



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNR, MNSD, FF

For the tenants – MNSD, FF (MNDC)

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a Monetary Order for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it.

Preliminary Issues

The parties advised me that there is an error on the correct legal name of the landlord. The parties did not raise any objections to the error being corrected and this has now been amended.

The tenants sought to amend there application at the outset of the hearing to include Money owed or compensation for damage or loss under *the Residential Tenancy Act (Act)*, regulations or tenancy agreement. As the tenant have provided sufficient documentation to support this claim I have allowed this amendment as the landlord was given notice as to what the tenants were claiming for in their documentary evidence.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
Is the landlord permitted to keep the tenants security deposit?
- Are the tenants entitled to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on December 15, 2010 and ended on September 01, 2012. Rent for this property was \$1,800.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$900.00 on December 15, 2010. No condition inspection reports were done at the start or end of the tenancy. The tenants have not provided the landlord with their forwarding address in writing at the end of the tenancy and the landlord determined where the tenants had moved to by other means.

The landlord's application

Unpaid rent

The landlord testifies that the tenants were evicted from the property after the landlord gained an Order of Possession for unpaid rent at a Direct Request Proceeding held on August 27, 2012. The Order of Possession obtained at that hearing ordered the tenants to vacate the property two days after service. The landlord testifies that the tenants had already moved to another home early on in August, 2012 but continued to occupy the

landlord's property until the tenants vacated the rental property on September 01, 2012. The landlord seeks to recover the unpaid rent for August, 2012 of \$1,800.00. The landlord testifies that the unit could not be re-rented due to the amount of damages and the condition the tenants left the rental unit and yard in at the end of the tenancy. The landlord therefore seeks to recover a loss of rental income for September, 2012 of \$1,800.00.

The tenants do not dispute that they did not pay rent for August but testify that due to the health issues caused by the mould in the unit the tenants had to move out of the unit. This was also due to the fact that the landlord failed to do the things he said he would do to the house and property at the start of the tenancy. The tenants do however dispute that the landlord is entitled to recover unpaid rent for September, 2012 as the landlord has been doing work to the unit so the landlord would not have been able to re-rent it anyways.

The landlord disputes the tenants claim. The landlord testifies that the house could not even be advertised for rent until December 01, 2012 due to the terrible condition the tenants left the house and property in. The landlord testifies that the house has now been re-rented for April 01, 2012.

Damage to the unit, site or property

The landlord testifies that the tenants caused so much damage to the property particularly the yard. The landlord testifies that the yard was left in total shambles after the tenants had moved out. The landlord testifies that the tenants had built many cages for their chickens, turkeys, rabbits, dogs, peacocks and goats. The tenants left the cages in shatters and garbage and broken belongings were left everywhere. The landlord testifies that he had to take three pickup truck loads to the dump, some items such as wood , two boats, cages, toys, a freezer, used oil, batteries, a truck and boat parts were also brought back to the landlords farm to sort through. The landlord testifies that he found dead chickens, two dead boars, rabbits and turkeys on the property. The tenants had put some dead chickens into bags and thrown them over the bank into the grass. The landlord testifies that he also found buried wires the tenants had run out to the cages along with buried bricks and rocks. There were also animal holes which had been dug by the tenants' animals. The landlord testifies that the dump fees were minimal as after sorting through the tenants abandoned belongings

and garbage the landlord was able to sort out items for recycling. The landlord has provided receipts for the dump fees paid in evidence. The landlord testifies that it took weeks of labour to put the yard back into a suitable condition again. This included having to bring in sand and topsoil to re-level the yard due to the many animal holes. The landlord seeks to recover the amount of \$900.00 for the yard clean up and haulage of garbage.

The landlord testifies that there was also a pervading smell of dead animals in the house and some of the dead chickens were not found until the fall. Cat feces were also found inside the house in the basement and the floors and walls had to be washed. The landlord testifies that he found a 10 by 10 centimetre hole in the living room wall. This was not there at the start of the tenancy as the house had been renovated and painted prior to the tenants moving in. There was also some damage on the other walls caused by marks left from the tenants' furniture and handprints. The landlord seeks to recover the sum of \$600.00 to wash the walls and floors, repair the hole and paint the wall, and reseal a damaged parka floor in the entrance hall. The landlord testifies that this area of the parka flooring appeared to be suffering from water damage.

