Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O MNSD MNDC MND FF
MNR MNDC MNSD FF

Preliminary Issues

Each person who attended the dispute resolution teleconference hearing and subsequent reconvened hearings were given an opportunity to present their arguments and/or testimony with the exception of the Tenants' witness who appeared at the teleconference hearing on March 14, 2011.

After careful consideration of the volume of evidence before me and the amount of testimony that was anticipated for both applications I ordered all witness testimony to be submitted and received by me and the opposing party, in writing, no later than March 25, 2011, pursuant to Rules 11.11, 3.1, 4.1, and 8.5 of the *Residential Tenancy Branch Rules of Procedure.*

I note that the male person named as the applicant in the claim filed against the Tenants and who is named as one of the respondent Landlords in the Tenants' application for dispute resolution is not named as a landlord in the written fixed term tenancy agreement. The female who is named as the Landlord on the fixed term tenancy agreement and as a respondent Landlord on the Tenant's application for dispute resolution is not named in the Landlord's application for dispute resolution as a Landlord. The male testified that both he and his wife are owners of the rental property. Both the male and female listed as Landlords in attendance for this dispute were in attendance at the teleconference hearing and each subsequent reconvened hearing.

As per Section 1 of the *Act* a "landlord", in relation to a rental unit, includes any of the following:

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

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

Applying the above definition, I find that the two Owners are proper parties to this proceeding. Therefore I amended the style of cause for these applications to include both the male and female Landlords' name pursuant to # 23 of *Residential Tenancy Policy Guidelines.*

The person who attended with the Tenant and is named as an Occupant in attendance for this dispute is the Tenant's adult daughter who lived at the rental property with the Tenant for the duration of this tenancy. It is not uncommon for adult children to reside with their parents and not be listed as a tenant as the parent is paying the rent. That being said and pursuant to section 8.3 of the *Residential Tenancy Branch Rules of Procedure*, I allowed the Occupant to attend the hearings and provide testimony as she resided at the rental unit for the duration of the tenancy, assisted her mother in putting their evidence together, and was attending as support for her Mother, the Tenant.

Introduction

This dispute dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants and were heard by teleconference hearing on March 14, 2011 for one hour, and reconvened on April 11, 2011 for three hours and ten minutes, and June 9, 2011 for three hours and five minutes.

The Landlords filed seeking a Monetary Order for damage to the unit site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and security deposit, to recover the cost of the filing fee from the Tenants for this application, and for other reasons which they described in the details of their dispute on the application as "respondents damaged the residence making it unable to rent for 3 months in addition to cost of damages – respondents did not fulfill their obligations in regarding maintenance as per lease agreement [sic].

The Tenants filed seeking a Monetary Order for the cost of emergency repairs, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, return of double their pet and security deposit, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of hearing documents and the volumes of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Landlords appeared at the first two hearings without the assistance of a legal advocate (Landlord's Advocate) who attended the June 9, 2011 hearing. At the outset of the June 9, 2011 reconvened hearing the Landlords' Advocate introduced herself. After stating her name she said "I have a law degree and I am here as the Landlords' advocate. I used to be a Dispute Resolution Officer with the Residential Tenancy Branch and I would like to know what Rule of Procedure you used to state no additional evidence would be accepted?"

I informed the Landlord's Advocate that I would not use valuable hearing time to argue my interpretation of the *Residential Tenancy Act*, Regulation, Rules of Procedure, or any other law with her. I explained that she was at liberty to ask me questions which I would document and respond to in my written decision. I note that no further questions were put forward by the Landlords' Advocate and the answer to her question about evidence is listed below in my analysis.

Issue(s) to be Decided

1. Have the Tenants met the burden of proof to be entitled to reimbursement of the cost of emergency repairs they had completed to the rental property?
2. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, have the Tenants met the burden of proof to be awarded monetary compensation as a result of that breach?
4. Have the Tenants met the burden of proof to be awarded the return of double their security deposit?
5. Have the Landlords met the requirements of the *Residential Tenancy Act* to be entitled to keep the security and pet deposits?
6. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

7. If so, have the Landlords met the burden of proof to be awarded monetary compensation as a result of that breach?

Background and Evidence

The *Residential Tenancy Branch Rules of Procedure # 11.2* provides that a party must present only evidence that is relevant to the application being heard. Over the course of the seven hours and 15 minutes of the teleconference hearing volumes of evidence was presented, some of which was not relevant. Following is a summary of the relevant evidence.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement which began October 15, 2008 and ended September 30, 2010. Rent was payable on the first of each month in the amount of $3,200.00. On August 5, 2008 the Tenants paid $1,600.00 as the security deposit and $1,600.00 as the pet deposit.

The Landlords testified they were not able to open the DVD of photos provided by the Tenants as evidence. Then they advised that their application and monetary amounts claimed are estimates based on their educated guess.

Due to the volume of relevant information provided in the testimony I have chosen to list the information in point form under each main category of compensation being claimed as follows:

Tenants' Claim

1) $6,400.00 Return of Double the Security and Pet Deposits

- On September 27, 2010 a registered letter was sent to the Landlords with the Tenants' forwarding address, requesting a move out inspection, and a request for the return of their security and pet deposits
- As of the hearing, March 14, 2011 the deposits have not been returned to the Tenants
- The Tenants attended the move out walk through however the Landlords never completed a formal report and nothing was signed
- The Tenants stated they left the rental property in clean, undamaged condition.
- Two witnesses attended on October 1, 2010 at 2:00 p.m. and provided written statements as to the condition of the rental property, provided in the Tenants' evidence
- They provided numerous photos in their evidence which support the condition of the unit

- The Landlords did not file a claim to keep the security and pet deposits until more than three months after the Tenants filed their claim for dispute resolution
- The Landlords provided a walk through orientation however no walk through inspection was completed and no forms were completed at the beginning or the end of the tenancy

2) $1,307.00 Emergency Repairs

- The Tenants stated they were led to believe that inside the envelope marked "emergency preparedness" that there would be emergency contact numbers inside, there were not
- The Landlords left to go out of the country November 27, 2008. The female Landlord returned in May 2009 and the male Landlord returned August or September 2009.
- There was no Landlord or emergency contact around to make the decisions
- **2(A)$84.00 Hot Water Tank**
- They had no hot water as of December 13, 2008; they had problems locating the hot water tank when they later found out that it was outside.
- They called a plumber and were told the hot water tank needed to be insulated and it cost $84.00. This was no fault of theirs as the hot water tank was outside and it was a cold winter
- **2(B)$978.00 Water Pump**
- When they had no hot water on December 13, 2008 they noticed a leak in the water pump and asked the plumber to check it out.
- The plumber also found a leak coming from the bath tub.
- They were instructed by the Landlord during their orientation to watch the water pump to make sure there were no water leaks
- The plumber advised the water pump was going to break down, they told the male Landlord who said the plumber was wrong and told them to tighten up the connections and to keep it warm
- January 27, 2009 the water pump seized. There was no communication with the Landlord at this time as they could not reach him on Skype so they had no water for 4 or 5 days
- The plumber told them the water pump could not be fixed so they paid to have a new water pump purchased and installed
- It was not until after the new pump was installed that the male Landlord claimed there was warranty on the old water pump
- They gave copies of the invoices for $84.00 and $978.00 from the plumber to the female Landlord in May 2009 when she returned to the country and did an inspection. It was during this inspection that they showed her the water leak in the outside garden hose and there was no response
- **2(C)$245.00 Sewage pumped and Repaired**

