "therapeutic or rehabilitative services," nor for "receiving care." They also take the position that the effect of the termination notice was to end the written rental agreement referenced above and begin a month-to-month tenancy under the statutory terms alone. They therefore submit that at the time the alleged damages occurred, the rental relationship between the parties was not exempted by s. 3(4)(c) of the *Act*.

12. In response, counsel for the tenant submit there was no change in the rental agreement, which continued to be in effect after 31-January-2023, and also that a lease agreement which starts outside of the jurisdiction of the *Act* cannot later move to be within its jurisdiction.

13. S. 3(1) and 3(3)(a) of the *Act* read as follows:

> **3.** (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.
>
> …
>
> (3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant
>
> (a) uses or occupies residential premises and
>
> (i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;

14. This tribunal has jurisdiction only with respect to disputes under the *Act.* The fact that the lease agreement has terms to the effect that the agreement is subject to all the provisions of the *Act* is not determinative of the issue as to whether or not this tribunal has jurisdiction, as the terms of a contract cannot override the terms of the statute.

15. The premises that were the subject of the lease agreement between the parties were described at the hearing as a “granny suite” or “basement apartment” in a 2-floor standalone home. There was no suggestion of any commercial use. It is clear that they would be considered “residential premises” under s. 3 of the *Act*. It is undisputed that the parties had an agreement whereby the tenant paid rent in exchange for the right to use the premises. I therefore find that a landlord and tenant relationship exists between the parties in respect of residential premises.

16. Notwithstanding that a lease would be considered under the purview of the *Act* under s. 3(1) and (3)(a), it may still be excluded if it falls under any of the exceptions listed in s. 3(4). The next question I must ask is therefore whether the subject matter of this dispute concerns a “living accommodation used or occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care.”

17. The fundamental principle of statutory interpretation is that the words of an Act are to be read in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature.[1] In other words, interpretation must consider the literal textual meaning, the intent of the drafters, and the entire legal context.

18. The lease agreement makes no mention of the purpose of the rental or the nature of the use the tenant intended, aside from part 6, which dictates that no more than one client of the tenant shall occupy the premises at a given time. It has some atypical clauses but nothing included would inherently give the impression that it regarded a usage intended as rehabilitative, therapeutic, or for the purpose of receiving care. Notwithstanding this, it appears that the landlord understood that the intention of [redacted] was to use the premises to house one or more clients that were, in their words, availing of rehabilitative and therapeutic care. They say these clients required care on a 24-hour basis. These clients had special needs with regards to their living accommodations. It was with this understanding that the lease agreement was drafted to include part 11, which allows for the conditions under which the tenant may make modifications to the premises.

19. In considering the full context of the legislation, I take particular notice of the other provisions of s. 3(4) of the *Act*. They exclude living accommodations provided “on a transient basis,” “as a vacation home,” “to temporarily shelter,” etc. Each of them speaks to situations where the nature of the usage is fundamentally distinct from a traditional landlord tenant relationship. I take note, too, that s. 3(4)(c) specifically excludes accommodations occupied for “penal, corrective, rehabilitative, or therapeutic purposes or for the purpose of receiving care.” The use of the conjunction ‘or’ makes it clear that the purpose of the use need only meet one of these criteria to be exempt, but the

[1] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, *per* Iacobucci J, at para 21

inclusion of the terms “penal” and “corrective,” which correlate to the functions of the criminal justice system and related diversion programs, colours the interpretation of the words “rehabilitative” and “therapeutic,” which can be used both in the largely separate contexts of medicine and in the context of the criminal justice system (particularly in relation to mental health and drug treatment courts, sometimes collectively referred to as therapeutic courts).

20. Considering the terms in the full context of the *Act* and its purpose, I find that the tenant’s usage does not fall within the meaning of s. 3(4)(c) as intended by the legislature, that the *Act* applies to the lease agreement, and that this matter is therefore within the jurisdiction of this tribunal.

21. Even if I am mistaken as to the lease agreement being within the jurisdiction of the tribunal, as discussed in paragraph 18, above, the lease agreement makes no direct or indirect reference to therapeutic or rehabilitative purposes or the purpose of providing care. If s. 3(4)(c) applies to the tenancy before 31-January-2023, it is the surrounding circumstances which have this effect, not the lease agreement itself. Therefore, a change in these circumstances could shift the lease agreement back within the jurisdiction of the *Act*.