The landlord testifies that the tenants had decided that the fridge door would not seal so the tenants put the fridge out on the sundeck. The landlord testifies that the tenants informed the landlord and the landlord offered to repair the fridge but the tenant testifies that they were still using it. The landlord testifies that at the end of the tenancy the landlord found an overpowering stench from the dried blood left in the fridge and components of the fridge were found on the sundeck. The fridge could not be repaired. The landlord testifies that this fridge was approximately six or seven years old and the landlord had originally claimed \$500.00 to replace the fridge but amended that claim to \$250.00. The landlord has not provided a receipt in evidence for a replacement fridge.

The landlord testifies that the tenants left the stove in the upper kitchen in such a filthy condition the landlord's partner had to vacuum the stove before it could be cleaned and it took two cans of oven cleaner to clean the stove. This work took five hours and the landlord seeks to recover the amount of \$75.00 for this work.

The landlord testifies that the tenants did not clean the carpets and the carpets were left heavily soiled. The carpets were all new at the start of the tenancy. The landlord testifies that one brown stain had to be soaked and scrubbed but that stain could not be removed. The landlord seeks to recover the sum of \$150.00 for the labour required to clean the carpets.

The landlord testifies that the tenants broke a glass pane in the study door. This is a 15 panned door, the door had to be removed and a new pane of glass fitted. The landlord seeks to recover the amount of \$50.00 for the labour to do this work.

The landlord testifies that the sidewalk outside the house had a tile mosaic on it. The landlord testifies that the tenant split wood in this area and caused damage to the tile mosaic. This tile cannot be repaired or replaced. The landlord testifies the tenants also damaged a tile on the interior of the house in front of the fireplace leaving a five inch hole in a tile. The tenants also damaged the front poach tiles when they used a wheelbarrow to bring wood into the house. The landlord seeks to recover the amount of \$300.00 in compensation for this damage.

The landlord testifies that the tenants spilt yellow paint on the sundeck and chimney. This was not water soluble paint and it has penetrated into the brick and the vinyl on the sundeck and cannot be removed. The landlord seeks to recover \$100.00 for this damage in compensation.

The landlord testifies that the tenant removed items belonging to the landlord from the landlord's storage room. This included some acrylic extension rods for the chimney brushes and metal plates for the sundeck. The tenant also removed or broke bricks that were stored on the property. The landlord seeks compensation for these missing items of \$150.00.

The landlord testifies that the tenants had a satellite dish installed. The person who installed this ran wires on top of the ground and drilled into the walls. The landlord testifies that the house had been previously wired for cable and the tenant could have used these existing cables or holes. The tenants did not seek the landlord's permission to drill the holes and has

not repaired the holes when the tenants moved out. The landlord seeks to recover the sum of \$50.00 to repair these holes.

The landlord testifies that the tenants caused damage to the brackets on the fireplace fan. The landlord testifies that a week before the tenants moved in to the house the landlord had the fire place installed professionally. After the tenants had moved out the landlord saw that the brackets were damaged. One was broken off and one was left bent with some wood wedged in. The landlord testifies that the fan now makes a noise when it is used and had not made any noise before the tenants had moved in. The landlord seeks to recover the amount of \$25.00 in compensation.

The landlord testifies that the tenants have abandoned a camper on the driveway of the property. The landlord testifies that he called a towing company who quoted the landlord \$100.00 to remove this camper however as there was no one to receive the camper the towing company could not tow it away and it remains on the property. The landlord testifies that he has approached other sources to get rid of the camper but no one will take it. The landlord testifies that he will now have to dismantle the camper in order to dispose of it and seeks to recover compensation for this of \$100.00.

The landlord withdraws his claim for \$500.00 for the missing teacup as this has been located at a neighbour's house.

The landlord seeks an Order to keep the tenants security deposit in partial satisfaction of the landlords claim. The landlord also seeks to recover the \$100.00 filing fee paid for this application from the tenants.

The tenants dispute the landlords claim for cleaning up the yard. The tenant CD testifies that the landlord's photographs were taken before the tenants moved out. The tenant testifies that they took the majority of the animal cages with them to their new home. The tires shown in the pictures were already in the yard along with the buckets and the woodshed pile. The tenants testify that the majority of the toys were removed by the tenants. The tenants agree some items were left at the property as the landlord only gave the tenants two days to move out.