- The sewage pump issue began in August 2009 when the sewage backed up into the downstairs bathtub and toilets
- They were told by the male Landlord at the outset that the septic tank was pumped out just before they were beginning their tenancy
- A snake was used as they thought it was simply plugged
- They ended up having to hire a plumber who determined that the main sewage pipe that ran from the house to the tank, up to about thirty feet, burst because the solids from the tank were backing up towards the house
- On August 26, 2009 they paid $245.70 to have the pipe fixed
- The male Landlord returned to the country and they discuss all of these issues. The Tenants request that the Landlords pump out the septic tank. The male Landlord tells the Tenants to have it pumped out and they will pay them for it. The tank was pumped September 3, 2009 for a cost of $438.37 and the Landlord did reimburse them.
- They were only in the house for eight months at the time the tank was first pumped yet as per their evidence the tank had not been pumped in years. They were told by the plumber that this is the worst issue he had ever seen and that pumping out the tank was only a temporary fix. The plumber stated that the field and tank had been neglected for years, as supported by the plumber's letter provided in tab 5 of the Tenants' evidence.
- The Tenants stated they were left with having to deal with this septic issue which involved cleaning up a lot of mess and the inconvenience of arranging to have the work completed.
- They were tired of not getting a response to their requests for reimbursement from the Landlords so they sent a firm email in December 2009 requesting the payment

3) $10,300.00 for Damage or Loss

3(A) $500.00 for Loss of Internet and Television Service

- They had a verbal discussion with the Landlord at the outset of the tenancy where they explained that internet service was mandatory
- Their evidence included a copy of the advertisement placed by the Landlord to rent the property which is located after tab 9. The advertisement lists telephone, internet , and television
- They were told by the Landlords the name of the service provider so they signed up with them for one year. The service was great for six months and then it became intermittent and riddled with problems.
- They had the service provider come out and inspect the property and they were told that the cable was not hooked up properly and it was an exposed line which is negatively affected by the winter weather
- They kept telling the male Landlord of the problems but he just never said a word

- Had they known of the problems with the service at the outset they would have had satellite from the beginning.
- There were satellite dishes at the property but the Landlords did not offer them for their use
- The Tenants spent over $1,000.00 to have a new satellite dish hooked up with a different service provider
- The service provider owns the dish so when they moved out it was left at the rental unit

3(B) $2,880.00 for Unpottable Water from December 2009 to April 2010

- During Christmas 2009 the water began to smell murky like lagoon or pond water and it appeared to have dirt in it
- The water stopped completely and then came back on again
- They had to boil their drinking water and did laundry and took showers elsewhere
- They e-mailed the Landlords to ask what was going on and if this water was safe
- The Landlord responded and never told the Tenants that the well had broken down and he had switched over to a pond with fish in it to provide their water
- The male Landlord was at the property often during this period to adjust the water pump and put filters on to accommodate the pond water. Then the pump got sluggish and stopped all together.
- When they complained to the Landlord he told them to buy themselves better filters at which time he told them it would be fixed in a few weeks
- The Tenants said this situation was a nightmare as they had arguments with the Landlords verbally and via emails about how their contract provides for potable water.
- The copy of the e-mail between them and the Landlord which is located on page 56 of their evidence supports that they were not informed of the well breaking in December 2009 until March 27, 2010. The well was not repaired and up and running again until early April 2010.
- The male Landlord was constantly on the property so we kept thinking he would fix it and before we knew it 4 ½ months had gone by.
- They had contacted the *Residential Tenancy Branch* and were told to work through this with the Landlord in a methodical way and make a claim later; which is what they did
- They continued to buy bottled water and went to family and friends to do laundry and shower

3(C) $6,920.00 for Loss of Quiet Enjoyment

- 3(C)(i) **$200.00** for Move in Date delayed
- Their tenancy agreement was to begin October 15, 2008 and they had arranged movers for that date

- The date was delayed until October 17, 2008 by the Landlords and when they arrived the Landlords still had many of their possessions inside the house
- They are seeking $100.00 for their inconvenience for each day they were delayed
- 3(C)(ii) **$3,200.00** Loss of Privacy due to Landlords Attendance at Property
- They are seeking the return of rent from October 17 to November 28, 2008 as the Landlords left furniture and their bird in a bird cage inside the house
- The male Landlord continued to enter the house without their permission or prior notice
- The Landlords left boxes of possessions outside
- The Landlords were building a storage building on the property which provided a constant echo of saws, hammering, talking, and cars driving by
- The Landlords blocked their driveway with equipment and would drive his ATV up to the house to pick up tools
- On two separate occasions the male Landlord entered the house, without notice, and startled the Occupant, who at one time was in her night clothes
- The Occupant stated the male Landlord told her she would have to bear with it until they were gone out of the country
- The male Landlord would also show up to fix things around the property without notice and would show up intermittently as it fit into his schedule
- 3(C)(iii) **$3,520.00** Reduced Rent
- They are seeking reduced rent equal to 5% ($160.00 for each of the 22 months of their tenancy) for the following:
- Having to deal with equipment constantly breaking that was due to no fault of their own
- Being told mistruths that everything was new and in pristine condition
- The solar panels on the roof never worked
- The roof leaked and they had problems with the water, septic, and internet
- They provided copies of the Landlords' new advertisement where they are saying everything is all good again
- They ended up feeling insecure as their patience ran out
- They felt the male Landlord's attitude towards them was a problem as he ignored them, called them whiners, told them this is country life, and he questioned why they could not handle it
- They paid they their rent and did not get their quiet enjoyment when the Landlord returned after 9 months of being out of the country as he caused unreasonable disturbances, he was always around, he would open doors without knocking and no notice was provided when he would be there
- He would tell them he was coming to his storage shed or the circle but 15 minutes later he would be at the front door and would open the door or look

inside the house through the windows. The front of the house is all windows so he could see everything inside
- There was no reason for him to be at the door and his appearances were random which caused a constant low grade nervousness
- Often he would not come to the property on the day he listed in his e-mails and then would just show up some other day unannounced
- When the Landlords would not leave or be restricted from entering all "hell would break loose" because they would become offended
- If they asked nicely for advance notice the Landlord would send e-mails stating things like "you want to play by the book" which indicates to them that the Landlords were offended.
- The Landlords would later become confrontational with them.

