



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenants – MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for 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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for the cost of emergency repairs; for the return of the security deposit; to recover the filing fee from the landlord for the cost of this application; and other issues.

One of the tenants (AB) and the landlord attended the first conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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. The parties confirmed receipt of evidence. The hearing was adjourned for more time and at the reconvened hearing held today the tenant and landlord along with a lawyer for the landlord attended. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- What are the tenants other issues?

Background and Evidence

The parties agree that this tenancy started on July 11, 2012 for a fixed term which ended on June 30, 2013. Rent for this unit is \$1,200.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$600.00 on July 05, 2012. The parties attended a move in inspection of the unit at the start of the tenancy. The tenancy ended on May 31, 2013 and the tenants provided the landlord with a forwarding address in writing on that day by posting it to the door of the rental unit.

The landlord's application

The landlord testifies that she found out on May 13, 2012 that the tenants had changed the locks to the front door. The tenants did not have permission to change the locks and did not provide a key to the landlord when they were requested to do so. A locksmith was called to rekey the locks on May 19, 2013. The locksmith was able to provide a key for the landlord at that time and the tenant still had the same access to the unit. The locksmith charged \$100.00 for his call out and the new key was \$4.46 from Canadian tire. The landlord has provided copies of the invoice and receipt in evidence.

The landlord testifies that the home was left in a mess at the end of the tenancy. The landlord had to do an emergency clean up as new tenants were due to move into the unit on June 01, 2013. The new tenants had a tenancy agreement (provided in evidence) which states that the landlord will compensate the new tenants if the unit is not ready for them to move into. Another cleaner cleaned the unit for four hours. The cleaner charged \$30.00 per hour to a total amount of \$125.10. The landlord also cleaned the unit for a further 10 hours and seeks to recover the cleaner's costs and a cost for the landlord's labour of \$124.90. The landlord has provided itemised bills for the cleaners work and the landlords labour. The floors required vacuuming and washing as they were left stained, the walls had many marks, the oven was dirty, the bathrooms required cleaning and the appliances had to be cleaned behind because the tenants had failed to do so and were easy to move to move out.

The landlord testifies that the tenants had broken two blinds in the living room. These blinds were new in 2009. The tenants did not use the blinds correctly and was trying to open them in the closed position. This broke the mechanism of the vertical blinds. The first set of blinds was replaced with curtains in December, 2012. When the second set of blinds was broken the landlord could not match the curtains with the set on the sliding door so both sets had to be replaced again in June, 2013. The blinds had to be removed, new panels purchased along with a rod and the curtains had to be fitted. The landlord has provided numerous bills and invoices for this work. The landlord states the total cost for the blinds was \$512.71 however the landlord seeks to recover the amount of \$250.00 from the tenants.

The landlord testifies that the tenants failed to leave the walls and trim of the unit in a good condition. The landlord painted the walls and made some repairs prior to painting to three holes in the walls. The hallway, the dining room and living room all required painting. The house was last painted in 2009. One closet door also had to be repainted due to some nail varnish on the door. The landlord seeks \$47.38 for the cost of the paint and has provided a receipt in evidence. The landlord also seeks to recover her labour costs of \$02.17.

The landlord testifies that the tenants turned off the pilot light on the water tank. The landlord had to get her handyman in to relight the pilot light so the new tenants could have hot water. The landlord seeks to recover \$30.00 for this work. When the pilot light was put back on the landlord was worried that the tenants may have done something else to the tank so the landlord called in a company to check the tank. The landlord states that it appeared as if someone had tampered with a screen on the tank as this had been pulled out. The landlord states the tenants were the only ones to access the tank and so the landlord seeks to recover the charge from this company of \$72.50.

The landlord testifies that the tenants failed to cut the grass in the last month of the tenancy. The landlord had a neighbour cut the grass at the start of the tenancy. Other neighbours complained about the grass not being cut in May, 2013 so the landlord sent the tenants a note asking them to cut the grass but the tenants failed to do so. The landlord engaged the neighbour's services again in May, 2013 to cut the grass for the tenants. The landlord seeks to recover this charge of \$45.00 and has provided an invoice in evidence.