The tenant disputes the landlords claim concerning the condition of the unit or that the tenants were responsible for cat feces in the unit. The tenant testifies that the unit was left cleaner then it was when the tenants moved in. The tenant testifies that the bathroom was dirty when they moved in and the tenants spent 48 hours cleaning the unit. The tenant disputes the landlords claim concerning the flooring. The tenant CD testifies that there was a section of the parka flooring that had lifted when they moved in. The tenant testifies that they placed a long mat over the floor because the floor was not finished. This mat had a rubber backing which would not allow water to go through.

The tenants dispute the landlords claim concerning the hole in the living room wall. The tenant CD testifies that this hole was previously patched with a wad of paper and plastered over. The tenant testifies that their five year old son poked this in with his finger. The tenant agrees that the walls in the unit were not cleaned at the end of the tenancy as there was mould that the landlord had painted over.

The tenant testifies that when they moved into the property the fridge was older than six years and the door would only shut with duct tape. The door would open in the night so the tenant bought their own fridge and put the landlord's fridge out on the deck. The tenant testifies the landlord could see the fridge was on the deck and as the tenants also had problems with critters in the attic the fridge failed due to the power outages.

The tenant testifies that someone had sprayed oven cleaner in the oven before the start of the tenancy and when the oven was turned on it left a terrible smell of chemicals. The tenant CC testifies that she did use the self cleaning function on the oven at the end of the tenancy and although the tenant agrees the oven was not left spotless the tenant testifies that they could not spend any more time in the house due to mould issues.

The tenant agrees that they did not clean the carpets at the end of the tenancy but testify that there were no stains left on the carpets so they dispute the landlords claim for carpet cleaning. The tenants agree that they did break a pane of glass in the study room door when they moved out and do not dispute the landlords claim for \$50.00 to replace this glass.

The tenants dispute the landlords claim for the broken floor tiles. The tenant CD testifies that the tile by the back door was not a fresh break and was there when they moved in. The landlord did not do a move in inspection until 9 months after the tenants moved in and never gave the tenants a copy of a report. The tenants agree they did break a fireplace tile. The tenants dispute that they damaged the sidewalk tiles and state these tiles were already damaged.

The tenants dispute the landlords claim concerning the yellow paint. The tenant CD testifies that the paint is water soluble as the tenants have scrubbed this paint off before. The tenant testifies that he does not know why the landlord could not wash this paint off and suggests the landlord's picture was taken before the tenants moved out.

The tenant CD testifies that the chimney bushes are still at the property and they dispute the landlords claim for these. The tenant CD testifies that he has no idea what the metal brace plates are and disputes the landlords claim for these. The tenant testifies that there was a stack of about 100 bricks on the property which the landlord said the tenants could use. The tenants dispute that these were removed from the property by the tenants. The tenants agree that there are similar bricks at their new property that were there when they moved in.

The tenant testifies that there was no cable in the area and the landlord informed the tenants that they would have to have satellite TV. The tenant testifies that they got an installer in but he could not use the existing wires so had to drill holes that were only the size of a pencil.

The tenants dispute the landlords claim for the fire place bracket. The tenant CD testifies that the fire place fan stuck out and the tenants had issues with it from the first day. The tenant testifies that he notified the landlord about these issues and one bracket was already bent. When the tenant bent it back the bracket broke off. The tenant testifies that he notified the landlord and mentioned to the landlord that he should claim under the fireplace warranty,

The tenant CD testifies that they had two campers. One of these was removed and when they tried to remove the other one the high jacks kept giving away. The tenant testifies that he was happy to make arrangements to remove this camper but the landlord would not accept the tenants' calls. The tenant said as they only had two days to move they could not remove the camper.

The landlord disputes the tenants claim and testifies that the tenants wanted to move into the house early as they wanted to get settled in before Christmas. The landlord testifies that they explained to the tenants that the house had still not been cleaned and the tenant stated that he was a professional cleaner and so they would clean the house to their own standards. The landlord testifies that there was also some furniture left in the house which the tenants wanted to use.

The tenants' application.