The Landlords provided the following response to the Tenants' submission during the April 11, 2011 hearing:

1) **$6,400.00 Double the Return of Security and Pet Deposits**
- The Landlords confirmed they do not have an Order from the Residential Tenancy Branch authorizing them to keep the security deposit
- The Landlords do not have the Tenants' written permission to keep the security deposit
- They made no applications for dispute resolution to keep the security and pet deposits until they filed their application on February 25, 2011.
- There were a few attempts to conduct a move out inspection as supported by the copies of emails provided on pages 57 and 58 of their evidence. The Landlords attended October 1, 2010 and left because the rental property was not cleaned up. They attended again on October 2, 2010.
- No final notice of inspection was issued and no move out inspection report was completed or signed by both parties.
- Rent was paid in full up to September 30, 2010.
- The Landlords state the Tenants refused to attend the move out inspection as supported by the e-mail found in their evidence after tab 11 page 58

2) **$1,307.00 Emergency Repairs**
- **2(A)$84.00 Hot Water Tank**
- They provided the Tenants with an orientation of the property at the outset of the tenancy at which time they told the Tenants verbally that they need to install a cable to the hot water tank before the winter arrived
- The instructions how to install the hot water tank cable were provided verbally and no written instructions or notes were provided to the Tenants

- The male Landlord referenced an e-mail provided in the Tenants' evidence on page 45 where he indicates that he needed to install the cable
- He questions the evidence provided by the plumber as the hot water tank did not freeze it was the water line that froze
- He referred to his evidence which displays that the outside temperature went below freezing (tab 4 pages 21 & 22)
- This hot water tank has no tank so the plumber's evidence is wrong
- The Landlords stated they are faced with having to defend themselves to items the Tenants never requested before as noted in the email they provided in their evidence (tab 4 page 29)
- They contend that all of the Tenants' emails were answered and they were never presented with a bill until they made this claim. They never have received a copy of the $84.00 bill only a copy of a cheque
- **2(B)$978.00 Water Pump**
- The Tenants said their plumber said the water pump froze however the pump is located inside the laundry room that has a heater, so if it froze it was due to the Tenants' negligence
- Their water pump was not an old pump; it was recently new, about two years old.
- The Landlords did not provide evidence as to the age of the water pump and never thought to bother looking for it
- The Landlords are of the opinion that the water pump broke because it froze
- They argued that they never saw the broken pump, they never saw an invoice, the Tenants never asked to be reimbursed until now, they never brought the issue up with the Landlords prior to making their application for dispute resolution.
- The Landlords confirmed they saw the new water pump during one of their inspections of the property but never questioned the Tenants about it
- The Landlords stated they did not remember how they heard about the problems with the water pump
- The Landlords stated they were not given an opportunity to participate in the repair and they suggest that it broke on the same day as the hot water tank
- **2(C)$245.00 Sewage pump**
- The Landlords advised the septic tank backed up on August 29, 2009 and the only bill that was presented to the Landlords was for the pumping out of the tank which they reimbursed the Tenants for.
- The Landlords claim the problems were caused by the Tenants putting improper products into the septic as they had had it pumped out prior to the tenancy
- The Landlords advised they do not have proof that the septic was pumped out prior to the tenancy

- The Landlords stated they were not given notice that the sewage pipe was broken and the first time they saw the bill for this repair was two years later

3) $10,300.00 for Damage or Loss

3(A) $500.00 for Loss of Internet and Television Service

- The Tenants never contacted the Landlords about their decision to have satellite installed
- The Landlords stated this information was all new to them when they read the Tenants claim
- Their internet provider served them for over 15 years and their next door neighbour said they have never had any problems
- They reference an e-mail they provided in evidence (tab 7) where the male Landlord wrote to the Tenants how their service has been fine for over 20 years and now their service provider has stopped providing them with service.
- There were two existing satellite dishes that were previously installed at the house that the Tenants disconnected and left all the wires and dishes behind

3(B) $2,880.00 for Unpottable Water from December 2009 to April 2010

- The male Landlord confirmed the water smelled like chlorine because he was treating the pond water with bleach
- This pond water is fed into a holding tank by gravity
- The Landlords stated there was an underground water line that fills the water holding tank, by gravity, and then an automatic valve to keep the tank full
- The pond feeds into the tank in an emergency or if switched manually
- The Landlords confirmed their well is shared with the neighbouring property and that the deep well pump was only four years old. They did not provide evidence as to the age of this well pump
- The Landlords received an email from their neighbour advising of a problem with the well pump and states that there was an 8ft water spray coming from the Tenants' outside hose
- The Landlord referenced an email dated May 3, 2009 at tab 9 in his evidence where the neighbour informs the Landlords of the water spraying from the Tenants' hose; the Tenants told him the water spray was fixed
- They had previously instructed the Tenants to keep the outside hose closed however the plumber opened the hose which caused a huge leak which the Landlords state was the cause the deep well pump broke
- The Landlords stated the Tenants allowed this water to continue to leak from May 3, 2009 to January 2010 which caused their deep well to burn out
- The Landlords confirmed they did not know if the Tenants used this hose intermittently or not and they did not supply documentary evidence to prove what caused the water pump to burn out
- The male Landlord advised that he does most of the repair work himself

- The Landlords did not provide the Tenants with notice that they were changing the water supply from well water over to pond water
- The male Landlord told the male Tenant in January of a problem with the well however there was never a loss of water to the house
- The Landlord claims it was a process of elimination to determine the problem with the well. He saw the water pump did not have enough pressure to fill the tank; he waited for parts and good weather to be able to install the new pump
- The Landlord confirmed his neighbour paid 50% of the cost of the repair
- The Landlords kept providing water even though it was pond water
- He agreed the water was brown with the rain and run off however he chlorinated the water with bleach after he tested it and measured the required amount of bleach required.

3(C) $6,920.00 for Loss of Quiet Enjoyment

- 3(C)(i) **$200.00** for Move in Date delayed
- The Landlords confirmed they were late in moving out of the house
- They contend they were out by October 16, 2008 and not October 17, 2008 as claimed by the Tenants
- The Tenants were not given the keys to move into the rental unit until October 16, 2008 even though the contract says start of the tenancy was October 15, 2008
- The Landlords stated they spent October 17, 2008 in a hotel but did not provide evidence to support this
- The Landlords confirmed they still had possessions inside and outside the rental unit and originally the Landlords property was to be stored in one side of the carport. they later verbally agreed to allow the Tenants to have both sides of the carport
- They stated the Tenants initially requested to keep some of the Landlords' furniture and the Landlords' bird inside the house and later changed their mind so the Landlords removed those items
- They worked through things as a trade off
- 3(C)(ii) **$3,200.00** Loss of Privacy due to Landlords Attendance at Property
- The Landlords pointed out section 3(b) of their lease which is found after tab 2 page 14 of their evidence which states that the Tenants have non-exclusive use of the property
- 3(C)(iii) **$3,520.00** Reduced Rent
- First the Tenants say we are not accessible so they have to do the repairs and then they say we are there all of the time never giving them their privacy
- The male Landlord said the Tenants' testimony is all false
- He confirms he was building a storage shed and working on the shed roof 700 feet away from the house but he never disturbed them

- The Landlord referenced an e-mail dated June 17, 2009, (tab 8 of their evidence) where the Tenants wrote them to advise everything was working great and they had no problems
- They did not constantly inspect the house and only did one house inspection as supported by the e-mail provided in their evidence after tab 8 on page 38

At this point the hearing time allotted for this reconvened hearing (April 11, 2011) was about to expire. I instructed all parties that we would reconvene for one final hearing and they would be notified in writing of the final reconvened hearing date and time. The parties were advised that no additional evidence would be accepted by either party and we would begin the next hearing with the Landlords presenting the merits of their application followed by the Tenants' response and closing remarks.