The landlord testifies that the tenants did not clean the windows of the unit. The tenants were asked to clean all reachable windows and the landlord agreed to clean the unreachable windows. There were nine reachable windows which had not been cleaned. The landlord has provided a bill for \$80.00 for all the window cleaning and requests to recover \$60.00 of that bill for the windows the tenants were responsible for. The landlord has also provided an invoice showing the windows were cleaned at the start of the tenancy.

The landlord seeks a loss of rent of \$160.00 as the new tenants could not move into the unit until June 05, 2013. The landlord testifies that she had to refund the new tenants \$160.00 of the rent they paid for June. The landlord seeks an Order to keep the security deposit to offset against the damages and rent.

The tenant's attending testifies that the landlord entered the home without permission on August 12, 2012. The tenants noticed that the landlord had left a kitchen shelve mat and had dropped of some blinds. The landlord had been told not to enter the unit and the tenants asked the landlord if they could change the locks. The landlord gave verbal permission to do so and knew the locks were changed as this was discussed with the landlord by email in December, 2012 and March, 2013 (copies of these e-mails have been provided in evidence). In May the landlord asked the tenants to provide the landlord with a key but as the tenants did not trust the landlord not to enter without permission so the tenants did not give the landlord a key.

The tenant testifies that the house was left totally clean at the end of the tenancy. There was one small pink nail polish mark on a closet door but no other scuff marks. The tenants have provided photographic evidence showing the condition of the unit at the end of the tenancy. The tenant states the landlord had given them a time to attend the move out inspection but the landlord failed to appear. The tenants waited for some time and then returned later but the landlord failed to appear again. The tenant testifies that no move out inspection was conducted.

The tenant testifies that the blinds were not damaged by the tenants. The blinds mechanism stopped working in August through normal use. The tenant disputes that the landlord had shown the tenant how to use the blinds. The tenant states they have used blinds for years and know how to open and close them. The landlord replaced the blinds and then accused the tenants of misusing them. One blind was never used by the tenants as it was located behind a sofa. In April when the landlord did an inspection the landlord found the blind was not working but the tenants' dispute that they damaged it.

The tenant disputes the landlords claim for painting. The tenant testifies that the landlord told the tenants that she always paints the house for new tenants. It should not be the tenants' responsibility to pay for this work when the unit was left in a good condition.

The tenant agrees that they did turn off the pilot light on the hot water tank. As the gas company told the tenants they would be billed for any gas usage up to midnight on May 31, 2013. The tenant testifies that as the tenants left the house at noon they did not want to incur any further gas charges. The tenant disputes that they removed a screen on the tank or tampered with the tank in any way. The tenant states they just turned off the pilot light.

The tenants dispute the landlords claim for cutting the grass. The tenant testifies that the landlord sent an e-mail on May 10, 2013 in which the landlord has mentioned that she cut the grass free of charge. The tenant states they had a lawn mower and could have cut the grass themselves, the landlord did not need to do this work as the tenants were still in residence at that time.

The tenants dispute the landlords claim for window cleaning. The tenant testifies that all the reachable windows were cleaned with glass cleaner both inside and out at the end of the tenancy.

The tenants dispute the landlords claim for loss of rent. The tenant testifies that the time the landlord wanted to spend on the house for painting and alleged cleaning was the landlord's choice and the landlord cannot now hold the tenants responsible for the time the new tenants could not occupy the unit.

The tenants' dispute the landlords claim to keep the security deposit. The tenant testifies that the landlord's pictures are false and the tenants' pictures show the rental unit in a clean condition. The landlord's pictures do not represent the true condition of the rental unit and the tenant has no idea when these pictures were taken however the tenants' pictures clearly contradict the landlord's pictures.