Money owed or compensation for damage or loss

The tenants seek to recover compensation for not being able to use the entire house as advertised. The tenant CD testifies that the landlord had two rooms in the basement which the landlord used for storage. The tenant testifies that at the start of the tenancy the landlord had stated that he would remove his stuff within two months however the landlord never did this. The tenants testify that there was also a third room that had a hole in the floor. This hole used to have steps going down to the boiler but due to the hole the tenants could not use this room. The tenants testify that they rented a 5000 square feet home but could not use 622 square feet. The tenants have calculated this against the rent paid and have calculated that it is 0.32 cents a square foot. The tenants therefore seek to recover the sum of \$223.92 a month for 17 months of their tenancy to a total sum of \$3,806.64.

The tenant CD testifies that one of the rooms had a mould issue. The tenants became sick with runny eyes, loss of sleep and breathing issues and the tenants' son had unexplainable rashes. The tenants testify that they paid the amount of \$325.00 for an air quality test to be done to detect mould spores. The person who did this test was able to visibly see the black mould so took samples of this and had it tested. The tests show that this was toxic black mould. This person also took moisture readings of the foundations and found unacceptable

moisture levels and holes in the external stucco and foundations. The tenant testifies that a year ago during a walkthrough of the house with the landlord CC asked the landlord about the smell of mould. The tenant testifies that therefore the landlord would have been aware that there were mould issues. The tenant testifies that they did not think it was a big issue back then until their son became sick.

The tenant testifies that there was also sewer gas coming into the home and they also called a CBRD house inspector in to look at the house. This inspector found the same mould issues, some electrical problems, sewer gas problems and safety issues with the missing stair railings, missing deck railing, and holes in the foundations. The tenants have provided the reports from the air quality inspector and the building inspector in evidence. The tenant states that they have not provided any medical evidence to show that they were ill due to the mould as that evidence is at present with the tenants lawyers. The tenants seek to recover the \$325.00 paid for the mould test report.

The tenants seek to recover the security deposit of \$900.00 and seek to recover the filing fee paid of \$50.00.

The landlord disputes the tenants' claims. The landlord testifies that the house was not advertised as being 5000 square feet. The two storage rooms and the landlord's workshop were not included in the advertisement or the rent. The landlord has provided a copy of the original advertisement in evidence. The landlord testifies that the tenants knew they did not have use of the workshop as the tenants had signed an addendum to the agreement that stated they had access to walk through the workshop only and not to remove the landlord's belongings.

The landlord testifies that his pictures clearly show that the room the tenants said they could not use because of a hole in the floor is false. The landlord testifies that the tenants did use this room to store things in and the hole was covered by a piece of plywood which the tenants must of removed as the landlord was standing on the plywood when the landlord took the photograph showing the tenants boxes stored in that room. The landlord testifies

that this shows that the tenants did use that room although they should not have had access to it.

The landlord testifies that at the start of the tenancy he had mentioned to the tenants that at some time in the future the landlord would clear out his belongings and the tenants could then use those other rooms. The landlord testifies that no mention was made of a two month time frame. The landlord testifies that the only room that had mould in it was not a room the tenants were supposed to have access to and this room is isolated from the rest of the house. The landlord testifies that the tenants had flooded the bathroom above that room and a water bubble is evident on the ceiling in that room which is likely to have caused the mould issues as shown in the landlords photographic evidence.

The landlord disputes the validity of the biologist's reports the landlord claims this person has a conflict of interest as she is friends with the tenants' daughter. The landlord claims the biologist has not submitted any photographs of any mould in other areas of the house and no air quality test was done. The landlord testifies that if the tenants had reported a mould issue to the landlord then the landlord would have taken steps to eliminate it to protect his investment in the property.

The landlord testifies that he spoke to the housing inspector who stated on the phone to the landlord that he was sorry he had responded to the tenants. The landlord testifies that there are no cracks in the foundations and if there are rodents in the house it is because of the way the tenants lived with their animals and the house and yard was like a pig sty.

The landlord disputes the tenant's testimony that their son made a small hole with his finger. The landlord testifies that the landlords photograph clearly shows a large hole. The landlord disputes the tenants claim that there is sewer gas in the home. The landlord testifies that the septic tank and field were pumped out before the tenants moved in. The landlord also disputes that anyone in the house was wearing masks as claimed by the tenants as the house is not contaminated with mould spores.