At the outset of the June 9, 2011 hearing I explained I would not be accepting the additional evidence provided by the Landlords as I had previously instructed all parties not to send additional evidence. The Landlords responded by claiming I did not allow the female Landlord an opportunity in the previous hearing to provide testimony in response to the Tenants' claim. The Landlords stated they felt I was not able to understand the male Landlord through his accent. I reminded the Landlords how I encouraged the female Landlord to provide testimony during the April 11, 2011 reconvened hearing and I repeated several pieces of testimony provided by the female Landlord. I also pointed out I had no problems understanding the male Landlord. The Landlords acknowledged this and apologized.

I then turned the floor over to the Landlords to begin presenting their submission at which time the female Landlord proceeded to read an eleven page submission which was created after the April 11, 2011 reconvened hearing and was a reconstruction of their response to the Tenants' claim that they had provided in the April 11, 2011 reconvened hearing.

The Floor was then turned to the Tenants for their response. The Tenants' Advocate submitted the following:

- He agreed that the law of equity should be applied if possible for residential tenancy matters
- His reading of the law is that the Dispute Resolution Officer does not have discretion to refuse payment of double the security and pet deposits as it states double payment "must" be made
- He is of the opinion that a Dispute Resolution Officer has the ability to refuse evidence based on their discretion

- The Tenants made requests and attempts to have their deposits returned, they did not walk away from their deposits as alleged in the Landlord's reconstructed submission
- It is the Tenants' right to apply for these claims
- Exceptional circumstances as quoted in the Landlords' reconstructed submission do not apply here, the Landlords simply made no effort to apply to keep the deposits
- The references to claims made for damages should be ignored as the Landlords' extinguished their rights to claim against the deposits when they failed to conduct a move in inspection and complete the report
- He agrees that the Landlords may be able to claim for cleaning
- In response to the e-mail the Landlords' provided in evidence at page 58 relates to a contentious issue at the time of move out yet they have phrased it in a neutral manner. The first line is very clear when they write "in all honesty". He contends this could not be clearer going into a conflict. There was no conciliatory note to it and the Landlords sounded very threatening. The Tenants did not want to respond to this so they gave the Landlords time to respond and return their deposits.

The Occupant testified and questioned the Landlords' claim of extraordinary circumstances. The Tenants sent their registered letter requesting their deposits. The Landlords sent them a report October 8, 2010 listing damages of $6,821.60 and then the Landlords wait until February 25, 2011 to make their application, more than 3 months after the Tenants file their application on November 8, 2010. She wondered how the Landlords' delay would be extraordinary circumstances.

The Landlords' Advocate submitted that the *Kikals* decision is clear with respect to doubling deposits and that it is not the amount of time that is at issue. She continued by arguing that the Landlords were estopped by the Tenants when the Tenants failed to respond to the Landlords' report.

Landlords' Claim

The Landlords referenced a two page spreadsheet titled "summary of damage from tenancy" which they provided in their original evidence at tab 13 and totals $23,447.35 for their claim. This spreadsheet was referenced during the Landlords' testimony while presenting the merits of their claim.

- The Landlords read sections 32(2) and 32(4) of the *Act,* and from Policy Guideline #1.

- They confirmed their claim represents estimated costs and that the actual costs are above what they have claimed.
- They stated that at the onset of the tenancy the house was newly painted and the floors were freshly varnished, they did not provide evidence to support this work was completed.
- They had a new hot water heater installed prior to the tenancy

Landscaping

- They had beautiful flower beds, lawn and patio
- They had realtors attend in August 2008 as supported by the email they provided in evidence at tab 11 page 53 and a letter at tab 11 pages 64-65
- A copy of the property appraisal is provided at tab 11 pages 48-52
- They state the Tenants agreed to pay their rent one year in advance because the property was in good condition
- The Tenants assured the Landlords they would take care of keeping the lawns and gardens maintained however they were not maintaining the grass and did not attend to the flower planters or flower beds that were near the house
- At the end of the tenancy the Landlords stated they found the planters were all emptied into the flower beds overtop of ashes from the fireplace
- All of the perennial plants were gone and they should have lasted about ten years
- A landscape quote was provided at tab 21 pages 189-190 in the evidence provided after the April 11, 2011 reconvened hearing (referred to as “late evidence” for the remainder of this decision).
- The Landlord had claimed $179.20 to refill and replant the half barrels.
- Item #’s 37, 58, 59
- **$1,139.20** for their claim as listed above for landscaping

Cleaning

- Landlords seek $25.00 per hour plus HST as quoted
- They claim the inside of the house required extensive cleaning at the end of the tenancy
- The shower stall door required extra cleaning with a corrosive cleaner to be able to remove the scum. Photos were provided after tab 16 pages 110- 125 and tab 17 page 174.
- Receipts were provided in the late evidence after tab 21 in support of the costs for cleaning supplies, kitchen cleaning $42.00, shower door cleaning $28.00, white sofa, $150.00, clean up after mice droppings $56.00, mice traps, clean out the gutters, pressure wash the outside of the house, and overall house cleaning of 40 hours.
- Item #’s 1, 12, 27, 29, 30, 36, 42, 52, 53
- **$1,761.42** for their claim as listed above for cleaning

Carpets

- The Landlords claim they had to replace the carpets because the Tenants' dogs soiled them repeatedly
- They know the dogs soiled repeatedly because they saw stains on the underlay and the wooden subfloor when they removed the carpets
- The carpets were 7 years old and there were 5.70 square feet for at total of $1,995.00. After considering the depreciated value they are seeking partial payment
- A receipt was provided in the late evidence after tab 21
- **$980.00** for their claim as listed above for carpets (item 32)

Wood Floors and Stairs

- The floors on the main level had to be refinished and were only 10 years old
- The upstairs floors were spot refinished and were new
- The damage is referenced in their photos found after tab 13 and claimed at items #10, 17, 26
- The wood floor refinishing was completed by the Landlords at the end of October 2010 so there are no receipts to provide
- **$836.00** for their claim as listed above for wood floors and stairs

Wall repairs and plastering

- Photos are provided in their evidence after tab 17 page 146 to show the size of the holes in the walls
- A list of hours worked by the male Landlord in October 2010 is provided after tab 13 page 75
- The receipt was for $642.00 however they claimed $184.80 for the downstairs bedroom and $350.00 for around the house
- Item # 49 and 34,
- **$534.80** for their claim as listed above for wall repairs and plastering

Painting

- The Landlords testified they had painted the house two years earlier in 2008
- Their actual cost to have the house repainted is $556.82 as every room in the entire house needed wall repairs or work (item 48)
- **$300.00** for their claim as listed above for painting

Appliances

- A new fridge and range were purchased
- The oven door was broken
- The hood fan over the stove and oven had grease and grime
- They calculated that there was 3 years remaining in the useful life of their appliances so they claimed the 20% depreciated value of $250.00
- The fridge bins and brackets were broken and the Tenants used screws to drill into the inside wall of the fridge

  - The bins were 7 years old. 53% of the new fridge cost of $424.00 however they only claimed the cost for the inside parts of $169.12.
- **$419.12** for their claim as listed above for the appliances (Item 22, 46)