The landlord testifies that in regard to the locksmith they went to the unit twice in July. The landlord testifies that the tenants gave verbal permission. The landlord argues that the tenants did know the landlord was going to enter as the landlord had informed the

tenants by e-mail that she needed to come into the unit to hear some pipes that were hammering after the neighbour had complained. The landlord testifies that this was an emergency as the landlord did not know what was making the pipes bang and it was found to be a pressure valve which was later replaced. The landlord testifies that she must have a key to enter in an emergency situation. The landlord argues that she did not enter the unit in August and the mats and blinds were left in July.

The landlord testifies that she did not do the move out inspection as she had emailed the tenants a date and time and did not get a response from them to say they would meet the landlord. The landlord also argues that as the male tenant had been shouting at the landlord over the phone the landlord was afraid to go and meet with the tenants to do the inspection. The landlord argues that the tenants had also called the police when the landlord had gone to the unit with a painter and so was reluctant to confront the tenants again.

The landlord argues that her pictures of the damage to the unit were taken between June 01 and June 04, 2013 and they do show the true condition of the rental unit. The tenant argues that the landlord's picture showing damage to a door frame is not true. The landlord must have damaged this door frame after the tenants moved out to mislead this case. The tenant argues that the only true picture is the one showing the room with the tenants' children's bikes in it which was taken before the tenants vacated. The tenants' pictures clearer shows this floor without any scuff marks made by the bikes.

The tenants' application

The tenant attending testifies that the landlord caused the tenants undue stress by all the things the landlord did during their tenancy. The landlord entered the unit without permission or proper notice and entered in the tenants' absence. The landlord continually made appointments for repair men to come to the unit. The landlord accused the tenants of damaging the blinds where in fact the blinds were damaged because of the mechanism. The landlord accused the tenants of damaging the washing machine

after water was found on the floor. The tenant testifies that the washer was working fine but it appeared that the pipes were blocked. The landlord accused the tenants of misusing the washer and that the tenants would have to pay for a service charge for the repairman to come out to look at the washer if it was found not to be faulty. The tenant testifies that when the repairman did come out he told the tenant that problems like this happen due to clogged pipes happening over a number of years as the pipes in the unit all led into the same drain.

The tenant testifies that the neighbours would bang on the door all the time about noise. However, the neighbours had carpeting and the tenants unit had laminate flooring so any noise could be heard next door even when the tenants' children just walked around. These same neighbours would smoke on the sundeck which prevented the tenants using their area.

The tenant testifies that the gas range stopped working in February but instead of calling the landlord again as the tenants did not want to be accused of breaking the range; the tenants paid for a repairman to come and repair the range.

The tenant testifies that the landlord would send rude e-mails to the tenants which also created a stressful situation. On November 19, 2012 the landlord wrote to the tenants about the gas company coming to replace a gas regulator. On November 20, 2012 the landlord sent another email asking if the tenants had moved out yet. The tenant testifies that she thinks the landlord sent the second e-mail because the tenants had not replied to the first one.

The tenant testifies that they sent the rent cheque for December on December 27 however it was delayed in the mail. The landlord then gave the tenants a 10 Day Notice to End Tenancy on December 03, 2012. The tenant testifies that they told the landlord they had mailed the cheque but after not being able to reach the landlord on December 04 to see if the cheque had arrived the tenants decided to drive to the landlords home and left another rent cheque in the mail box. On the way back again the tenants

stopped at their bank and found that the landlord had cashed the first rent cheque on December 03, 2012. The landlord did not tell the tenants she had received this cheque to avoid the tenants making an unnecessary journey to the landlord's home.

The tenant testifies that she found all of these dealings with the landlord to be so stressful that the tenant could not concentrate on her family and kept crying all the time. The tenant went to her doctors on May 07, 2013 and was prescribed sleeping tablets and was told to avoid the landlord at all costs.

The landlord also gave the tenants another eviction Notice on April 29, 2013 and told the tenants that she was entitled to June's rent. The tenant testifies that they had given notice to the landlord to end the tenancy on June 15, 2013 so it was not appropriate for the landlord to send another e-mail about the rent. The tenants seek to recover compensation from the landlord for stress of \$3,500.00.