22. After 31-January-2023, the tenant continued to rent the premises purely for the purposes of completing their contractual duty to restore the premises There was no intention to potentially house a new client. The premises would no longer be used in the manner that the tenant submits would be considered as rehabilitative, therapeutic, or receiving care. It was during this time period that the alleged damages occurred. I would therefore find that even if the *Act* did not apply to the lease agreement before 31-January-2023, that it does apply to the events which followed.

C. Interim Application

23. The landlord closed their case during the first hearing date and the respondent began to produce evidence. The matter was set over to be continued at another time. In the interim, the applicant sought to subpoena four additional witnesses. The respondent objected and requested an interim ruling on the issue. This ruling is attached. It was decided that one of the four witnesses would be allowed to testify and provide documentary evidence in their possession.

3. Legislation and Policy

24. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.

4. Issues before the Tribunal

25. The landlord claims for $107,481.25 in damages. A landlord’s claim for damages to the rental premises is the subject of the Residential Tenancies Program Policy and Procedure Guide policy 09-003. In accordance with this policy, to succeed in a claim for damages a landlord must provide sufficient evidence to establish on a balance of probabilities that the damages were caused by the wilful or negligent act of the tenant or

a person they allowed on the premises, to establish the extent of the damages, and to demonstrate the cost of repair. This should include documentary evidence where possible.

26. The parties agree that sometime in the summer of 2023 a sewer backup occurred in the premises that caused flooding and damages. There is no suggestion that this was the fault of either party. The landlord's theory of the case is that (A) the tenant had a duty to monitor the property, that they failed this duty, and (B) that this negligence caused further damages that were otherwise avoidable. These alleged further damages are what they seek to recoup from the tenant. The tenant argues that (C) the landlord is the author of their own misfortune and their recovery should therefore be barred or reduced. They add that (D) rental payments the tenant has continued to pay to the landlord should be offset against damages, should any be ordered.

27. For clarity I will briefly outline the most important relevant facts, then deal with each issue in turn.

Facts

28. The tenant, a contractor for [redacted], began to rent the premises at [redacted] from the landlord in the summer of 2018. [redacted] was named as the property manager for the landlord. The tenant used the premises to house a client. Modifications were made to the premises for the benefit of this client. Subsequently the tenant issued a termination notice for 31-January-2023 (tab#2/page 12 of the tenant's book of exhibits). The tenant maintained possession of the premises and continued to pay rent. [redacted] subsequently posted a Request for Proposals (RFP) to complete the necessary work to restore the premises to their original state.

29. A dispute ensued as to the proper procedure for awarding the contract. [redacted] communicated that they believed they had the contractual right to manage the work and proposed they be allowed a right of first refusal. [redacted] communicated that they were unable to accept this as a public entity bound by the *Public Procurement Act,* SNL 2016, c. P-41.001.

30. On 28-June-2023, the tenant advised [redacted] to proceed with awarding the tender to the successful bidder, [redacted]. On 27-July-2023, the tenant discovered the sewage back-up had occurred. They say they immediately advised [redacted] who failed to advise the landlord at the earliest possible opportunity. They say they advised the landlord on or about 1-August-2023. They further submit that the landlord delayed in remediating the damage.

A. Did the Tenant Have a Duty to Monitor the Property

31. For a party to be held negligent, they must owe the injured party a duty of care. There is no question as to whether a tenant and a landlord in a residential tenancy owe each other a duty of care. They do. Such is the close nature of the relationship, where one party is entrusted with possession of real property owned by the other.

32. Determining whether the tenant has breached the duty of care requires considering whether the tenant was required to monitor the property. This consideration is closely related to but distinct from the question of whether any harm resulting from said breach is reasonably foreseeable.

33. S. 10 of the *Act* effectively requires that tenants keep the premises clean and repair damage caused by a wilful or negligent act of the tenant or a person they allow on the premises. The *Act* does not overtly impose a duty to monitor the property.