Missing Items and Supplies

  - There were several possessions left inside the house by the Landlords during the tenancy that were missing after the Tenants vacated the property
  - The Landlords did not have an inventory list that was approved by the Tenants at the beginning of the tenancy however some of the items being claimed are seen in photographs provided in their evidence.
  - The missing items being claimed under this category are listed as item numbers 45, 47, 2, 3, 4, 5, 11, 20, 21, and 19 on the “summary of damages from tenancy” document.
  - The Landlords stated they could not replace most of these items as many were unique. Of the items listed above numbers 4, 11, 19, 20, and 21 were replaced.
- **$429.76** for their claim as listed above for the missing items and supplies

Retile around Downstairs Bath Tub

  - The Landlords’ evidence at tab 17, pages 135-138 and at tab 21 page 203 references their claim listed as item # 18 on their summary of damages document and displays the broken tiles around the bathtub
  - Their receipt at tab 21 shows an amount of $1,535.00
- **$448.00** for their claim as listed above for the bath tub tile repairs

Repairs to Threshold, Doors, and Desk Top, Front Gate Post

- The Landlords are seeking $336.00 for the Desk (item 33); $56.00 for the front door threshold (item 28); and bathroom door repairs $112.00 (item 14); front gate $28.00 (item 35)
- **$532.00** for their claim as listed above for repairs

Repairs to Broken or Damaged Items

  - The Landlords’ photos provided at tab 17 pages 126-130; 139; 144-146; and 149 represent some of the items being claimed.
  - The amounts and item numbers for this section are as follows:
    #6 - $39.00; #7-$28.00; #8-$112.00; #9-$75.00; #13-$60.00; #15 - $55.98; #16-$84.00; #23-$112.00; #24-$112.00; #25-$112.00; #31-$11.20; #43-$25.00
- **$826.18** for their claim as listed above for the repairs to broken or damaged items

Septic Tank Repairs

  - The Landlords stated it was the Tenants who caused the septic system to back up and not the field
  - The Landlord had the distribution box excavated as supported by their evidence at tab 13 pages 74 and 77
  - Both contractors noted that paper was in the septic which was corrugated

  - The Tenant was informed about this and denied putting this in the septic so the Landlords gave them the benefit of the doubt
  - The items relating to this claim on the Landlords' spreadsheet are numbers 50, 38, 39, and 40
- **$1,300.30** for their claim as listed above for the septic tank repairs

Well Pump Replacement

  - The Landlords stated this pump was only two years old when it burnt out and the normal life is 10 years
  - They believe the pump burnt out due to the Tenants' negligence of allowing a water leak from the outside hose pipe that was spraying up to 7' high
  - The Landlords provided evidence at tab 13 pages 83 to 96 of receipts for the cost to replace the pump
  - This is claimed at item number 51 on their list at $2,374.57
  - The Landlords advised their costs were much greater because they made improvements during the replacement
- **$2,374.57** for their claim as listed above for the well pump replacement

Machine Work

  - The Landlords state the Tenants dumped piles of dirt on the gravel driveway to create a garden
  - It will take a machine about one hour to remove this dirt
  - The Landlords confirmed this work has not been completed and it is an estimated cost listed at item # 41
- **$112.00** for their claim as listed above for the machine work

Cable and Satellite Dishes

  - The Landlords advised that there was fully functioning cable at the outset of the tenancy
  - The Tenants did not have the Landlords' permission to remove the existing satellite dishes and wiring
  - When the Tenants' new satellite dishes were installed there was no sealing done to where screws were drilled into the exterior of the house
  - The Tenants had a dispute with the Landlords' service provider and now this service provider is no longer willing to provide service to the Landlords
  - The Landlords allege the Tenants failed to pay the bill to the Tenants' new service provider and the Landlords are now allegedly being refused service from this new service provider
  - The Landlords' claim is located at item #44 and is for resetting and rewiring for the pre-existing satellite dishes
- **$200.00** for their claim as listed above for the appliances

Fees for Filing their Application and Service of Documents

- The Landlords seek costs for filing fees, service of documents, developing of photos and copying

- **$300.00** for their claim as listed above for fees

Loss of Rent

- The Landlords are claiming two months loss of rent (2 x $3,800.00) at item # 57
- The Landlord provided evidence at tab 13 page 97 to support the rental unit was not re-rented immediately following the Tenants end of tenancy

- **$7,600.00** for their claim as listed above for the appliances

Travel Costs

- The Landlords did not reside on the island where their property was located and are seeking travel costs and time to attend the rental unit
- These amounts are claimed at item numbers 54 - $600.00; 55 - $ 354.00; and 56 - $2,400.00

- **$3,354.00** for their claim as listed above for travel costs

<u>The Tenants' and their Advocate's response to the Landlords' claim is as follows:</u>

- The Advocate stated the Landlords admitted in their own materials that claims for damages are extinguished if no move in or move out inspection reports are completed
- The Landlords did not provide receipts for a majority of the items being claimed
- It is up to the applicant to prove there has been a loss suffered and without receipts they cannot prove this
- How can they come up with $1,803.42 for cleaning supplies alone which makes us question how they determined these amounts
- There is no evidence of when this alleged work was done and it is critical for the applicant to prove their claim and that they have actually suffered a loss
- The Landlords used speculative dates so this weakens their evidence
- The time to claim to retain a security deposit is 15 days
- The Landlords did not conduct a proper move in or move out inspection
- There are no exceptional circumstances here
- They believe the Landlord is only entitled to make claims for cleaning here and not for damages
- The Tenants stated they outlined as much as they could and they believe their evidence gives all the information needed to know their rebuttal as provided in their evidence
- They note that there may be a possible misunderstanding in their phrasing of "holidays" of when the Landlords left the country
- The Landlords never left a contact number for when they were out of the country
- No information for a local contact was provided to the Tenants for the period the Landlords were out of the country

- They would just email the address listed on their tenancy agreement to contact the Landlords, no phone number was ever provided
- The emergency preparedness envelope did not contain emergency contact numbers or names
- The Tenants stated they would not have dealt with the emergency issues had the Landlord arranged to have a representative there for them to contact while the Landlords were out of the country
- When the Landlords called the Tenants it would never show a number on their call display. It would always show unlisted or redirected numbers
- The telephone number listed on their application for dispute resolution for the Landlords is a very recent number that they only obtained since the Landlords returned to the country.
- The Landlords are claiming their unfinished repairs as damages such as the work around the bath tub
- They have no knowledge of the alleged missing items; there were no mutually agreed upon lists created of items left in and around the house by the Landlords, there was no move inspection either... the Tenants had created a list which is listed at tab 11 page 6 of their evidence
- The Landlords' photos are zoomed in and do not fairly represent the items
- The Tenants deny that their dogs chewed the Landlords' desk
- It is disturbing that the Landlord provided a photo of a hole in the wall where their "bull noses" were installed; where one was obviously removed to show the hole for their photos. This was not damage, these were wooden circles screwed into the wall for decoration and which the hand railing sat on.
- The Tenants contend that they left the house clean and undamaged
- As per their evidence at tab 13 pg 74 the Landlord was at the house showing potential tenants so if there was that much damage why did he not mention it at the time of the showings
- Potential tenants started coming by to view the property as of July 2010
- As per their evidence they provided a copy of the Landlords' internet advertisement dated October 4, 2010 which notes it is available as of October 15, 2010 so this displays that they had a good idea that the house was fine
- The Landlords have increased the rent in these on line advertisements, first they listed it at $2,990.00 per month and then at $3,000.00 per month
- If this damage truly existed how could the Landlords not see it
- If the Landlords went to the trouble of getting receipts for photos or other costs why would they not provide receipts for their other items being claimed
- The Landlords did not provide receipts with proper dates, no business names, did not provide official receipts and their costs being claimed are vague
- What proof did the Landlords provide that these items were actually paid for

