Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for damage to the unit, site or property; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the conference call hearing, accompanied by legal counsel, however only one of the landlords testified. The named tenant also attended and gave affirmed testimony and was accompanied by legal counsel who also represented by the tenant company. An Articled Student also attended with legal counsel for the tenants, but did not testify or take part in the proceedings. The tenants also called one witness.

The hearing did not conclude on the first day scheduled and was adjourned from time-to-time for continuation of testimony and counsels' submissions. The parties and the witness each gave affirmed testimony and counsel were given the opportunity to cross examine the parties and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

At the outset of the hearing, on the first day, counsel for the tenants argued that the landlord is incorrectly named in the Landlord's Application for Dispute Resolution. Counsel submitted that a previous application was filed with the Residential Tenancy Branch and the claim was dismissed because the landlords had named an incorrect respondent. Counsel further submitted that the party with standing is not either of the parties named but another company, and that an application must be brought by the landlord. Counsel for the landlords argued that a property management agreement was in place, and that a change of landlord is provided in the tenancy agreement.

With respect to such arguments, I reserved my decision and directed that the hearing proceed. A decision with respect to the proper names of parties in this matter is dealt with in this Decision.

Issue(s) to be Decided

- Have the landlords correctly named parties to this proceeding?
- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties agree that this fixed term tenancy began on February 15, 2010 and expired on June 15, 2010 and then reverted to a month-to-month tenancy which ultimately ended on July 31, 2010. Rent in the amount of $1,800.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit in the amount of $900.00 which is still held in trust by the landlord. A copy of the tenancy agreement was provided for this hearing.

Witness, CK

The parties agreed that the witness would testify out of the normal order of testimony so as not to inconvenience the witness.

The witness testified to being a licensed property manager, and currently manages about 93 units. A Property Management Agreement was entered into by the owners and the witness. The witness entered into a tenancy agreement with the tenant company for the monthly rent of $1,800.00 and a copy of the tenancy agreement was provided for this hearing. The tenancy agreement is completed on a form which contains sections for naming the parties to the agreement, such as Landlord last name, another box for Landlord first and middle names. The form has been completed by listing the property management company under “Last Name” of the landlord, and under the “First and Middle Names” box are the first and last names of the witness. The tenant is stated to be the tenant company under “Last Name” and the first and middle names are the first and last names of an agent for the tenant company. The witness testified that she made the representative of the tenant company aware that she was the agent for the owners and that her obligation was to them. The tenancy agreement was also signed by the representative of the tenant company and the witness filled out the tenancy agreement that way because he was the representative signing the agreement.

The witness also testified that the tenant company paid the security deposit and rent directly to the property manager, which was not always on time, but timely. During the tenancy, the property manager had cleaning done in the rental unit on March 7 and 8 as well as on May 10, 2010. The property manager paid for some of those costs and the tenant company paid the balance. The same cleaning company is used on a regular basis by the property management company, and they advise the property manager if repairs are required or noted. No repairs required were mentioned by the cleaning company when they attended the rental unit on March 7 or March 8, 2010.

After the expiry of the fixed term, the parties extended the term of the tenancy from June 15, 2010 to July 30, 2010, and the owners had agreed to that extension. The tenant did not confirm, however that the rental unit was vacant until August 3, 2010, at which time another cleaner entered the rental unit. Cleaning issues were noted throughout the rental unit at that time. The witness and the cleaners spent a total of about 13 hours and 45 minutes to complete the cleaning, and the witness notified the owners right away about a toilet handle that needed to be replaced. The toilet on the middle of the 3 level rental unit was not leaking; the valve was turned off. The witness turned it on and back off again and no leakage was noticed. The witness did not note any damage, water damage, dampness in the flooring or any visible or odor of mildew, nor did the other cleaner. The witness also noted that the light on the stove stayed on and the burner was out.

In August, 2010 the witness met with the owners at the rental property. The owners showed the witness issues that the owners had already noted prior to the witness arriving.