34. While it is not explicitly stated in the *Act*, this tribunal has in the past and continues to accept that tenants have a duty to report damages of which they become aware in a timely manner. This is in recognition of the general duty of care between the parties and the common sense understanding that failing to report such damages can lead to deterioration. It is a step further, however, to find that tenants must actively monitor the property.

35. The lease agreement (LL Schedule 1) specifies under part 10(a) that the tenant shall immediately report to the agent any damages incurred to the property, and under part10(f) that should the tenant fail to immediately notify the agent of any deficiencies or malfunctions which result in any additional damage to the property, the tenant will be responsible for the costs associated with repairing the additional damage. Part 12(a) of the Agreement states that the tenant undertakes to comply with certain rules concerning the premises provided that the rules are in writing, are "reasonable in all circumstances," and the tenant is given a copy of the rules at the time of entering into the agreement and is given a copy of any amendments. 12(c) lists the initial rules, with 12(c)(v) stating that "should the tenant be away from the property for more than 72 consecutive hours, the tenant shall assign someone to verify the property regularly to ensure its security and that all mechanical systems are functioning."

36. As noted in paragraph 11 above, the landlord took the position that the lease agreement as written terminated, and that the relationship of the parties survived as a "bare month-to-month tenancy." They cannot, therefore, rely on the terms of that contract to provide the duty they allege the tenant has breached.

37. Conduct is negligent if it creates an unreasonable risk of harm.[2] What is an unreasonable risk can differ based on the particular circumstances of the relationship between the parties. I must consider what a reasonably prudent person would have done in the circumstances from an 'objective' perspective.[3] The question then becomes would a reasonably prudent person, in the circumstances, leave the property unmonitored for as long as the tenants did in this case?

38. In considering this question, I take note of several factors, including:
    - The previous rental agreement obliged the tenant to check on the property regularly should they be away for more than 72 hours.
    - Statutory condition 1(a) imposes upon the landlord a duty to maintain the premises in good repair.
    - The tenant had access to the property at all times and without limitation.

[2] *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, para 7.
[3] *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, para 73.

- Statutory condition 2 imposes upon the tenant a duty to keep the premises clean.
- In accordance with statutory condition 5 the landlord could access the property at reasonable times with 24 hours written notice.
- The owner/director of the landlord testified that he understood that the tenant would be remaining at the premises "for the same purposes they had during the fixed term."
- He testified that as far he was aware, representatives of the tenant had not been in the property between 28-June-2023 and 27-July-2023 (see the email marked LL#1). No evidence was provided to rebut this.
- He also testified that neither he nor his property manager took any action to monitor the property.

39. There was conflicting evidence as to whether the landlord or the property manager retained a key to the premises. I do not consider this to be a significant factor. If they did not retain a key, this was solely their choice.

40. Considering all of the above, I am satisfied that a reasonably prudent tenant would check on the property more than once in 30 days, and I find on a balance of probabilities that the tenant did not do so. Therefore, I conclude that they breached their duty of care.

B. Causation and Damages

41. I have found that the tenant breached their duty of care to the landlord. To succeed in their claim, the landlord must next establish that this breach caused the landlord damage in fact and law. The question governing causation in fact can be formulated as 'but for the tenant's failure to regularly monitor the property, would the landlord have suffered the injury for which they claim?'

42. The landlord claims for $107,481.25. They say this represents the $149,980.00 cost of restoring the premises to their original condition (for the appropriate invoices, see the landlord's Schedule 2 Appendices 1-3) minus the approximately $42,500 cost that would have occurred whether or not the sewage damage was found in a timely manner (see landlord's Schedule 2 Appendix 4). They take the position that the majority of the damages were the result of the initial damage being unaddressed for the first month, during which time they say mould permeated much of the premises and furniture.

43. The tenant takes the position that the $107,481.25 cost was a result of the negligent actions of the landlord and/or the property manager. At this stage of the analysis my question is only whether the tenant's breach caused the damage, not whether there were also other causes.

44. They highlight also the fact that the contractor who provided the $42,500 estimate emphasized the difficulty in calculating this figure and admitted they were making what they called their "best guess." They submit that the contractor, [redacted] has no specialization in mould remediation which would allow them to reach their conclusion. They add that there is no way to predict how much damage may have been done if it was caught earlier. They suggest that the landlord's alleged delay in seeking remediation contributed to the penetration of the mould.