The tenant CD responds to the landlord's rebuttal and testifies that the advert they responded to said the house was 5000 square feet. The tenant testifies that his father was witness to the conversation with the landlord at the start of the tenancy when the landlord said he would clean and remove his belongings within two months. The tenant testifies that he spoke to the landlord each month when rent was paid and the landlord kept saying he would come and do work in the yard and house but never turned up to do anything. The tenant CC disputes that they lived like pigs and testifies that they looked after the house. The tenant CD testifies that they would never have moved to this house if the landlord had not promised to fence and grass the yard or that the tenant would have access to a workshop.

The tenant calls their first witness. The witness testifies that she is a qualified building biology environmental consultant that did the inspection for mould. The witness KM testifies that she first looks to see if there is any visible mould and then she smells for mould. When the visible mould was seen, then there was no reason to do an air quality test but a tape lift was done on the visible mould and this was sent to the lab for testing. The results confirmed that this was black toxic mould. This mould was determined to be in the basement room. The witness denies knowing the tenants but states her daughter may go to the same school as the tenants' daughter and there is no conflict of interest.

The landlord cross examines the witness and asks the witness why an air quality test was not done. The witness responds that as the mould was visible they did not need to do it to confirm that mould was present. The landlord asks the witness what the air quality was in the rest of the house. The witness responds that the air was toxic as the lab report shows. (No lab report has been provided in evidence only a report from the witness). The witness states that black mould was seen on a piece of gyprock on the floor and on some wood as her pictures show. The landlord asks the witness why the witness did not mention that the mould was caused by the water coming from the bathroom upstairs. The witness responds that moisture was seeping from the holes in the outside and the witness used a moisture level meter showing moisture seeping into the basement through the foundation due to cracks in the foundation and the stucco. The landlord states to the witness that the landlord put in parameter drains when the house was renovated and there is nothing to show water

is seeping into the basement through any cracks as there is tar paper behind the stucco. The witness responds that tar paper is not enough to keep moisture out. The witness also states that one of her photographs also show a gutter is leaking due to the plastic clips coming off through poor insulation.

The tenants call their second witness DJ. This witness is a friend of the tenants who stayed in the house. The witness testifies that he was present during the inspection done by the landlord many months into the tenancy. The witness testifies that he saw the tenant point things out to the landlord that the landlord was supposed to fix including a hole in the living room wall the size of a golf ball. The tenant asks the witness what happened when they went down to the room with the mould. The witness responds that you could smell mould and feel it in your respiratory system. The witness states he saw the landlord and the landlord's wife go into that room and write something down. The tenant asks the witness if the witness saw leaks in the house. The witness responds yes. The tenant asks what the landlord did about repairs. The witness responds that the landlord said he would get right on it but none were done. The witness testifies that there were lots of holes in the siding on the exterior of the house and you could hear critters in the roof and see holes in the eaves. The witness testifies that when the tenant paid rent each month he would come home and say the landlord said he would do stuff around the place and remove his stuff from the work shop.

The landlord declines to cross examine this witness and states this testimony is based on hearsay.

The tenants call their third witness CD. This witness is the tenant's father. The witness testifies that at the start of the tenancy they had talked about how great it was that the tenant had a workshop and that the storage room had the landlord's stuff that was to be moved out. The witness testifies that he didn't want to use the bathroom at the start of the tenancy as it smelt funny and was dirty and remembers the tenant saying it was going to take a lot of the tenants' time to clean. The witness recalls that there was no fence and the landlord mentioned getting his machines in to level the ground to put a fence in. The witness testifies that his impression of the house was that he would not have lived in the

basement suite and it was only good for storage. The witness testifies that there were also railings missing.

The landlord declines to cross examine this witness.

The Arbitrator asks the landlord if the railings were replaced. The landlord responds that the tenant rented the house as it was and when the contractor came to do the railings the plates were missing so the work was not completed. If the home was so bad why did the tenants move into it?

The tenant testifies that before he gave the landlord the first cheque the landlord said all these things would be repaired including the railings on the stairs. The tenant disputes saying he would clean the bathroom and states he only said he would do a light clean for cobwebs and crumbs.