The rental unit was furnished complete with dishes, towels, wine glasses, pictures, etc. and an inventory of items in the rental unit was completed by the owners. The inventory was very detailed, and the owners pointed out such things as one missing glass, and they counted every item. The witness testified that most owners who rent out furnished premises don’t count the silverware. The witness and the owners went through the whole house on August 6, 2010 and it was noted that an indicator light on the stove was lit even though the stove was turned off. The landlords have claimed $669.00 for a new stove. No mention was made by either of the parties at that time of water damage, drywall stains, or odours, nor did anyone note dampness in the carpet or drywall. The witness also testified that the landlords have made a claim with respect to a damaged pond liner, but the witness was not able to inspect it at the commencement of the tenancy because it was covered with snow.

On August 10, 2010 the witness received an email from the owners setting out a list of concerns pertaining to the rental property. The list contains 13 items and states that the

owners understand and expect a certain amount of wear and tear, but were shocked at the amount of damage left by the tenants. The witness stated that none of those concerns were noted by the witness while cleaning or while touring the rental unit with the owners. In particular, item 6 in the email states: "Upstairs bath: water damage to walls caused by a loose shower head. This was fixed easily by one twist with a pair of pliers. There were the beginnings of mold streaks that went down all three walls. It took a considerable amount of time and effort to remove the marks, and there are still residual stains that won't come off. The concern is, what effect will that amount of water going down the walls have on the integrity of the floor?" The witness testified that none of that was noted by the witness, nor was it brought to the attention of the witness while there with the owners. The witness did not see any mold streaks in that bathroom.

Item 7 in the email list states: "Downstairs bath: water damage that appears to be possibly caused by the toilet overflowing probably more than once. The tenants/cleaners must have known there was a problem, as there was a toilet plunger in that bathroom when (to our knowledge) there wasn't one before. The linoleum is pulling away from the substructure. The baseboards were still very wet and moldy when pulled off. The drywall is wet, moldy and disintegrating. As well, the inside of the vanity cabinet has the evidence of mold. The toilet is functioning properly." The witness testified that none of that was noticed by the witness or the cleaners, and if any had been noticed, the witness would have noted it and reported it to the owners.

Item 8 in the email states: Downstairs family room: water damage that came from the bathroom. The baseboards were very wet and expanded in size due to water absorption. The drywall is wet, moldy and disintegrating. The carpet is wet and covered with black mold." The witness stated that none of that was noticed, and no one had reported it. If the witness had noticed it, it would have been noted.

At the end of the tenancy, the witness did not give notice to the tenant to complete a move-out condition inspection report.

The witness further testified that the property sold in the spring of 2011.

At the commencement of the tenancy, the witness collected a security deposit in the amount of $900.00. The witness did not notify the tenant company or agent that the security deposit was being sent to the owners, but did so notify them in November, 2010, after the witness received a registered letter from the owners demanding $15,000.00 from the witness' firm. The security deposit has not been paid out, but is on hold until the lawyers deal with it. The witness has also retained counsel.

Landlord, CB

The landlord testified that the rental unit was in very good shape at the commencement of the tenancy and referred to photographs which he testified depicted its condition. The landlord contacted the property manager on the recommendation of a realtor, and the parties came to an agreement that the property manager would rent the property and the parties discussed a price. The landlord believed the employees of the tenant company would be occupying the rental unit; the employees were working on an apartment building downtown. The landlord expected that at the end of the tenancy the rental unit would be identical to at the beginning of the tenancy – clean, no damage, and everything there and that during the tenancy the property manager would inspect the rental unit. The landlord is only aware that the property manager was there in March, May and August.

The property manager put herself and the realty company as landlords on the tenancy agreement. The landlord and his spouse were owners and had a contract with the property manager to represent them. A Property Management Agreement was signed on February 15, 2010 and a copy has been provided for this hearing. The landlord's understanding was that the property manager was going to rent and screen tenants, and demanded she take action to recover damages from the tenant at the end of the tenancy.

Once the property manager was discharged, the landlord testified that he felt it was his responsibility to deal with the house, however, the landlord had received information from the Residential Tenancy Branch that the property manager was the one that needed to bring the application for dispute resolution for damages as against the tenants. The landlord subsequently spoke to a BC Realty lawyer and learned otherwise.