45. [redacted] was the person who provided the $42,500 estimate. [redacted] testified that he has a diploma in Civil Engineering Technology and has almost 25 years experience working in construction.

46. There was some suggestion that there might have been overlap in the scope of the work between the initial contract accepted by [redacted] from [redacted] to restore the changes the tenant had made to the property and the subsequent contract which was accepted by them from the landlord after the damage from the backup was uncovered. Based on [redacted] testimony and the written explanation he provided to the landlord (landlord's schedule 3) there was no overlap.

47. [redacted] candidly explained his process for calculating the estimate of what the cost would have been had the mold been caught earlier. He says he spoke to the abatement subcontractor and asked what level of work would have to be done in a sewer backup situation which is caught "right away." This person told [redacted] that the floor would need to be removed, as would the drywall up to a height of about two feet. [redacted] testified that since the kitchen was close to the washroom, he assumed that the lower kitchen cabinets would have been irreparably damaged even if the backup had been caught immediately. He admitted he did not know how significant the backup had been. Therefore, [redacted] calculated the ~$42,500 figure by adding the cost of the floors, the lower cabinets, the drywall remediation up to two feet around the entire premises and repainting all those areas. He was open about the fact that the estimate was ultimately a ballpark figure. He believed it would not be "significantly off" in either direction, however.

48. I accept that [redacted] had the knowledge and skills to estimate the cost of these items and that he in fact did so correctly.

49. Finding that the damage claimed was the result of the tenant's breach requires understanding how quickly the mould would "set in." The tenant's breach was leaving the property unmonitored for an unreasonable amount of time. If the mould might have penetrated to the point where "gutting" the property was necessary within an amount of time short enough to be reasonable for the tenant to leave the property unmonitored, then we cannot say the damage would not have occurred but for the tenant's breach.

50. [redacted] was open about the fact that he himself is no expert on mould. He testified that he had "not a clue" as to how fast mould can grow. I asked him how one would know when mould growth had reached the point where the only option was to remove all porous material from the premises, and he admitted the question was outside his area of expertise. He also did not know how long it would take to reach this point.

51. The landlord also called [redacted], who testified that he has about 12 years experience working in fields related to property restoration and that he is IICRC (Institute of Inspection Cleaning and Restoration Certification) certified to do this work. [redacted] testified that he has done "millions and millions of dollars" of mould remediation, upwards of $9 million/year. [redacted] was given the description of the premises by the person who attended the property on 27-July-2023. The description included the presence of black-coloured mould "up the walls" and doors. Based on this description, he was asked to estimate how long it would have taken for those conditions to appear after a sewer backup. He estimated it had been 2-3 weeks. When the question was

rephrased, he suggested 3-4 weeks. When it was rephrased a third time, he indicated about three weeks. He said that “mould doesn’t really grow that fast.” He testified that if he had attended the premises within the first 24-48 hours he would have been able to remedy the problem only by removing the flooring and the drywall up to a height of about one foot and remove directly contaminated porous material, and the entirety of the work might have been done within three days. This is consistent with the evidence of [redacted]. He shared the opinion that after the mould had penetrated as extensively as it had, the only option was to “gut” the premises, and this was true according to the description of the premises on 27-July-2023. He said that was already “way too late.”

52. [redacted] testified that the progression of mould in a situation like this one – a basement with low or no air circulation and standing water – is predictable. He explained that in the first week the mould can climb a foot or so up the wall, by the second week, it may get to about three feet, and that the three-to-four-week point is when the entire basement becomes contaminated. This is the point when a complete “gutting” is required. He testified that after the four week point the primary concern is the studs becoming increasingly contaminated with black mould. The further this progresses, the longer it takes to clean them. With regards to the premises this case concerns, he testified that the studs were “pretty good.” He did indicate he had discovered a small amount of rot in the studs and believed that it had existed prior to the sewage backup. He considered it “no big deal.”

53. The evidence before me suggests and I accept that had the backup been caught within 72 hours to a week, the damage would have been significantly less. [redacted] testimony impressed upon me the important of addressing such an issue in a timely manner, and highlighted how a person on the premises could have begun to reduce the ensuing damage by actions as simple as opening the windows and turning on any fans. I accept also that the backup had occurred about three weeks prior to the tenant discovering it.

