



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution seeking a monetary order for the return of double their security deposit and compensation for loss or damage under the Act, regulations or tenancy agreement.

The Tenants' original application was heard on February 4, 2013 and a decision and monetary order was issued on February 18, 2013. The monetary order was awarded to the Tenants in the amount of \$3,964.98 and the Arbitrator indicated that the Landlord had issued cheques for \$702.21 that could be used as partial payment of the monetary order.

The Landlord applied for a review consideration on March 5, 2013 and a review hearing was granted in a decision issued on March 14, 2013. The review was granted on the grounds that the Landlords were unable to attend the hearing as they did not receive the hearing package when it was sent by registered mail.

This review hearing was conducted via teleconference on June 25, 2013 and was attended by both the Landlords and the Tenants and witnesses for both parties. The review hearing was convened to determine if the decision and order dated February, 18, 2013 are to be confirmed, varied or set aside.

Both the Landlords and the Tenants confirmed that they had received the other parties hearing packages and evidence as required by section 89 of the Act.

Issue(s) to be Decided

The issues to be decided are whether the Tenants are entitled to the monetary order in the amount of \$3,964.98 for compensation for damage or loss and the return of double the amount of the security deposit.

Background and Evidence

The Tenants testified the tenancy began on July 1, 2011 as a month to month tenancy for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid. The Tenants said the rent increased to \$1,200.00 when an additional occupant moved into the rental unit. The Landlord said the rent increase was a mutually agreed rent increase. The tenancy ended on October 31, 2012. The Tenants provided their forwarding address via email on October 31, 2013. The Landlord confirmed receiving this email.

The Tenants said that on November 12, 2012 the Landlord returned all but \$150.00 of their security deposit and that on December 18, 2012 the Landlord returned the balance of the security deposit (\$150) plus some compensation for utility bills (\$152.21) for compensation for the basement tenant's utility usage for the period from July 22, 2012 to October 21, 2012. The Tenants are seeking compensation for the Landlord's failure to return the security deposit in full in accordance with the *Act*. The Tenants also said the Landlord did not do a move in or move out condition inspection report.

Further the tenants are seeking monetary compensation for the following:

1. Compensation of \$700.00 because the Landlord did not provide a written tenancy agreement and \$500.00 for pain and suffering because they did not have the Landlord's address. They believe this caused them pain and hardship because they could not get insurance or apply for dispute resolution because they did not have the Landlord's address. The Tenant said they had the Landlord's email and phone number and that is how they contacted the Landlord.
2. The Tenants did get the Landlord's address by doing a title search which cost them \$6.00 and \$10.00. The Tenants said they are requesting to recover these costs.
3. The Tenant said they are requesting a portion of the hydro and gas bills returned to them as part of the bills were to be paid by the tenant in the basement unit. The Tenant said they took the average prior to the tenant moving into the basement and then subtracted this amount from the utility bills when the basement tenant was there. The tenants claim is for \$362.86.
4. In addition the Tenants are claiming \$3,000.00 for the frustration of dealing with and paying the full utility bills.
5. The Tenants are requesting their application or filing fees of \$100.00 to be recovered from the Landlord and all their registered mail costs as a result of the application. The Tenants are requesting \$58.12 in previous mailing costs and \$20.20 in mailing costs when they were ordered to resend their evidence package to the Landlord in the hearing dated April 16, 2013.