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. I will deal first with the landlords claim for unpaid rent. I refer the parties to s. 26 of the *Act* which states:

tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Having considered the evidence and testimony I find the tenants were served with a 10 Day Notice to End Tenancy for unpaid rent. The tenants agree that they withheld rent for August, 2012 therefore I find that the landlord has established a claim to recover the sum of **\$1,800.00** from the tenants for August, 2012 rent.

With regard to the landlords claim for unpaid rent for September, I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. This policy guideline goes on to say that even where a tenancy had been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. I therefore find the landlord has shown that the premises were un-rentable for the following month of September, 2012 due to the large amount of debris and belongings left in the yard and damage to the yard and house. The tenants refer to the fact that they only had two days to vacate the property however it has been established that the tenants had already started to move out prior to the Order of Possession being served upon the tenants and any items left on the property or in the unit must be removed within two days. If the tenants do not remove all their belongings and garbage then the landlord can treat these items as abandoned and deal with them in accordance to the Residential Tenancy Regulations. I therefore find the landlord has established a claim to recover a loss of rent for September, 2012 to the amount of **\$1,800.00.**

With regard to the landlords claim for damages to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter: With this test the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Taking this test into consideration I find the landlord has established that the tenants did leave a lot of mess, junk, belongings, dead animals, wires, toys and some animal cages in the yard. These items were left by the tenants after the tenants had vacated the rental

property. As the landlord had to clean up this mess himself no invoice showing an actual amount is required and the landlord has provided receipts for the dump fees. Therefore it is my decision that the landlord has established a claim for **\$900.00**.

With regard to the landlord's claim of \$600.00 for a wall repair, washing walls and floors, repainting the walls and repairing the parka flooring. I find the landlord did not do a move in condition inspection of the property at the start of the tenancy. Therefore the landlord has no corroborating evidence to show that the parka flooring was intact at the start of the tenancy. The tenant agrees his son poked a hole in the wall and the tenants witness stated that there was a golf ball size hole in the wall. Therefore I find the landlord has established this section of their claim in part. Due to insufficient evidence to meet the burden of proof for all this section of the landlords claim I must limit the landlords claim to **\$200.00** to wash, repair and re-paint the wall in the living room and to clean the floors in the unit.

With regard to the landlords claim for a replacement fridge; the landlord has reduced his claim for the fridge to \$250.00. I find the landlord has established that the tenant removed the fridge to the deck however the landlord has not provided an invoice showing the amount paid for the replacement fridge. I therefore find the landlord has not met the burden of proof as to the actual cost to replace the fridge and I dismiss this section of the landlords claim without leave to reapply.

With regard to the landlords claim for \$75.00 to clean the stove; the tenant CC testified that the stove was cleaned at the end of the tenancy but due to the mould they did not want to spend time in the house. The landlord's photographic evidence clearly shows that the stove was not left clean and it does not appear that any attempt was made to clean the stove. The tenants have not shown that mould spores were in evidence in this part of the house. As this work was done by the landlord's partner then no cleaning invoice is required and consequently, I find in favor of the landlords claim for **\$75.00**.

With regard to the landlords claim for the labour to clean the carpets; the policy guidelines #1 states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be

held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I find the landlord has shown that the tenants left stains on the carpets and has established that the carpets were not cleaned at the end of the tenancy by the tenants. The landlord testifies that they did this work themselves and they seek the sum of \$150.00 for their time and labour. Therefore as no invoice is required I find the landlord is entitled to recover the amount of **\$150.00** for this work.

With regard to the landlords claim to replacing glass in the study door; the tenants do not dispute that they break this glass when they moved out of the unit. I therefore find the landlord is entitled to recover the sum of **\$50.00** to replace the glass.

With regard to the yellow paint spilt on the deck and chimney; the landlord testifies that this cannot be removed; the tenants testify that the paint is water soluble and can be washed off. If the tenants agree therefore that the paint could be washed off then the tenants should have ensured that they did this at the end of the tenancy instead of leaving this for the landlord to do. I therefore find the landlord has established a claim for **\$100.00** in compensation for the yellow paint stains.

With regard to the landlords claim for \$150.00 for missing items; the landlord has not established that the tenants have removed these items from the property therefore the landlord has not meet the burden of proof in this matter and this section of the landlords claim is therefore dismissed without leave to reapply.