54. But for the tenant’s failure to monitor the premises, the landlord would have been alerted to the backup and been able to attend the premises without notice as an emergency measure, allowing them to substantially mitigate the damage. The tenant’s breach factually caused the landlord’s injury.

55. Legal causation must also be considered. In other words, is the harm too unrelated to the wrongful conduct to hold the tenant fairly liable?[4] I conclude that it is not. The possibility that an unmonitored property can suffer harm which requires timely intervention is well known. It is, presumably, for this very reason that provision 12(c)(v) was inserted into the original lease agreement (see para 35 above). It is known by this tribunal that home insurance companies typically include clauses requiring homeowners to take special precautions when they expect to be away from the property for extended periods, at risk of voiding part or all of their coverage. The reasonable person in the position of the tenant could have foreseen this result. I therefore conclude that the tenant’s breach caused the landlord’s injury in law as well as in fact.

56. The landlord has successfully established that the resulting damages value at approximately $107,480.

[4] *Mustapha, supra* note 2, at para 12.

C. Is the Landlord Responsible for their own Misfortune?

57. The tenants submit that the landlord is partially or fully at fault for their injury due to (i) the actions of the property manager in allegedly delaying the reversal of the changes to the property, (ii) the alleged failure of the landlord and/or property manager to monitor the property after it was vacated, and (iii) the alleged failure of the landlord and/or the property manager to respond to the backup in a timely manner. I will address each issue in chronological order.

(i) Delaying the Restoration

58. The facts are clear that the tenant retained possession solely for the purposes of completing their contractual duties to restore the property to its original condition. The tenant takes the position that the property manager, [redacted] inappropriately interfered with this process and, had they not done so, the restoration may have been complete before the sewer backup.

59. The landlord takes the position that [redacted] was not, at that time, acting as an agent in a legal sense. They also take the position that the tenant knew that [redacted] had no legal standing for their claims, and therefore that there was no reason to delay the restoration in response to them.

60. Provision 4 of the lease agreement states that [redacted] is the agent of the landlord, shall be responsible for the execution and administration of the agreement, and that the tenant will deal with [redacted] exclusively for all matters resulting from the lease. Provision 10 of the agreement states, among other things, that the tenant may not repair any damages to the property or make any alterations to the property without the written approval of the agent.

61. The tenant provided emails between [redacted] the tenant, and [redacted] (tenant's exhibits 4-6, pages 28-34). In these communications, [redacted] unequivocally states that the landlord will not consent to any party other than [redacted] doing work on the property. Testimony at the hearing made it clear that this was not an accurate statement. [redacted], the owner/director of the landlord entity, stated that he would have been fine with any qualified contractor that would produce quality work. [redacted] goes on to acknowledge [redacted] statutory obligations and asks to be given a right of first refusal, which [redacted] states they are unable to grant.

62. The landlord takes the position that [redacted] was not, at this time, acting as an agent of the landlord. As referred to above, they take the position that the rental agreement which named [redacted] as their agent was terminated at this point. Regardless of the status of the rental agreement, it is clear that all parties understood [redacted] to be acting as an agent of the landlord at this time. [redacted] spoke on behalf of the landlord. The tenant dealt with the landlord through [redacted] exclusively, just as they had prior to 31-January-2023. [redacted] testimony indicated at this point that he was still relying on [redacted] to manage the property on behalf of the landlord.

63. I do not accept, and it was not argued before me before either party, that provision 10 or any other part of the lease agreement had the effect of giving [redacted] the ability to assert

an exclusive right to work on the property. Even if the terms of the contract unequivocally stated this right, such terms would be contrary to the statutory provisions included in s. 10 of the *Act* and therefore of no effect.

64. The tenant called as a witness [redacted], property manager for a group of companies which includes the tenant. His testimony made it clear that his duties included arranging for the restoration of the premises to its original condition. [redacted] testified that he had initially sought quotes from various contractors, which he shared with [redacted]. They were evidently not satisfied with the results and issued an RFP. [redacted] advised that this RFP ended with the contract being awarded to [redacted]. [redacted] explains that the tenant's business is all done through [redacted]. He stated that once the RFP went out, the awarding of the contract was out of the hands of the tenant. [redacted]' testimony was clear that he at no point believed that [redacted] was correct in their assertion that they had a contractual entitlement to do the work.