6. The Tenants are also requesting \$450.00 for frustration and their time to do the mailing to the Landlord as they had to resend many items because the Landlord did not pick up his registered mail.
7. The Tenants continued to say they are requesting \$1,000.00 for clean up expenses of the unit at the start of the tenancy. The Tenants said there was no agreement about the clean up; it was done because the unit was not clean when they moved in. The Tenants did not submit any verification of their costs. The Tenants provided a witness R.J. that confirmed the rental unit was dirty when the Tenants moved in and they had to clean it.
8. As well the Tenants are claiming \$500.00 for lost work time at the start of the tenancy to clean the unit. The Tenants did not submit any verification of their costs.
9. The Tenants said they are requesting \$1,500.00 in emergency repairs for the toilet not working in the rental unit for over a month during the tenancy. The Tenant said they did not fix the toilet or have any expenses with the toilet, but they lost the use of the toilet for approximately one month. The Tenant said they use the toilet in the basement unit during this time.
10. The Tenants continued to say they are claiming \$2,000.00 and \$75.00 for other repairs that were not done. The Tenants said the dishwasher, fireplace, faucets, doorknobs and bathtub all needed repairs and the Landlord did not do the work. The Tenants said they did not repair any of the items and they had no monetary costs with respect to the repairs. The Tenants said their claim is for services or facilities included in the tenancy, but not provided.
11. The Tenants are also requesting \$300.00 as compensation for the frustration of not having these items repaired.
12. In addition the Tenants are requesting compensation of \$2,000.00 for disturbances by the basement tenant which were primarily noise complaints about wild midnight parties and shouting. The Tenants said they are a retired couple and the noise from the basement suite disturbed them.
13. As well the Tenants are claiming the Landlord's parents have been harassing them in the community with respect to the tenancy and the Tenants are claiming \$3,000.00 as compensation. The Tenants provide a witness that gave testimony that the Landlord's parents were involved in the tenancy being at the unit on move in, giving the Tenants the keys and the Landlord's parent did make remarks about the Tenants and about the tenancy in the community. These remarks included comments about cutting the grass and about the Tenants movements which the Tenants found to be defamatory.
14. The Tenants also said the Landlord did some repairs to the basement unit and the noise and repair work was done without their knowledge so it caused a disturbance which affected the female Tenant's health. The Tenants did provide a letter from her Doctor, but it does not say that the tenancy was the cause of her health condition. The Tenants are claiming \$1,300.00.

15. During the repair work the Tenants said the Landlord borrowed their vacuum and broke it so the Tenants are claiming \$138.02 which was the purchase price of the vacuum. The Tenants did not provide any verification of the claim.
16. In addition to the noise complaints about the tenant in the basement the Tenants are claiming \$2,500.00 for the basement tenant harassing them and making threats against them. The Tenants included a hand written note from the basement tenant that said "he will do something that they would never forget". The Tenants said the basement tenant made this note as a threat against them and they were scared. The Tenants said they did not phone the police, but they did contact the Landlord about the noise complaints.
17. The Tenants said their last claim is for \$5,500.00 against the Landlord, because they believe the Landlord has bullied and harassed them. The male Tenant said the Landlord was going to hit him at the end of the tenancy until the Landlord's wife restrained the Landlord. The Tenants provide witness testimony from witness R.J. and witness Y. E. Both witnesses said they saw the altercation between the Landlord and the Tenant at the end of the tenancy and they both said it appeared that the Landlord was going to hit the Tenant but was restrained by the Landlord's wife. The Tenants said this was only one incident and the Landlord used his power and authority to intimidate the Tenants. The Tenants are seeking \$5,500.00 for the bullying, harassment and terrorization them toward the end of the tenancy by the Landlord. The Tenants submit the Landlords misused their power and authority; took advantage of the Tenants being seniors and the Landlord was cruel, he lied about what he would do (payments and repairs), the Landlord used offensive language to intimidation the Tenants ("hope you have a good lawyer") and the Landlord humiliated and terrorized the Tenants in front of witnesses. The Tenants said this caused them to have emotional and health issues.

The Landlord responded to the Tenants' claims as follows and the Tenants comments with respect to the Landlords' responses are as follows:

1. The Landlord said the Tenants did not want a written tenancy agreement as the tenancy was month to month and they had his phone number and email so they could have asked him for his address any time. The Tenant said the Landlord is not telling the truth and they did ask for a written tenancy agreement, but did not receive one. The Landlord said he did not provide a written tenancy agreement with the Landlord's address on it.
2. The Landlord said he was available to the Tenants by phone and email so there was no reason to do a title search of the property.
3. The Landlord said he has compensated the Tenants \$152.21 for the utility bills in the cheque dated December 15, 2012 for a total amount of \$302.21. This cheque also includes the balance of the security deposit of \$150.00. The Tenants said they should be compensated \$362.80 for the utilities.

There is no evidence as to how the utility bills should be shared beyond the parties' testimony.