- It is just allegations that this property was not rentable for three months
- There is no evidence of broken windows or gouges in the walls
- The Landlords constantly mentioned a dirty shower door and are claiming $1,000 plus $675 for cleaning on their spread sheet
- It was not until two months after we left that the Landlords provide a witness statement about the condition of the shower stall, why wait two months to clean it
- Their application shows a request for two months rent not three months rent
- The Tenants anticipated the Landlords would claim they damaged the septic so they provided the evidence at tab 5 page 6 which indicates it was “cement like sewage” which is not normal
- The problems were found to be in the distribution box at the second pumping which is further away from the house and would take years of neglect to accumulate
- The Landlords claim it was the Tenants neglect that caused the well pump to break because of the leak at the garden hose or pipe. They contend that this is a red herring. They confirm the hose pipe leaked but this did not cause the well pump to break down. They were told that there was an underground pipe that had burst which caused the well pump to burn out.
- The Tenants stated the burst water pipe was located under the pavement and it burst because it was not installed low enough underground.
- Everyone, including the Landlords were aware of the leaking hose pipe and the Landlords did not patch the leak properly
- There was no mention of damages to the well pump in the Landlords’ October 8, 2010 letter of damages and no mention that the Tenants would be responsible
- In the Tenants’ evidence at tab 13 page 56 the Landlord writes “I know this is not your fault” when speaking about the well pump breaking
- The Tenant read her closing statement and stated they are seeking fair compensation as they feel they honoured their tenancy agreement and left the rental unit clean and undamaged
- They questioned the Landlords testimony about the dates their photos were taken as they noted one of the outside pictures displays the veranda with a railing
- They contest the property is still not rented because it is in a remote area, is a specialized property with high rent for a narrow market as per the Landlords evidence; and that it is not due to damage to the unit
- The onus is on the Landlords to clear issues up with their Tenants and to provide peace and quiet – the Tenants were under the assumption that they rented the house and surrounding property
- The male Landlord would be in the house unannounced several times during the tenancy

- They feel the Landlords' claims are outrageous and that the Landlords have the responsibility to repair and maintain their property

Prior to closing remarks the Landlords' Advocate posted direct questions to the Tenants as listed below. This is the only time during the hearing process that direct questions were posted.

- The Landlord's Advocate questioned the Tenants as follows:
  - Q: Please tell me where the ground was soggy and when did you tell the Landlords that the ground was soggy.
  - The Tenants replied stating there was no soggy ground that they had noticed therefore they did not report anything to the Landlords. They had learned after the end of their tenancy that the Landlords' workers discovered a burst pipe that was underground. They did not notice or see any problems and it took experts to find the problem.
- The Advocate stated that while the Landlords claim against the security deposit is extinguished their claim for damages is not. Furthermore she argues the Landlords are not limited to 15 days to make a claim for damages
- The Advocate stated she is of the opinion that receipts are not required and that the Landlords need only to prove there are damages or loss as per section 7 of the *Residential Tenancy Act*
- The Landlords' Advocate turned her questions towards the Landlords and asked:
  - Q: Did the Tenants ever phone you?
  - A: Yes, several times.
  - Q: Did they have your phone number?
  - A: Yes
- The Advocate referenced the Residential Tenancy Policy Guideline # 3 in support of the Landlords' claim that the property was not rentable due to damage
- The Landlords advised the rental property has not been re-rented as of yet (June 9, 2011)
- <u>The Landlords' Closing Remarks</u>
- The repair work was too much to do
- The Landlord had personal issues to deal with so they had to stop work on the property
- They changed their request for loss of rent because they evaluated what was fair at the time and thought two months not three months was fair
- The Landlords confirmed there were no inspections. The Tenants said they would participate for a move out but then they walked away shortly after they started the inspection

- They advertised the property because they needed to re-rent it right away
- The Landlords pointed out that in the Tenants' own submission they admit to burning the counter with their toaster oven
- They refute the Tenants' statements that they do not know about the missing items as most of them were in the rental house at the outset of the tenancy and are displayed in the photos provided in their evidence at tab 14 page 103. These photos were taken in 2008.

Analysis

11.4 of the *Residential Tenancy Branch Rules of Procedure* provides that If a party does not provide evidence in advance in accordance with Rule 3.1 [documents that must be served] and Rule 3.5 [evidence not filed with the Application for Dispute Resolution], that party must bring to the dispute resolution proceeding sufficient copies of that evidence for all of the parties and the Dispute Resolution Officer. The Dispute Resolution Officer will decide whether to accept this evidence in accordance with Rule 11.5 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

At the closing of the March 14, 2011 hearing and again on April 11, 2011 all participants were advised due to the expiration of the hearing time the hearing would be reconvened at a future date. Each party was instructed not to submit additional evidence. Neither party submitted additional evidence prior to the April 11, 2011 reconvened hearing.

It was during the April 11, 2011 reconvened hearing which the Tenant and Occupant presented the merits of their application, each Landlord provided testimony in response and I asked my clarifying questions. Both Landlords were provided an opportunity to present evidence in response to the Tenant's claim.

At the closing of the April 11, 2011 hearing the parties were instructed a second time that I would not accept additional evidence prior to the next reconvened hearing. They were also advised that the next time we convened the Landlords would be presenting the merits to their application, followed by the Tenants' response and cross examination, and each party's closing remarks.

During the two month period between April 11, 2011 and the reconvening on June 9, 2011, the Landlords hired an advocate, reworked their response to the Tenant's presentation of their claim and submitted volumes of additional evidence to the Tenants and the *Residential Tenancy Branch,* contrary to my previous instructions.

Each reconvened hearing does not constitute a new hearing; rather they are a continuation of the initial hearing. Therefore I hold to Rule 3.1 and Rule 4.1 of the *Residential Tenancy Branch Rules of Procedures* which stipulate evidence must be provided in advance of the hearing.

I find that to accept the additional late evidence from the Landlords would prejudice the other party and would result in a breach of the principles of natural justice because the Tenants would be deprived of the ability to spend 2 months reworking their response to the Landlords' presentation of their claim. Therefore I decline to consider the Landlords' additional late evidence and the female Landlord's oral presentation of that evidence, pursuant to Rule 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure.*

The Landlord's have stated they could not view the DVD evidence which was provided in the Tenants' evidence. Therefore the photos on the DVD will not be considered in my decision pursuant to Rule 11.5 and Rule 11.8 of the *Residential Tenancy Branch Rules of Procedure.*

Section 7(1) of the Act provides that 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Tenant's claim $18,007.00

The evidence supports the fixed term tenancy ended September 30, 2010 and the Tenants' forwarding address was sent to the Landlords via registered mail September 27, 2010. The Landlords are deemed to have received the forwarding address October 2, 2010, five days after it was mailed in accordance with section 90 of the *Act.*

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposits, to the tenant with interest or make application for dispute resolution claiming against the security and pet deposits.