The landlord had decided to sell the property and on August 6, 2010 the landlord and the property manager met at the rental unit and sat at the kitchen table for the 15 or 20 minutes that the property manager was there. At that time, a large cobweb and dirt in the corner of the front hall first caught the landlord's eye. The realtor also attended shortly after and the parties walked through the unit. The property manager had mentioned that a toilet had been turned off. The landlord turned it on and noticed mold and dirt in the downstairs bathroom and streaks on the walls in the other bathroom. The carpet in the family room next to the lower bathroom was wet. The landlord pulled a chair away and saw black marks on the carpet. Upon moving the TV stand the landlord found more black marks and that the baseboard was swelled. The realtor advised at

that time that the house would not sell in its condition; because of the mold, the house required an inspection and would have to be signed off by an air quality specialist. The disclosure document for the selling listing couldn't be completed due to the condition.

The landlords have provided a document entitled "Damage" which contains a description of damages noticed and the result of correcting the damages. The general damages include the pond, stovetop, frying pans, missing household items, as well as other items. Also, the landlords have prepared a list of purchases made for correcting such damages, and the landlord testified that the last page shows stove damage of $699.00 although a new stove has not been purchased. It was put in the disclosure document that was prepared for the sale of the rental unit and the landlord testified that the sale price was reduced as a result of damages. The landlords had already purchased another house and had to accept the selling price. The landlords put the repairs on credit in order to sell. A list of damages was also provided to the property manager on or about September 10, 2010 who forwarded it to the tenant company immediately. The landlord testified that the landlord did not repair the stove or the pond and did not incur those costs directly, but indirectly by a reduction in the selling price of $10,000.00 for damages which included the stove and the pond.

One of the items on the list was the damaged pond. The landlord testified that he had drained and cleaned it in the fall, probably in November and when the tenancy began in the winter of 2010 it would have been covered and the yard was surrounded by a 6 foot fence with 2 locked gates. The landlord agreed that the damage could have been caused by vandalism or a deer, or lots of possibilities but judging by the uncut grass, empty beer cans and garbage left outside the rental unit it was clear that the tenants showed a lack of concern for the property.

The landlord further testified that the move-out condition inspection report contains the landlord's signature, but no one else's, and that he couldn't get anyone to come back to sign it. The landlord contacted the tenant several times, but was unsuccessful in getting his cooperation. The parties had arranged August 16 but the tenant didn't show up. The landlord called the tenant who agreed to attend the following day, but again he didn't show up. The landlord tried to find his truck around town after that but was not successful. The landlord filled out the report but does not recall the date, and testified that it was after he had contacted the tenant asking him to attend because the landlord was hoping they could go through it together.

The landlord further testified that the agreement between the landlord and the property manager had ended, and the property manager told the landlord to deal directly with the tenant company. The landlord contacted the owner of the tenant company in September, 2010 who stated that the company was waiting for more details from the

property manager, and the response from the tenant was that he was not paying for leaky pipes. He said he'd contact a lawyer and get back to the landlord, but despite several calls from the landlord, the tenant never contacted him. The landlord finally sent a letter by registered mail asking to keep in touch, but the tenant never did.

The landlord also testified that the letter to the property manager states that the toilet tank was sweating and water was dripping on the floor and the tenants did not report it or the damage that it caused. The water ran under the floor and into the family room below but that wasn't the major source; a feed valve was defective. The landlord witnessed the shower spraying and run down walls onto the floor and all of the ceiling tiles in the floor below were wet. The landlord sprayed them with bleach. The landlord did not see the toilet overflow, but saw what he believed to be sewage on the floor along the baseboards, and dirt. Once the landlord took the floor out, no other source of the water was visible. The landlord testified that a toilet plunger was noticed in the bathroom which was not there before.