4. The Landlord said the frustration and pain and suffering claims by the Tenants are a money grab as they did not make any applications to resolve these disputes prior to the end of the tenancy. As well the Landlord said the Tenants did not provide the utility bills to him until the end of the tenancy. The Tenants said they gave the utility bills to the Landlord in September, 2012 a month before the end of the tenancy.
5. The Landlord said he checked his mail and the original application was missed as he thought it was a credit card application. The Landlord said his review consideration application was accepted so he should not be responsible for the mailing and filing fees.
6. Again the Landlord said the Tenants are just trying to get money from him by claiming pain and suffering due to frustration with mailing registered mail packages to the Landlord. The Landlord said this is wrong. The Tenants said serving the Landlord was difficult because he did not pick up his registered mail packages and he lied on his request for a review consideration as he was in Edmonton when the registered mail package was sent to him and he said he was not.
7. The Landlord said the Tenants took the rental unit as it was and there was no agreement to pay the Tenants to clean the unit up at the start of the tenancy. The Tenants said the unit was very dirty and that is why they had to clean it prior to moving in. The Tenant said no move in or move out condition inspection reports completed and signed. The Tenant said the Landlord did not do a tenancy agreement at the start of the tenancy either.
8. The Landlord said the male Tenant is retired and does not work and the female Tenant works part time so it was not likely that they lost wages to clean the unit on move in. The Tenants said they did loss time at work but they do not any evidence to verify the lost wages. The Landlord said the claim for \$500.00 in lost wages is just another attempt to get money.
9. The Landlord said the toilet work in the unit at the start of the tenancy and he repaired things as soon as he could. The emails submitted show the Tenants told the Landlord about the toilet on April 4, 2012 and the Landlord said he replaced the toilet in mid May, 2012. The Landlord said he had the toilet inspected and it was work during the months of April and May, 2012. The male Tenant said the toilet was not working and he had to go outside to gain access to the basement to use the toilet in that suite.
10. The Landlord said he repaired the dishwasher, fireplace, faucets and the bathtub. The Landlord continued that the Tenants were not using the dishwasher so it took a couple of months before it was repaired. The Tenants said they paid for these items in their rent, but could not use them as these items were in need of repair. The Tenants said they did not spend any money to repair these items themselves.
11. The Landlord said that the Tenants are again just claiming money for the repair of these items and should have done something about it during the tenancy not after the tenancy ended.

12. The Landlord's witness A.M. (the basement tenant) said he does not have wild parties in fact he only has 6 friends who have been at his rental unit and no more than 3 at one time. The witness A.M. said the Tenants make noise and disturb him as well. He said the Tenants get up at 3:00 a.m. to go to prayer and have left their alarm clock on after they left. As well the witness A.M. said the Tenants sometimes bring visitors back after prayer and they make noise at 5:00 a.m. that disturbs him. The Tenants said the alarm clock incident only happened once and they are very respectful to the basement tenant so they would not make noise to disturb him. The Landlord said the Tenants' claim for \$2,000 for lost of enjoyment because of the basement tenant is again just about the money.
13. The Landlord said that his parents are not involved in the tenancy and that they are in their 80's and have not harassed the Tenants. The Landlord provided a Witness Z.S. that testified that the Tenants mocked the Landlords parent at the community center and this was wrong. The Tenants said they did not mock the Landlord's parents. Again the Landlord said the Tenants are just looking for money and it is wrong.
14. The Landlord said when they worked on the basement unit it was not a noisy job as all he did was paint and repair a few things. The Landlord continued that the Tenants knew they were working in the basement because the Tenants provide refreshment for them during the time they were working there. The Landlord said the work in the basement suite did not disturb the Tenants and they are just using it to get more money.
15. The Landlord said he took the Tenants' vacuum back to them in good condition and it was working.
16. The Landlord said when he received a complaint from the Tenants about the basement tenant making noise he had 2 meetings with all the tenants to resolve the issues. The Landlord said he thought the issues were resolved and he has not heard anything about the basement tenant harassing or threatening the Tenants. The Landlord provided the basement tenant as a witness. The Witness A.M. said he has not harassed the Tenants and the reason he locked the gate was to keep his dog in and the Tenants said they did not use the gate. The Tenants said they use the gate to take the garbage out. The Tenant said the note from the basement tenant is a threat. The Landlord said if the Tenants were afraid why didn't they call the police. The Tenants did not answer why they did not call the police.
17. The Landlord said the Tenants have made derogatory remarks about his parent and that is why the altercation happened at the end of the tenancy. The Landlord said he lunged at the male Tenant, but he did not hit him nor was he going to hit him. The Landlord said he was helpful throughout the tenancy and he cannot understand why the Tenants are making these claims unless it is just for the money.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlords which may extend beyond the tenancy. This hearing is only to resolve the Tenants application for double the security deposit and for monetary compensation for loss or damage under the Act, regulations or tenancy agreement. I will decide on whether to confirm, vary or set aside the decision and order dated February 18, 2013.