In this case the Landlords were required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than October 17, 2010. The Landlords did not file their application until February 25, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security and pet deposit. Therefore, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double their security and pet deposits (2 x $1,600.00) + (2 x $1,600.00) plus interest on security and pet deposits from August 5, 2008 to July 7, 2011 of $19.74 for a total amount of **$6,419.74**.

Section 33(1) of the *Act* provides that in this section, **"emergency repairs"** means repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing (i) major leaks in pipes or the roof, (ii) damaged or blocked water or sewer pipes or plumbing fixtures, (iii) the primary heating system, (iv) damaged or defective locks that give access to a rental unit,(v) the electrical systems, or (vi) in prescribed circumstances, a rental unit or residential property.

Based on the aforementioned I find the Tenants' claim for repairs to the hot water tank, water pump, and sewage system meet the definition of emergency repairs.

Section 33 (2) of the *Act* provides the landlord must post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

There is sufficient evidence to support the Tenants had email communications with the Landlords for the periods of September 2008 to December 19 2008 and again beginning May 2009 until the end of the tenancy. I note there is no evidence before me that supports there were communications between the parties, email or otherwise between the period of December 20, 2008 and April 24, 2009.

I accept the Tenants' evidence that the Landlords failed to provide a contact telephone number and that when the Landlords called the call display showed that the number was unlisted or redirected.

Based on the aforementioned I find the Landlords breached section 33(2) of the Act as they failed to provide the Tenants with an emergency contact name and telephone number.

The parties communicated via e-mail December 14, 2008 pertaining to the frozen hot water source, as supported by the Tenants' evidence where the male Landlord is providing directions where the Tenants can locate the hot water tank and suggestions on what may be causing the problems. I note that at no time did the Landlord offer to have someone attend the rental unit to conduct repairs, during this communication; rather I find it clear that the Landlord was expecting the Tenants to deal with the situation.

I accept the Landlords' evidence that he informed the Tenants, via e-mail, that a cable needed to be installed on the hot water tank and that when they offered to install it, the Landlord agreed. There is no evidence to support the Landlord followed up this communication to ensure the cable was installed. The Landlord did not provide written instructions to the Tenants for the required maintenance of the hot water tank or anything else pertaining to the rental property.

After careful consideration of the evidence before me I find that a reasonable person ought to have known that when providing such detailed information as to the maintenance or operation of mechanical equipment written instructions would need to be provided to ensure the instructions could be carried out as requested.

The Landlords admit that at the outset of the tenancy they felt the need to provide the Tenants an orientation on how to manage the property and that this orientation with several instructions was provided orally with no written instructions provided.

I do not accept the Landlords' submission that they were not previously informed of the requirement for repairs or the Tenants' requests for reimbursement for repairs that were paid for the hot water tank, water pump, and sewage pump. Rather the evidence provided by the Tenants supports their testimony that they had informed the Landlords via e-mail, when they had contact with them and that they provided the receipts to the female Landlord in May 2009 which was followed up by an e-mail requesting payment in December 2009.

Section 33(5) of the *Act* provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenants' evidence included a photo copy of a cheque in the amount of $84.00 which was the payment to the plumber who attended to repair the hot water tank. I accept this evidence as a receipt of payment for services rendered by the plumber.

Based on the aforementioned I find the Tenants have met the burden of proof for the cost of emergency repairs (Hot Water Tank, Water Pump, and Sewage Pumped and Repaired) and I approve their claim in the amount of **$1,307.00.**

The Tenants seek $500.00 for the loss of internet and television service. The tenancy agreement does not provide for uninterrupted service of internet or television service. I find that a reasonable person ought to have known that living on an Island could cause minor interruptions in service of this nature. Therefore I find there to be insufficient evidence to support this claim is the result of the Landlords' breach, and I dismiss the claim of $500.00, without leave to reapply.

I accept the evidence supports the Landlords used bleach to treat the pond water however there is insufficient evidence to prove the water was unpottable and I dismiss the Tenants' claim of $2,880.00, without leave to reapply.

On October 11, 2008, the Tenants paid the Landlords $36,800.00 as rent for the entire first year of their tenancy which was scheduled to begin on October 15, 2008, as per the tenancy agreement. It was after receiving this payment that the Landlords informed the Tenants that their occupation date would be delayed as the Landlords had not yet vacated the rental house. I accept the Tenants' claim that the Landlords over held the rental property in breach of the tenancy agreement and I approve their claim in the amount of **$200.00.**

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find it undeniable that the Tenants have suffered a loss of quiet enjoyment for approximately two months between October 16, 2008 and November 28, 2008; prior to the Landlords departure from the country; and again December 20, 2009 to mid April 2010; during the period the Landlords were determining the problems with the well pump. Therefore I find the Tenants suffered a loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

As such, I make note that the Landlords attended the rental unit during various times of the day and week and were inside or looking into the rental unit unannounced for short periods of time.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant’s use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction of $3,520.00, based on Section 27, they have provided no evidence indicating that the Landlords have breached section 27 of the *Act*, rather their evidence pertains to a breach of section 28 of the Act and they have included this claim and their evidence under the heading for loss of quiet enjoyment.

After careful consideration of the aforementioned and evidence I find the $3,200.00 claimed for loss of privacy and the $3,520.00 claimed for reduced rent meet the requirements for claims of loss of quiet enjoyment and aggravated damages. I find the Tenants are entitled to compensation in the amount of **$4,400.00** pursuant to section 67 of the *Act.*

The Tenants have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **$50.00.**

Total amount awarded to the Tenants above: $12,376.74

Landlords' claim $23,447.35

Section 24 (2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (a) does not comply with section 23 (3) *[2 opportunities for inspection]*, (b) having complied with section 23 (3), does not participate on either occasion, or (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

This section prevents a landlord from a claim for damages against the security deposit however it does not prevent a landlord for making a claim against a tenant for damages.

The *Residential Tenancy Regulation # 21* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case the Landlords rely on statements obtained from real estate agents who viewed the property two months prior to the onset of the tenancy as their evidence to support the condition of the rental property at the onset of the tenancy. In support of the property condition at the end of the tenancy the Landlords rely on photos taken of the inside of the rental house.

A significant factor in my considerations is the credibility of the evidence. I am required to consider the Landlords' evidence not on the basis of whether it "carried the conviction of the truth", but rather to assess their evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The evidence supports that in October 2010 the Landlords sent the Tenants a list of damage and loss totalling $6,821.60 which was arbitrarily increased to $23,447.35 in the Landlords application for dispute resolution which was filed four months after the Tenants made their application for dispute resolution in the amount of $18,007.00.

In the absence of evidence to support the actual amount of loss and in considering the Landlords' evidence of the October 2010 list of claims totalling $6,821.60, I find that on a balance of probabilities the Landlords simply altered their claim in a retaliatory fashion so it would be a higher amount than that being claimed by the Tenants. That being said,

the *Residential Tenancy Act* provides that claims can be made for damage or loss up to two years from the end of the tenancy; therefore the Landlords were at liberty to increase the amount they made their claim for. The Landlords are however still required to meet the burden of proof that these losses were suffered as a result of the tenancy.