The landlord testified that he hired a company called Puro Clean to look at the property due to black spots up the walls, carpets, base boards, and vanities. Once they removed the drywall, there were black spots inside the walls. Puro Clean provided the quote and the second page shows that on November 1 the landlords paid them $5,908.88. The landlord testified that he had removed the carpets, baseboards and underlay before they arrived, but not the drywall. The document is a quote; they inspected, gave the quote then came back a few days later & in meantime the landlord removed carpets. The only remedial work the landlord completed between August and October was the removal of the baseboards, and the landlord listed the house for sale in November, 2010. The property sold on May 27, 2011.

The landlord further testified that "Pillar to Post" is a home inspection company and it was retained to verify that all mold had been removed to prove there was none left for the sale of the house. The landlords paid $450.00 for that service, and testified that the rental unit was a disaster and took several days to clean. Further, neighbors were not very happy with the number of vehicles at the property so the landlords don't know who stayed there.

The landlord also testified that he attempted an insurance claim, which was denied because the policy only covered intentional, not negligent damages, and the landlord was shocked to learn that under renters' insurance there was no coverage.

The landlord also testified that the only carpet damaged at the end of the tenancy was in the basement, about 800 square feet, and the $4,477.25 claim includes linoleum in 2

bathrooms and the stairway, using a medium range of carpeting which was about the same as the carpet at the beginning of the tenancy.

Tenant, TP

The tenant testified that he was an employee of the tenant company at the time that the tenancy agreement dated February 15, 2010 was entered into by the parties. At that time, the tenant did not believe he was renting the property, and the property manager did not indicate that he was a tenant, but it was made clear to the property manager that the tenant was the tenant company and the rental unit would be utilized by and was rented for sub-trades persons of the tenant company who were completing a staff housing construction project. The tenant never personally stayed there. The tenant company also rented at least 4 other properties in the town.

The tenant further testified that while preparing to head back to the town he resides in he was approached by a man who introduced himself as the owner of the property and stated that he had some concerns. He asked if the tenant would go view the property with him. The tenant had never spoken to him before and didn't know what property he was referring to at that time. The tenant told him he would contact him when he returned to town. The tenant had only dealt with the property manager prior to that. The tenancy ended in July, 2010 and the property manager had never asked him to complete a move-out condition inspection. The tenant only learned of allegations of damage when the landlord attended the construction site that day. The tenant agrees that he never attended the property when requested by the landlord stating that the practice is to do everything through property managers. The tenant called the property manager to tell her that the landlord had approached him. When asked if the tenant asked the property manager to do a walk-through, the tenant testified that he hired the property manager to do the final clean-up of the property and never heard anything back upon completion of the tenancy and never knew of any concern. The tenant did not participate in the move-in condition inspection either.

The tenant further testified that a $900.00 security deposit was collected but that has not been returned to the tenant.

Closing Submissions of the Landlords' Counsel

The landlords' counsel submitted that the landlords were entitled to bring this action by the definition of landlord under the *Residential Tenancy Act*. At the commencement of the tenancy which was executed February 15, 2010,, or during the tenancy, there was no agreement to sublet, or any information from either party that other employees or sub-trades persons would be residing in the rental unit. The property manager testified

that she made the tenant company aware she was acting as agent for the landlord even though the paperwork had been filled out incorrectly.

The property was in good condition at the beginning of the tenancy and on November 19, 2010 the property manager made the tenant company aware of who they were to contact after that date. The tenancy concluded July 31/10 and owners arrived on August 6, 2010. The evidence is contradictory on whether the owner and the property manager did a walk-through; the property manager testified that they did, but the owner testified that they only met in the kitchen.

The owners noted damages and have set them out with a distinct description of damages. Counsel submits that the damages were pointed out after the fact – they did not do a full walk-thru.

The owner contacted the tenant who declined to do walk-through due to his schedule that day agreeing to be there following Monday but he failed to show. He then said he wouldn't be able to attend till next day and again did not go. Based on the fact that 3 contacts had been made but he failed to attend, the owner completed the condition inspection report without a representative for the landlord in attendance.