It should be note at the start of the analysis that the Landlord has not met his responsibility as a Landlord as no written tenancy agreement was completed and no condition inspections were completed and signed by the parties. The Landlord said he is a professional person and has other rentals therefore I believe he should be aware of his responsibilities as a Landlord.

As well a tenant has responsibility during a tenancy to inform the Landlord of issues and problems so that both sides can resolve their concerns with the minimum of disruption to either party. A tenant can make repairs to a rental unit or request action from a Landlord to resolve issues during the tenancy and then apply for compensation from the Landlord during a tenancy if the Landlord is delinquent in providing normal maintenance to a rental unit or if there are unresolved issues in the tenancy. If a party to a tenancy makes a monetary claim the claim must meet the following test to be successful.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, regulations or tenancy agreement, the applicant must verify the loss with receipts and the applicant must show how they mitigated or tried to minimized the loss.

Section 13 of the *Act* requires a landlord to prepare a written tenancy agreement that must be provided to the tenants within 21 days of entering into the agreement. I accept the testimony from both the Tenants and Landlords that no tenancy agreement was provide to the tenants. Consequently the Landlord did not provide his address in writing to the Tenants and this resulted in confusion, frustration and costs to the Tenants. I find the Tenants have established grounds to support their claim for the title searches of \$16.00. I award the Tenants \$16.00 for the cost of the title searches.

Further I concur with the previous decision that Tenants' claim for compensation for pain and hardship (\$700.00) and for pain, suffering and time lost from working (\$500.00) for not having the Landlord's address are so similar that they are the same therefore; I find the Tenants are seeking compensation in the amount of \$1,200.00 for the frustration of not having the Landlords address.

The Tenants have not provided any corroborating evidence that substantiates these claims of hardship or loss and I question why the Tenants did not phone the Landlord and request his address. Consequently, I find the Tenants have not established

grounds to be successful on their claim for \$1,200.00 for pain and suffering or hardship because they did not have the Landlord's address. I dismiss this portion of the Tenants' Application due to a lack of evidence.

With regard to the utilities I concur with the previous decision that the Tenants' testimony and submission regarding utilities has establish the Landlord failed to reimburse the Tenants for utilities used by the basement occupant at the time the Tenants moved into the unit. The Tenants submit a bill for \$52.35 and they are seeking \$40.00. I award the Tenants the \$40.00 for the billing period of June 28, 2011 to July 25, 2011.

And in relation to the Tenants' claim for compensation for hydro costs when the Landlord was completing renovations and repairs to the basement unit, I find the Tenants have established grounds that the Landlord used the hydro for periods of a week in duration at least on 4 occasions during the tenancy. I find the estimate of \$150.00 to be reasonable compensation for the use of the Tenants' utilities for this purpose.

Based on the testimony and evidence of the Tenants I accept their calculations for the hydro and gas charges for the basement occupant usage in the amounts of \$131.29 and \$41.57.

With respect to the Tenants claim of \$3,000 as compensation for the frustration of having to repeatedly ask the Landlord for the utility monies and for having to take on the responsibilities of having utility bills in their name, I find this was a condition of the tenancy that the Tenants agreed to and as such they cannot now rely on their dissatisfaction of how it worked to be compensated for it. I dismiss this portion of their claim.

In relation to the Tenants' claim for registered mail costs and compensation for the frustration, time and inconvenience of having to resend mail and attend the RTB, I find these to be costs of pursuing their claim and not a result of a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of their claim with the exception of the order by myself to reserve the Landlord with the evidence package after the April 16, 2013 hearing. I accept the Tenants testimony that the registered mail costs were \$20.20 based on previous mailings. I award the Tenants \$20.20.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In relation to the tenants' claim for compensation for cleaning and loss of working days I accept, based on the Tenants' testimony and the Testimony of their witness that the rental unit was not adequately cleaned at the start of the tenancy. From the list of

cleaning that was required I accept the Tenants required substantial time to clean the rental unit.