The evidence supports the tenancy agreement provides that the Tenants were to maintain the property in its' current state. The Landlords allege they had verbal discussions and agreement from the Tenants as to what maintaining the property entailed.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In the absence of a move in inspection report or a preponderance of evidence which proves the condition of the exterior landscape of the rental property at the onset of the tenancy and without detailed written documentation of what was agreed to by the Tenants for maintenance of the property, I find there to be insufficient evidence to meet the burden of proof that the Tenants breached the Act, regulation or tenancy agreement by failing to maintain the property in its current state. Therefore I dismiss the Landlords' claim of $1,139.20 for landscaping and machine work of $112.00, without leave to reapply.

I accept the Landlords' evidence which was in the form of a notarized letter from a real estate agent that spoke to the condition of the rental house at the end of the tenancy. That being said, I accept this letter with caution given to the descriptive language used by the realtor as I am unclear of the relationship between the Landlords' and the realtor and the potential for ulterior motives on the part of the realtor. That being said, I accept that this letter indicates that the condition of the interior of the house was worse at the end of the tenancy when he saw the property in December 2010 from that when he first saw the property in August 2008, prior to the tenancy.

Section 32 of the *Act* provides (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

After careful consideration of the aforementioned I find the Landlords have met the burden of proof that the Tenants breached sections 32 (1) and (2) of the *Act*. That being said, in the absence of a move in or move out inspection report and in the absence of copies of receipts proving the actual cost of the loss being claimed for the interior of the rental property, I find there to be insufficient evidence to meet the burden of proof for the amounts being claimed by the Landlords for cleaning (1,761.42), replacement of carpets ($980.00), wood floor and stair repair ($836.00), wall repairs and plastering ($534.80), painting ($300.00), and damage to appliances ($419.12) totaling $4,831.34.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there is insufficient evidence to prove the amount of the loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlords are entitled to nominal damages and award them the following: cleaning labour $1,600.00 (2 x 40 hours x $20.00 per hour), cleaning supplies $25.00, carpets $300.00, wood floor and stair repair $160.00 (8 hours x $20.00), wall repairs, plastering $50.00, painting $250.00, damage to appliances $175.00 for a total amount of **$2,560.00**. The balance of $2,271.34 ($4,831.34 – 2,560.00) is hereby dismissed without leave to reapply.

In the presence of the Tenants' opposing evidence that the work to the tile around the bathtub was a renovation project; that damage to the threshold and doors were present at the outset; and that their dogs did not damage the desk top, I find there to be insufficient evidence to support the Landlords' claim of loss. Therefore I dismiss the claims of $448.00 for retiling and $532.00 for repairs to the threshold, doors, and desk top, without leave to reapply.

In the absence of a move in inventory list or inspection report and after considering the Landlords did not fully vacate the house prior to the onset of the tenancy agreement, I find there to be insufficient evidence to support the amounts claimed by the Landlords for the alleged missing personal possessions ($429.76) or for damages allegedly caused to their possessions ($826.18); with the exception of the burnt kitchen countertop which is claimed at item 23 for the amount of $112.00. Based on the aforementioned I dismiss the amount claimed of $1,143.94 ($429.76 + 826.18 – 112.00), without leave to reapply.

The evidence provided by the Tenants supports the Landlords' claim that damage was caused to the kitchen countertop during the Tenants' tenancy. I accept the amount

claimed to be a reasonable amount and I award the Landlords **$112.00** for damage to the kitchen counter, pursuant to section 67 of the *Act.*

The Landlords seek $1,300.30 for septic tank repairs and $2,374.57 for the well pump replacement due to what they allege was the Tenants' negligence.

There is insufficient evidence to prove the septic tank had been regularly maintained prior to the tenancy and there is no evidence before me that supports it was the Tenants' actions that caused the septic to back up into the lower bathroom or to cause the septic pipe to burst. On the contrary the evidence provided by the Tenants supports the septic system and field had been neglected. The Landlords' testified they treated the pond water with bleach and their evidence page 76 further indicates problems in the septic tank were caused by the presence of "bleach or some other product had been killing the bacteria in the tank". Based on the aforementioned there is insufficient evidence to prove the septic tank, field, or septic line repairs were required due to the Tenants' negligence or breach, therefore I dismiss the Landlords' claim of $1,300.30, without leave to reapply.

Furthermore the evidence supports that both parties were aware of water streaming from the garden hose pipe and neither party took action to properly repair this leak. There is insufficient evidence to support it was this garden hose pipe leak that caused the well pump to burn out. Rather, the Tenants provided evidence that it was later determined by the Landlords' contractors that a pipe under the concrete had burst which caused the pump to run continuously and burn out. I note that the Landlords did not refute this evidence.

Therefore in the presence of opposing testimony, I find there to be insufficient evidence to support the well pump burnt out as a result of the Tenants' negligence or breach and I hereby dismiss the Landlords' claim for the well pump repair of $2,374.57, without leave to reapply.

The *Residential Tenancy Policy Guideline #1* provides that (1) any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. (2) If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

The Tenants admitted to removing the Landlords' satellite dishes and wiring from the rental house and installing a new satellite dish and wiring installed without the Landlords prior approval; and did not re-install the satellite dishes and wiring at the end of the tenancy. Based on the aforementioned I find the Landlords have met the burden of proof and I approve their claim of **$200.00.**

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. I note that *Black's Law Dictionary, sixth edition*, defines costs, in part, as:

> *A pecuniary allowance....Generally "costs" do not include fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*

In relation to travel fees (ferry, mileage, time $3,354.00), and fees to compile and serve evidence (photocopying, photo development, postal $200.00) I find that the Landlords have chosen to incur these costs that cannot be assumed by the Tenants.

Therefore, I find that the Landlords may not claim these fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act.* I therefore dismiss the Landlords' claim of $3,554.00 ($3,354.00 + $200.00), without leave to reapply.

Having found above that the Tenants breached section 32 of the Act by leaving the rental unit in a worse state at the end of the tenancy I find the Landlords would not have been able to re-rent the unit immediately following the end of the tenancy. That being said I find there to be insufficient evidence to support it would take two months to restore the rental unit to a condition that it could be occupied. There is evidence which supports the Landlords did not act in a timely manner due to their own personal circumstances. I accept the Landlords may have been negotiating with a potential tenant however, I do not accept the evidence which suggests the Landlords had entered into a tenancy agreement with a new renter at $3,800.00 as no signed agreement was provided in evidence. Based on the aforementioned, I find the Landlords have met the burden of proof to claim loss of rent for one month, in the amount of **$3,200.00.** The balance of $4,400.00 ($7600.00 - $3,200.00) loss of rent is dismissed without leave to reapply.

The Landlords have been partially successful with their claim; therefore I award recovery of the filing fee in the amount of **$50.00.**

Total amount awarded to the Landlords above: $6,122.00

Monetary Order – I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenants' award	$12,376.74
LESS: Landlords' award	-6122.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	**$6,254.74**

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **$6,254.74**. This Order is legally binding and must be served upon the Landlords.

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: July 08, 2011.

Residential Tenancy Branch