65. [redacted] testified on cross examination that in the context of contracts like these "I wouldn't necessarily blame anyone for the delay. There's just a process. There's always a process to go through. Some things go through faster than others."

66. The only evidence of [redacted] interfering with the restoration work was in their assertions that they had a contractual right to special status. Insofar as the tenant suggests [redacted] delayed their awarding of the contract, the testimony of [redacted]' does not support this. If he knew or believed the claim to be baseless, he could simply ignore it and proceed as normal. Insofar as they suggest [redacted] RFP process may have been delayed by [redacted] no evidence was presented in support of this.

67. I do not find that [redacted] delayed the awarding of the restoration contract.

(ii) Landlord's Failure to Monitor

68. The tenant takes the position that the landlord knew the property was unmonitored and failed to take steps to secure it.

69. I note first that there is no evidence before me that the landlord did, in fact, know the premises was unmonitored from 28-June-2025 to 27-July-2025. [redacted] testimony was to the effect that he believed they had no reason to monitor the premises, as it was the tenant's duty to do so. The tenant did not provide a record or testimony of any communication from the tenant to the landlord that the property would be unmonitored for this time. The only evidence provided was the termination notice.

70. In the context of the parties would a reasonable person, with full knowledge of their dealings to date, take the termination notice to mean that the tenant was no longer monitoring the property except once a month?

71. I conclude that a reasonable person would understand that this notice was a sign that the circumstances of the property had changed. They would understand, also, that the property was no longer under the same level of observation as it would have been while it was occupied by a client – in that case, after all, there had generally been a person present nearly 24 hours a day. I do not find however that they would have taken the

notice to mean that the tenant would be ending all monitoring of the property or limiting this monitoring to every 30 days, which seems to have been what they did.

72. Speaking with the benefit of hindsight, it would have been prudent for the landlord and/or the property manager to undertake some increased monitoring of the property, or at least to check with the tenants as to their intentions. They had the right to, albeit their right was limited by the requirements of 24 hours written notice. Does this lack of prudence amount to negligence?

73. Considering the evidence in its totality, I must conclude it does not. The landlord had taken measures to ensure the tenant was aware that monitoring the property was their responsibility. They had no reason to suspect that the tenant had abandoned or did not understand this responsibility.

(iii) Delaying the Repair

74. The tenant submits that the timeline delay between when the spill was discovered and when the repairs were affected were the fault of the landlord and contributed to the high cost of repairs.

75. The evidence of [redacted] was that at the point the damage had been discovered, the mould had penetrated to the point that every porous material had to be removed from the basement. When I asked how it might progress beyond that point, he indicated that the next thing to be expected was mould building up on the studs. He also testified that at the time he effected the repairs, the studs were in acceptable condition. I do not see this as inconsistent with his testimony. He was asked what would occur in a scenario with standing water and closed windows. I infer that when the backup was discovered, the basement was aired out and the water was cleaned up, which prevented further deterioration.

76. The evidence before me does not support the finding that any delay on behalf of the landlord after the 27-July-2025 date contributed to the scope of the damage. Even if it did, I am not satisfied that any delay was a result of fault on behalf of the landlord. As [redacted] testified, “there’s always a process to go through.”

D. Offsetting the Rent

77. Finally, the tenant submits that any damages awarded should be offset by the rent payments the tenant has continued to make, in consideration of the delays allegedly caused by the landlord and/or the property manager. As discussed in 5(C)(i) and 5(C)(iii), above, I have considered whether the landlord and/or the agent caused any delay and found that the evidence did not support such a finding on a balance of probabilities.

Decision

78. The landlord’s claim for damages succeeds in the amount of $107,481.25.

79. As the landlord was successful in their claim, they are entitled to claim for reasonable hearing expenses. I only have evidence regarding the $20.00 hearing fee, so that is all I award.

Summary of Decision

80. The tenant shall pay to the landlord $107,501.25 as follows:

Damages.....$107,481.25
Hearing Expenses.....$20.00

Total.....$107,501.25

16-May-2025
Date

[redacted]
Seren Cahill
Residential Tenancies Office