However, the tenants have failed to provide any evidence to establish their loss for cleaning was \$1,000.00 and that any time off work was required or the value of that lost work time. As such, I concur with the previous decision that based on the work required and in the absence of any other information from the Tenants as to how they determined this value, I concur with the award of \$200.00 in the previous decision.

I accept that for the period of 1 month during the tenancy the Tenants were without a working toilet in the rental unit and despite being able to use the toilet in the basement rental unit, the landlord had an obligation to ensure the Tenants' own rental unit was suitable for occupation. I accept this as the Landlord said that he replaced the toilet in the Tenants' rental unit in May 2012. I find inclusion of a working toilet is essential to making a unit suitable for occupation and as such, I find the landlord failed to meet his obligations under Section 32 of the *Act*.

However, the Tenants are seeking \$1,500.00 as compensation for the inconvenience. To determine a reasonable amount of compensation I must consider the impact of the lack of the toilet had on the entire tenancy. Further, I must consider the Landlord did provide an alternate toilet until the tenants' toilet was replaced. As such, I occur with the previous decision and award \$50.00 for the month to be sufficient compensation.

In relation to the Tenants' claim for compensation because the landlord failed to repair the dishwasher, fireplace, refrigerator; faucet and doorknobs I concur with the previous decision and I accept the Tenants informed the Landlord of these problems early in the tenancy. From the Tenants documentary evidence the first record of these complaints is in an email to the Landlord dated September 26, 2011. As such, I find the Landlord failed to comply with his obligations under Section 32 of the *Act*.

I concur with the previous decision that found that the impact on the Landlord's failure to make these repairs reduced the value of the tenancy during the period that the Landlord was awareness of the request for these repairs. In the case of these repairs I find the Landlord was aware of these request for at least 13 months of the tenancy (from September 2011 to October 31, 2012).

While the Tenants seek \$2,000.00 in compensation for the failure of the Landlord to comply with Section 32 they have provided no explanation as to how they have determined this amount. Based on the items that required repairs I concur with the previous decision that \$100.00 per month from the first documented complaint to the end of the tenancy is a reasonable loss in value of the tenancy for a total compensation for this claim of \$1,300.00.

The Tenants claim \$75.00 for actual costs incurred for clearing a drain during the tenancy and while I accept the tenants may have had to deal with this issue based on their testimony, they have provided no evidence, such as a receipt, for any costs

incurred to have the drain cleared. Therefore I concur with the previous decision and I dismiss this portion of the Tenants' claim.

As well, I concur with the previous decision in regard to the tenants' claim for compensation in the amount of \$300.00 for frustration of having to live without the repairs. The *Act* does not allow for compensation of a party to a tenancy for frustration over one party's failure to comply with their obligations. Further, as the Tenants have already been compensated for the loss in value of the tenancy for the Landlord's non-compliance I find the Tenants have been sufficiently compensated for this issue. The Tenants' claim for \$300.00 is dismissed.

Section 28 of the *Act* states 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 Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

As the Tenants have provided copies of several emails dated from May 2012 from themselves to the landlords, with responses from the landlords attached, complaining about being disturbed by the occupant in the unit below I find the Tenants informed the Landlord on several occasions of the disturbing behaviour. The Landlord said he did have 2 meetings with the tenants to solve the noise issues, but the Landlord could not remember when the meetings were therefore; from the Tenants testimony I accept that the Landlord failed to deal with the Tenants' complaints. The Landlord did provide the basement tenant as a witness who said he did not have wild parties, he did not make noise and the Tenants actually disturbed him. On review of the written evidence and testimony I find the Landlord's meetings with the tenants about issues were a result of the Tenants complaints not the complaints from the basement tenant. Consequently I accept the Tenants evidence and testimony and I concur with the previous decision that the disturbances from the occupant of the rental unit in the basement were of sufficient concern that I find the Tenants suffered a loss of their quiet enjoyment of the rental unit.

While the Tenants are claiming \$2,000.00 for this loss they have provided no indication of how they established this value and as such, I must consider the seriousness of the disturbance; their frequency and the length of time the Landlord was aware of the problems and failed to act.

I concur with the previous decision and from the testimony and evidence that the basement occupant disturbed the Tenants by deliberate and aggressive behaviour as presented in the hand written notes from the basement tenant to the Tenants. These notes are included in the evidence. I concur with the previous decision and I find the loss of quiet enjoyment to be substantial and grant the Tenants \$600.00 for the Landlord's failure to act.