An inventory was provided with the tenancy agreement and at conclusion of the tenancy there were damages and items missing. Water damage existed in 3 bathrooms and the family room downstairs but the property manager didn't make note of anything and in her testimony agreed that she didn't get behind toilet and mold could have been there and she wouldn't know.

The lawn was left deplorable state and the cost of damages in the amount of $11,842.10 in actual receipts has been provided. The landlord clarified that it didn't include labor. The property manager and the owner agreed that a fair amount of labor had to be done. The property manager admitted in cross examination that she benefited financially from the tenant company and if she caused them to pay for the damages claimed, it would be monetarily detrimental to her and damage her ability to have further rentals.

Counsel for the tenants asked the landlord if he was sprucing up the house for a sale, however, evidence throughout shows that in fact the landlords were intending to sell from day one and had contacted a realtor by email in February, 2010. Prior to executing the tenancy agreement the property was in immaculate condition and the landlords were waiting for the market to pick up. The landlords thought it would be in the same condition at the end of the tenancy and be ready for sale.

The landlords' submission is that the end of the tenancy report has to stand because the owner of property was acting as the landlord pursuant to *Act.* The landlord gave the tenant 3 opportunities to inspect the rental unit at the end of the tenancy. The tenant didn't provide a further alternative date and testified that he thinks he may have called the property manager saying he had been approached by the owner but didn't participate in the inspection. He can offer no information about condition at the end of the tenancy; he didn't go there. Therefore, in accordance with Section 21 of the *Act,* the report must bear the most weight.

Closing Submissions of the Tenants' Counsel

The landlord's testimony was very clear that if the tenants had a problem, they were to contact the property manager or the property management company, and the landlord expected the property manager to deal with issues including rent. She was to act in all respects as the landlord. The landlord who brought this action has no standing for good reason – a tenant must know who they are dealing with as the landlord. The *Act* provides that a tenancy agreement must identify who the landlord is. The landlord may have an action against the property manager and the property management company, or may not, but have no standing to bring this application.

With respect to inspection, the landlord testified that he attended at the tenant's worksite on August 13. The tenant didn't know who he was or what property he referred to and told him he'd be back on 16th. That is not an opportunity to conduct an inspection; it must be offered by the landlord and the tenant had no idea who he was. The *Act* also states that the opportunity must be at a reasonable time but the tenant was leaving town. The opportunity must be about a specific property, but the tenant didn't know what property the landlord was talking about. That's not an inspection opportunity and should have been done by the property manager.

With respect to the landlords' claim for repairs, they claim the cost of replacing the stove but it was never replaced. Of the $11,842.10 of receipts submitted by the landlord, he admits that some weren't incurred and it's questionable that any should be considered.

The only evidence that indicates the presence of mold is the Puro Clean invoice which is an estimate provided more than 2 months after the tenancy had ended. If mold is not rectified for over 2 months it's reasonable to expect it's more expensive. All the landlord did was remove baseboards and nothing else for 2 months. The estimate says containment due to mold remediation but there is no report from any expert saying it's mold. There is no evidence as to what caused the damage other than a guess by the landlord as to where water came from. The landlord guesses that the toilet must have

overflowed because a plunger was present. That's not evidence. More than 2 months later remediation is done by Puro Clean.

The property manager was in the rental unit for many hours cleaning up the property before the landlord arrived. She testified that she spent time with the landlords on the property and went through everything for close to an hour. Nothing is said to her by the landlords at that time. Her evidence is she didn't note any of the damage he claimed. She didn't believe there was damage so an inspection wasn't necessary and there was no damage to note. Counsel submits that the damage claimed by the landlords was not holding up the sale of the house, it was the market.

Neither the realtor nor the landlord's spouse testified, and the realtor was on the property on August 6. Either of them could have corroborated the story of the landlord but they were not called to testify.

Counsel submits that there is no standing for good policy reasons for the landlords to bring this action. If so, the evidence does not support the claim.

Response by Counsel for the Landlords

No one knows what the realtor may have said if she had been called to testify.

Further, counsel for the tenants stated that nothing was done by the landlords for months but failed to say that the landlord's testimony was that remediation was not started because the insurance company told him not to.