The tenant testifies that due to the stress the tenant was sitting on her sofa and she hit her hand into the wall. The tenant experienced so much pain in her hand she had to go to the hospital and had a surgical procedure on her hand. Due to this the tenant lost three days of work. The tenant refers to her evidence showing her lost time at work and seeks to recover \$600.00 from the landlord for this.

The tenants seek to recover the security deposit. The tenant agrees that on their application they had also claimed interest on the security deposit but now know that no interest was accrued so they amend their application accordingly.

The tenants seek to recover the sum of \$40.00 for the cost of the repair to the stove range. The tenant explains that she does not have the receipt for this work but has provided a copy of the cheque. The tenants also seek to recover the cost for registered mail to return the keys to the unit as the landlord did not show up for the move out inspection. The tenants have provided the registered mail receipt of \$10.92

The landlord dispute the tenants claim for compensation for stress. The landlord testifies that she has always dealt with the tenants' complaints about repairs and even resolved an issue when the landlord was attending her son's wedding in Australia. The landlord had given responsibility to others to deal with any problems and the tenants contacted the landlord while she was away. When the landlord returned to Canada she spoke to the plumber who advised the landlord that the problem with the water leaking could be because of grease in the pipes.

The landlord testifies that she only entered the unit once without written notice due to an emergency with the pipes banging. The other times of entry were after the tenants had complained about repairs being needed to various things and with the tenants' verbal permission. The tenants complained about many minor things including drips from the bathroom fan which resulted in the landlord having roofers to look at the roof. The tenants were told then that it was only condensation because they were not using the fan when they showered.

The landlord refers to the doctors notes provided in the tenants evidence. These notes say that the landlord has harassed the tenants with daily calls. The landlord testifies that she communicated mostly by email and did not call the tenants daily as the male tenant was very rude to the landlord on the phone so the landlord requested that communication was done by email.

The landlord testifies that the only noise complaint from the neighbours was about noise after 8.00 at night. As the neighbours did not want to put this in writing the landlord did not take any action. The landlord testifies that she acted only on complaints from the tenants and dealt with their repair issues. The landlord does not see that this caused the tenants any stress. The landlord testifies that the tenants' letter to the landlord caused the landlord stress. The landlord testifies that the tenants have not provided a bill for the repair to the stove top and the landlord does not know what this repair was for as the tenants never contacted the landlord about this.

The landlord refers to the two e-mails sent to the tenants in November, 2012. The first e-mail was sent to inform the tenants that the gas company needed to get access to change the gas regulator to both units at the same time. When the tenants did not respond the landlord asked the neighbouring tenants to knock on their door to sort out a time convenient to both sets of tenants. The neighbours told the landlord that they did not think the tenants were there as they had not heard them. The landlord then sent the second e-mail as a joke to say had the tenants moved out. The landlord also called the male tenants place of work to confirm the tenants were still there. The landlord testifies that if these e-mails offended the tenants it was not intentional.

The landlord testifies that she would normally pick up the tenants rent cheques when she was at the unit doing repairs. The landlord testifies that this is not her normal practise and when the tenant told the landlord on September 28, 2012 that he does not have to pay rent until the 5th day of each month the landlord informed the tenants that rent was due on the 1st day of each month as per the tenancy agreement. The tenants did not pay rent on December 01, 2012 so the landlord served the tenants with the 10 Day Notice to End Tenancy on December 03, 2012. The landlord testifies that she was then at the hospital all day on December 03 so in her lunch time she went home and found the rent cheque from the tenants had arrived so deposited it into her bank. The landlord returned to the hospital and did not get home until 9.30 that night and emailed the tenants on December 04, 2013 as the landlord only then got their messages.

The landlord testifies that the tenants gave written notice to end the tenancy on April 24, 2013. This was effective on June 15, 2013. The tenants did not think that they had to pay rent for the whole of June however the fixed term lease did not expire until June 30, 2013. The landlord agrees she did give the tenants a One Month Notice to End Tenancy on April 29, 2013 which had an effective date of May 31, 2013. When the landlord found new tenants to move into the unit on June 01, 2013 she had to tell the incoming tenants that she did not know when the tenants were moving out but that they would be compensated for any days they could not move into the unit.