In relation to the Tenants' claim for compensation for loss of quiet enjoyment caused by the interference from the Landlord's parents, I concur with the previous decision that the Tenants are claiming for activities related to interaction with the Landlord's parents in their community centre and within their community, however the Tenants have provided no evidence to establish that these actions are in contravention of the *Act*. I therefore dismiss this portion of the Tenants Application.

As to the Tenants' claim for \$1,300.00 for disturbances while the Landlord was renovating the basement rental unit, I accept that the Landlord did work in the basement unit and as there is no evidence as to the extent of the work or the time of the day the work was done I find it is just the Applicants word against the Respondents word as to how disturbing the work was. The Landlord said it was minor repairs and painting and the Tenants said it was repair work that was disturbing and caused health issues. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Tenants have not established grounds to be awarded compensation for disturbance cause by work done in the basement rental unit. I dismiss the Tenants' claim for \$1,300.00.

I accept, based on the Tenants' and the Landlords' testimony that the Landlord did borrowed the Tenants' vacuum cleaner to clean the basement unit from the mess of repairs and renovations. The Tenant said the vacuum was broken when it was returned and the Landlord said the vacuum was in good condition when he returned it. Again the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I dismiss the Tenants' claim for the vacuum of \$138.02 due to lack of evidence.

The Tenants seek compensation, in the amount of \$2,500.00 from the Landlord for the basement tenant's threats, terrorization of them, use of foul language, shouting and screaming at them. I concur with the previous decision and my findings that determined that the Tenants are entitled to compensation in the amount of \$600.00 for the loss of quiet enjoyment as a result of the basement tenant's behaviour. Consequently I dismiss the Tenants further claim for \$2,500.00 as the Tenants have already been compensated for loss of quiet enjoyment caused by the basement tenant behaviour.

In regard to the Tenants' claim for \$5,500.00 which is primarily for the behaviour of the Landlord at the end of the tenancy. The Tenants are seeking this compensation because they said the Landlord threatened them, misused his authority and power; took advantage of the Tenants because they are seniors and used offensive language and intimidation; and humiliated and terrorized the Tenants in front of witnesses.

The Landlord said this did not happen and he was very helpful to the Tenants throughout the tenancy. The Landlord said the altercation at the end of the tenancy was because the Tenants brought his parents into the discussion and that aggravated him, but nothing came of it.

Again these claims are based on the parties testimony and the only corroborating evidence is conflicting witness testimony from both sides. The witnesses for both sides were equally passionate in their support of their party. Therefore it is a situation of the applicant's word against the respondent's word. Again the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I dismiss the Tenants' claim for the compensation for the claim by the Tenant that the Landlord bullied, harassed and terrorized the Tenants during the end of the tenancy due to lack of evidence. The Tenants' claim of \$5,500.00 is dismissed.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the Tenants provided the Landlords with their forwarding address in writing on October 31, 2012 and the Landlords did not file an Application for Dispute Resolution seeking to claim against the Tenants' security deposit, I find the latest the Landlord should have returned the Tenants' deposit, in full, was November 15, 2012.

Despite eventually returning the full amount of the deposit by only providing a partial refund by November 12, 2013 I find the landlords failed to comply with their obligations under Section 38(1) and as such the tenants are entitled to double the amount of the security deposit in accordance with Section 38(6). I concur with the previous decision and award the Tenants double the security deposit in the amount of \$1,100.00.

Conclusion

I find the previous decision of February 18, 2013 and the monetary order dated February 18, 2013 for \$3,964.98 are set aside and are replaced by this decision and monetary order as follows.

I find the Tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,649.06** comprised of \$16.00 title search; \$362.86 utilities; \$20.20 in registered mail costs; \$200.00 cleaning; \$1,350.00 repairs; \$600.00 loss of quiet enjoyment; \$1,100.00 double the security deposit and \$50.00 of the \$100.00 filing fee paid by the Tenants for this application, as they were only partially successful.

This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I note that the Tenants have received cheques from the Landlord totalling \$702.21. As long as the Tenants are still able to negotiate these cheques I note that these amounts must be considered as partial satisfaction of the above order.

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: June 26, 2013

Residential Tenancy Branch