With regard to the landlords claim for damage to the fire place bracket; the tenant agrees that they did damage a bracket when they attempted to straighten the bracket however the tenant should not have touched the bracket if there was a problem with the fireplace. The

tenants' recourse would have been to notify the landlord in writing that there was a problem and request the landlord in writing to repair the problem. I therefore find the landlord is entitled to recover the amount of **\$25.00** for damage to the fireplace bracket.

With regard to the landlord's claim of \$50.00 to repair holes left in the walls by the installation of the Satellite system. At the end of the tenancy the tenants are required to fill any holes such as these made during their tenancy. I therefore find in favor of the landlords claim to recover the sum of **\$50.00**.

With regards to the landlord claim for \$100.00 due to the tenant's camper being left on the property; the tenants agree this camper was left on the property at the end of the tenancy and could not be removed at the time due to problems with the camper. The landlord requests to recover the sum of \$100.00 as the landlord states he will now have to dismantle the camper as no one will come to remove it. I therefore find this is reasonable compensation for the landlord's trouble in removal of the tenants' camper and I find in favor of the landlords claim for **\$100.00**.

With regards to the landlords claim for broken tiles in and around the property; I have reviewed the documentary evidence and the testimony of the parties. As the landlord has no evidence such as a move in inspection report to show that the mosaic tiles or the tile by the door were intact at the start of the tenancy I have no evidence to show that the damage was caused by the tenants when the tenants contradict the landlords claim. The tenants agree that a tile by the fire place was damaged during their tenancy and therefore I must limit the landlords claim to the sum of **\$20.00** for the one broken tile.

As the landlord has been partially successful with their claim I find the landlord is entitled to keep the tenants security deposit of **\$900.00** pursuant to s. 38(4)(b) of the *Act*. This sum will be offset against the unpaid rent. I further find the landlord is entitled to recover the **\$100.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. The landlord is therefore entitled to a Monetary Order for:

Damages and cleaning – \$5270.00

Filing fee - \$100.00

Less the security Deposit – (-\$900.00)

Total amount due to the landlord - \$4,470.00

With regard to the tenants claim; I have considered the evidence and testimony before me and have applied the same test for damage or loss claims concerning the tenants claim to recover compensation for loss of use of square footage of the house and to recover the fees paid to have mould inspected. With this test in mind the tenants have the burden of proof to show that when they rented the property they rented 5000 square feet which included the two storage rooms and workshop and that the landlord was made aware of the mould issues and the mould was found in a room which the tenants had access to.

The landlord has provided a copy of the original advertisement which shows that not all of the property was included in the rent. The landlord has also shown that the tenants only had access to walk through the workshop on the addendum to the tenancy agreement to which the tenants signed. The tenants argue that the landlord verbally agreed to remove his belongings within two months and the landlord disputes this. By their very nature verbal agreements are almost impossible for a third party to interpret and therefore when it becomes one person's word against that of the other then the burden of proof is not met that the tenants rented all 5000 square feet of this home. I therefore find the tenants have not established a claim for loss of use of the other rooms and I dismiss this section of the tenants claim without leave to reapply.

With regard to the tenants claim to recover the sum of \$325.00 for the mould testing; the tenants have shown that there was mould found in the storage room. However the tenants have not established that mould spores or mould were found in other areas of the house to which the tenants had access to. The tenants witness has testified that mould was visible in this storage room on some pieces of drywall and wood on the walls. The tenants witness has also testified that the moisture levels in the foundations were high due to cracks on the exterior of the property. If the mould was so visible in this room, that the tenants should not have had access to, and then the tenants should have notified the landlord of the mould in

writing and requested that the landlord took steps to remove and eradicate the mould before the tenants went to the expense of having the test done. The landlord has established that the mould was only visible in a room that the tenants were not entitled to access. I therefore find the tenants claim to recover the sum of \$325.00 for the mould test is dismissed.

With regard to the tenants claim to recover the security deposit; as the landlord has shown that the tenants have not provided the landlord with a forwarding address in writing as required under s. 38 of the *Act*. The landlord was not required to return the security deposit until such a time as the landlord received a forwarding address in writing from the tenants. As the landlord has applied for and successfully been awarded the security deposit I find the tenants claim is therefore dismissed.

The tenants must bear the cost of filing their own application.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,470.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenants claim is dismissed in its entirety without leave to reapply.

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

Dated: April 15, 2013

Residential Tenancy Branch