The landlord's lawyer cross examines the tenant and asks the tenant to tell them how she hit her hand. The tenant responds and states that she was sitting down and was thinking about the landlord and what the landlord had done and the tenant then hit her hand on the kitchen shelve. The landlord was not there at the time but the tenant was under stress and was depressed about the landlord. The landlord's lawyer asks the tenant about her depression as it is not mentioned on her medical records the tenant provided. The tenant responds that the doctor's note says acute situational distress. The landlord's lawyer asks the tenant about the doctor's notes from March 10 and March 11 as there is no mention of the landlord or the tenancy on these notes. The tenant responds that why would the doctor mention them.

The landlord's lawyer questions the tenant about her written submissions concerning a realtor for the landlord attending at the house. The tenant responds and states that she saw a man sitting in his car outside and this man then started to walk around the outside of the unit taking measurements. The tenant states she did not know who this man was. The landlord and repairman were downstairs at the time working. The man went back into his car and the tenant asked the man who he was. The man told the tenant he was a realtor and the landlord had invited him there. The tenant states that she spoke to the landlord and the landlord said she had asked the realtor to look at the house however the landlord had not informed the tenants of this. When the male tenant called the landlord about it the landlord shouted at the male tenant and said she could get them to vacate the house with a notice

The landlord's lawyer asked the tenant if she protested to the realtor about him being there. The tenant responds that no she wanted to confirm with the landlord first as in their culture they do not just let any man into the home. The landlord's lawyer asks if the tenant told the landlord that she did not want him in the house. The tenant responds that the landlord did not ask, the landlord just let him in.

The landlord asks the tenant that she felt she needed to call the police as the landlord and workman were just downstairs. If the tenant felt unsure why did the tenant not just

ask the landlord? The tenant responds and states that if she had it in her mind that someone was there why would she ask the landlord. If the landlord had not known this man the tenant would have called the police.

The landlord testifies that at this time she asked the tenant if it was alright for the realtor to have a quick look around the house. If the tenant had objected then the realtor would not have come in.

The landlord's lawyer asks the tenant about her written submissions about the cat and when did the landlord give the tenants notice to get rid of the cat. The tenant replies that they agreed to get rid of the cat by the first week in March but due to the snow they could not drive across the mountains to their parents who were taking the cat in. In the end they still had to drive the cat as the landlord did not allow them to keep it.

The landlord's lawyer asks the tenant about the plumber who made the repairs and did the tenant call the plumber directly. The tenant responds that she did because the landlord was at her son's wedding and the tenants had problems with the laundry room sink again. They contacted the landlord and then the landlord suggested that they call the plumber. The landlord's lawyer asks the tenant if the landlord still helped the tenants even though she was away. The tenant replies that yes she did but the landlord still accused the tenants of causing the problem.

The landlord's lawyer provides a closing statement and states that the landlord has never breached the tenants right to quiet enjoyment; the injuries to the tenants hand are not the landlords fault. The landlord gave the tenants three months to remove the unauthorised cat from the unit. The tenant changed the locks without written permission and refused to provide a key to the landlord. The tenants did not try to negotiate an early end to the tenancy but wanted to end the tenancy on June 15, 2013. The landlord was always responsive to making repairs in a timely manner even when she was overseas. There is nothing in the tenants' evidence to prove that the landlord caused the tenants' any stress or depression.