With respect to the submission that there is good policy reason that tenants should know who they deal with, since 2010 the tenants were fully aware who the landlord was and was told by property manager who to deal with.

Analysis

Parties Named in the Application for Dispute Resolution

Firstly, with respect to the parties named in this proceeding, I refer to Section 1 of the *Residential Tenancy Act* which defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act,* the tenancy agreement or a service agreement; or a person who exercises any of the rights of a landlord under a tenancy agreement or the *Act.*

I also note the fine print on page 6 of the tenancy agreement which states: "Change of Landlord – A new landlord has the same rights and duties as the previous one and must follow all the terms of this agreement unless the tenant and new landlord agree to other terms."

In this case, the property manager prepared a tenancy agreement naming 2 landlords and 2 tenants and it was signed by the property manager and a tenant. The property manager and the tenant both testified that they believed they were signing as agents for others. The property manager was signing as a landlord on behalf of the property management company and the owners. The tenant was signing as a representative for the tenant company. There is no evidence before me to suggest that if the tenant believed he would be personally liable that he would have signed the tenancy agreement the way it was prepared. The property manager testified that she has learned a lesson from preparing it the way she did.

The parties provided submissions at the outset of the hearing, including submitting that an application had been previously filed by the landlord which resulted in a dismissal, and that the dismissal was ordered because the landlord had named an incorrect party, and as such, the same finding should be made with respect to this application. However, I have not been provided with a copy of that Decision.

The tenancy agreement was signed on February 15, 2010 and the property management agreement was signed by the owners and the property manager the same day. The property manager was discharged of the property management duties and the tenancy ended at the end of July, 2010.

I find that naming an incorrect respondent is different than naming an incorrect applicant and a dismissal of the previous application is really not relevant to this hearing. A party must ensure that the proper party is being sued in order to be successful in any civil dispute, and considering the *Act* and the tenancy agreement, I find that the landlords named in this application are landlords under the *Act* and the tenancy agreement and as such are entitled to bring this claim.

Damages

In this case, the representative for the tenant company and the property manager entered into a tenancy agreement and completed a move-in condition inspection report. All items in every room listed in the report are marked "good" and it is signed and dated by the parties in February, 2010. The property manager testified that the owner also provided a detailed inventory of what furnishings and other household items were included in the rent.

A move-out condition inspection report was completed by the owner after the tenancy had ended, and he testified that he gave the tenant 3 opportunities to conduct the inspection with him, but the tenant failed to attend each time.

The *Residential Tenancy Act requires* a landlord to provide the tenant with at least 2 opportunities, and the regulations go into some detail of how that is to be done. The landlord must offer a date and time and if the tenant is not available, the tenant may propose an alternate time, and the landlord must consider it. The landlord must propose a second opportunity (different from the first) by providing the tenant with a notice in the approved form. Parties must also consider reasonable time limitations of the other party, if known.

In this case, the tenant's representative testified that a man had approached him asking that he attend to do an inspection, but he didn't know who the man was or what property he was speaking about. The landlord's testimony is somewhat different, and I am satisfied that the landlord felt the tenant's representative knew who he was and what property he was speaking about. However, the question here is whether or not the landlord offered the tenant at least 2 opportunities to conduct the inspection and that the second opportunity was by way of a notice in the approved form, which I find was not used. The *Act* also states that if the landlord fails to comply with that section of the *Act,* the landlord's right to claim against the pet damage deposit or security deposit for damages is extinguished, and I so find.

The *Act* also requires a landlord to return a security deposit or pet damage deposit in full within 15 days of the later of the date the landlord receives the tenants' forwarding address in writing or the date the tenancy ends, whichever is later, or must be ordered to repay the tenant double the amount of the deposits. There is no evidence before me that the tenants have provided the landlord with a forwarding address in writing.