The tenant makes a closing statement and states that the landlord has said she did not know when the tenants were vacating but how can the landlord allow the tenants to remain in the unit after the landlord has given the tenants One Months Notice to End Tenancy effective on May 31, 2013. The reason given on that Notice was that the tenants had not paid for a broken blind. The landlord is claiming \$160.00 for a loss of rent but the house was left clean and undamaged so if the landlord decided to paint and do extra cleaning then the landlord cannot hold the tenants responsible for this especially when the landlord has not even bothered to do a move out inspection.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties attending. In damage or loss claims a test is applied to show that the claimant has meet the burden of proof 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. With this test in mind I will deal with each section of the landlords claim:

With regard to the landlords claim for the costs incurred to change the locks. I refer the parties to sections 31(3) of the *Act* which states:

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

The landlord testifies that she did not give written permission for the tenants to change the locks to the rental unit and when asked, the tenants refused to provide the landlord with a key. The tenant testifies that they changed the locks and refused to provide a key to prevent the landlord from entering the unit without proper notice. It is my decision that

if the landlord had entered the unit without proper notice and without the tenants' verbal permission to do so then the tenants recourse would have been to apply for an Order to either change the locks to the rental unit or suspend or set conditions on the landlords right to enter the rental unit. A tenant may not change the locks without either the landlord's written permission or an Order from the Residential Tenancy Office. Consequently, the landlord is entitled to recover the cost to change the locks and to purchase a new key to the amount of **\$104.46**.

With regard to the landlord's claim for additional cleaning cost for the rental unit; both Parties have provided some photographic evidence showing the condition of the rental unit. As the parties testimony and documentary evidence contradicts each other, with the exception of a small pink nail polish mark on a closet door, then had the landlord conducted a move out inspection of the unit this could have been corroborating evidence to support the landlords claim for cleaning. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not met the burden of proof that the tenants failed to meet the "reasonable" standard of cleanliness required and consequently the landlord's claim of \$250.00 is dismissed.

With regard to the landlords claim for broken blinds; the landlord must show that the blinds were broken through the actions or neglect of the tenants. As both parties contradict each other's testimony and I have no further corroborating evidence from the landlord to support this claim then it becomes one person's word against that of the other and in that case the burden of proof is not met. Consequently, this section of the landlords claim for \$250.00 is dismissed.

With regard to the landlords claim for taking down the blinds and refitting the curtains and for repairs to a drawer and a closet door; the landlord failed to do the move out

inspection to show that there was any damage to a drawer or a closet door and the landlords claim for damage to the blinds has been dismissed. Consequently the landlord has not met the burden of proof and the landlords claim for \$70.00 is dismissed.

With regard to the landlords claim for painting and repair to damaged walls; the landlord must show that the damage which required the walls to be repainted was more than normal wear and tear. As the landlord failed to complete the move out inspection report to document this alleged damage then the landlord has no corroborating evidence to show that the tenants did cause damage to the walls and trim that was beyond normal wear and tear. Both parties contradict each other's testimony and the photographic evidence provided by both parties also shows contradictory evidence of the interior of the unit. Furthermore, the landlord is responsible for painting the interior of the rental unit at reasonable intervals. The useful life of interior paint is shown as four years therefore the landlord must expect some wear and tear to the interior paint work when it was last repainted in 2009. Consequently, the landlord's claim for \$250.00 is dismissed.

With regard to the landlords claim for \$30.00 to turn on the pilot light and a further \$72.50 to have the furnace checked. The landlord has testified that the tenants turned off the pilot light and tampered with the furnace at the end of the tenancy. The tenant agrees that they did turn of the pilot light to ensure no extra gas charges would be applied after they had moved out but dispute that they tampered with the furnace. The burden of proof falls to the landlord to show that the tenants did tamper with the furnace and as the landlord has failed to meet that burden of proof then I find the landlord is only entitled to recover the sum of **\$30.00** to have the pilot light turned back on. A tenant should not turn of a pilot light to a furnace as the additional cost for gas would be negligible and in doing so the landlord incurred a cost to have the pilot light turned back on. Consequently, the landlords claim for \$72.50 is dismissed.

With regard to the landlord claim to recover the cost of having the grass cut; the landlord asked a neighbor to cut the grass while the tenants were still in residence at the rental unit. The tenants did not ask the landlord to cut the grass and the landlord has

not established that the tenants were not prepared to cut the grass themselves. Consequently, the landlords claim for \$45.00 is dismissed.