The move-out portion of the report shows that a burner was not functioning on the stove, the rental unit was not cleaned, the walls and floors in a bathroom were wet and stained with mold, the toilet in a bathroom was running, the grass was not mowed and yard messy, the pond liner was destroyed, and ceiling in the basement was water stained and walls were wet and moldy. Another notation on the report says, "Water damage on levels 2 & 4 bathrooms, family room drywall, ceilings, floors, pond, lost or broken furnishings, stovetop."

The property manager testified that she attended the rental unit and cleaned it after the tenancy had ended and didn't notice any of the issues that the landlord has written on the move-out condition inspection report. No one for the tenants ever attended. That effectively leaves conflicting testimony from two landlords.

The *Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. However, having found that the landlord did not comply with the *Act* respecting giving a notice to inspect in the approved form, I find that the weight of such evidence is significantly reduced because there is no input from a tenant and the landlord did not properly notify the tenant about the inspection.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Although I have found that the landlords' right to claim against the security deposit for damages is extinguished, the landlords' right to make a claim for damages is not extinguished. The landlord has provided photographs of the rental property taken before the tenancy began and photographs of some damages which were taken after the tenancy had ended. I have reviewed the receipts and invoices of the landlord, and when compared to the photographs and the move-in condition inspection report, I find that the landlord has suffered damages as a result of this tenancy.

The tenant's representative testified that the company's policy was to leave everything to the property manager however that is not sanctioned by the *Act.* A landlord and a tenant have obligations under a tenancy agreement. A tenant is required to repair any damages caused by the actions or neglect of a tenant and is required to leave a rental unit reasonably clean and undamaged at the end of a tenancy. Leaving that responsibility to a property manager, who has testified that she made it clear when the parties entered into the tenancy agreement, that she represented the owner of the property does not erase any responsibility of the tenant, particularly at the end of the tenancy. The property manager would have been the person to report water damage to if there were problems with the plumbing, but there is no evidence that the occupants ever called the property manager or the company's representative.

Counsel for the tenants argued that the landlords did nothing for months after, however the landlord testified that the insurance company told him not to.

In the circumstances, I am satisfied that the damage to the rental unit was a result of the tenants' failure to comply with the *Act.*

With respect to the itemized account provided by the landlord, I am not satisfied that the tenants are liable for such things as the landlords' travel expenses under the *Act.* Those are business expenses of the landlords' business of renting properties. The list also includes the costs of sending registered mail. I also note that the list contains recovery of the filing fee for $107.50 although the filing fee was $100.00. The *Act* permits recovery of a filing fee but no other costs associated with dispute resolution. The list shows a total of $17,879.28 which is the amount claimed in the landlords' application. The other list which contains the inventory of household items shows a cost of $69.00 for missing cutlery and dishes, and the claim for those items appears in the first list, but at a cost of $120.00. There is no evidence before me that anyone on behalf of the tenants acknowledged the inventory list, nor is there any evidence of the costs associated with replacing items, and therefore, I find that the landlord has failed to establish element 3 in the test for damages and the claim for missing items is hereby dismissed without leave to reapply. The landlords' claim for food, fuel, travel time and registered mail costs are also hereby dismissed without leave to reapply.

The landlord testified that once mold was noticed the realtor had advised that the home required an inspection and an air quality test had to be completed before a disclosure document could be prepared for the sale of the house. The realtor was not called to testify, however, I have reviewed the photographs and I find that the landlord's testimony is believable, and I allow those claims.

I am not satisfied that the landlords have established the claims for the pond damage, stove or TV stand damage, and I dismiss those claims.

I also note that the landlords have claimed $20.00 per hour for some work completed by the landlords and $25.00 per hour for other work. I see no reason to grant additional time per hour, and I have reduced the landlords' claim for all work to $20.00 per hour.

In the circumstances, I find that the landlords have established a claim as against the tenants for damages in the amount of $15,721.65. Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the $100.00 filing fee for the cost of the application. The landlords currently hold a security deposit in the amount of $900.00 which I set off from the award, and I hereby grant a monetary order in favour of the landlords for the difference in the amount of $14,921.65.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the security deposit and I grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $14,921.65.

This order is final and binding on the parties and may be enforced.

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 31, 2013

Residential Tenancy Branch