With regards to the landlords claim for window cleaning; the landlord has provided evidence that the windows were clean at the start of the tenancy. However, the landlord has the burden of proof to show that the tenants did not leave the windows reasonably clean at the end of the tenancy. Without any corroborating evidence from the landlord such as a move out inspection report then I find the landlord has not met the burden of proof in this matter. Consequently, the landlords claim for \$60.00 is dismissed.

With regard to the landlords claim for a loss of rent as the new tenants could not move in; I have considered the evidence before me and find the landlord did serve the tenants with a One Month Notice to End Tenancy for cause. Even through the reason given on this Notice is not considered to be a valid reason under the *Act* the tenants acted on this Notice and vacated the unit on the effective date of the Notice of May 31, 2013. As I have found the landlord has not shown that the tenants failed to leave the rental unit in a reasonable clean condition or that the tenants were responsible for wall damage and painting of the unit I cannot find in favour of the landlords claim for a loss of rent of \$160.00. Consequently, the landlord's claim is dismissed.

With regards to the landlord's claim to keep the security deposit of \$600.00; as the landlord has been partially successful with her claim I find the landlord may deduct the amount of **\$134.46** from the security deposit for the successful portion of the landlords claim as indicated above.

With regard to the tenants' claim for a loss of quiet enjoyment of the rental unit resulting in stress and depression; in this matter the same burden of proof falls to the tenants to show that the landlord did not protect the tenants' right to quiet enjoyment of the rental unit. It is my decision that the tenants have not shown that the landlord entered the unit without the tenants' permission. While I agree the landlord did send notices to enter by e-mail and this is not considered the correct process for serving a notice of entry, the

tenants did ask the landlord to enter to do repairs and allowed the landlord to enter when the landlord showed up with any repairmen. The landlord argues that she only entered without permission on one occasion which was to deal with a suspected emergency repair. Consequently, as I have no further corroborating evidence from the tenants then it is one person's word against that of the other that the landlord entered the unit without permission with the expectation of one occasion for an emergency repair which is permitted under section 29(1)(f) of the *Ac*. Therefore the tenants have not met the burden of proof to show the landlord did enter the unit without permission.

Having reviewed the tenants' submissions and testimony I find the tenants have been over sensitive to the landlord's emails which I do not find offensive or rude but rather business like. I do not find that the landlord's actions in attending the unit to repair items asked for the tenants can be considered stressful as the landlord has an obligation to repair items in accordance with the *Act*. If a landlord thinks a tenant has caused damage to the unit or appliances a landlord is entitled to ask the tenant about this damage without a tenant assuming the landlord is accusing the tenants of causing the damage. A landlord may assume a tenant has damaged an appliance until further proof shows that the tenants did not. The tenants are required to ensure their rent is given on the first day of each month. If the rent check is late then the landlord may serve the tenants with a Notice to End Tenancy. This is not considered to be harassment. A landlord is also entitled to serve a tenant with a One Month Notice to End Tenancy for cause. The reason given on that notice was that the tenants' had breached a material term of the tenancy agreement that was not corrected within reasonable time after written notice to do so; not for a broken blind. A tenant's recourse is to file an application to dispute the Notice and again this is not considered to be harassment of a tenant. Furthermore, when the incident of the realtor attending the unit; if the tenants felt the landlord had not provided Notice for a realtor to view the property then the tenant could have refused entry to the realtor and asked the landlord to provide written Notice instead. Consequently, the tenants' application for \$3,500.00 is dismissed.

With regard to the tenants' claim for injury to her hand; The tenant agrees the landlord was not present at the time this injury occurred, the tenant argues that she hit her own hand because she was stressed and depressed at the landlord's actions. However, a tenant cannot hold a landlord responsible for an injury if the landlord did not cause this through their own actions and the letter from the tenant's doctor is not definitive proof that the tenant's health conditions were caused by the landlord and were not due to another source or previous health condition. Consequently, the tenants' claim for a loss of income of \$600.00 due to this injury is dismissed.

With regard to the tenants' claim for a repair to the stove; under section 33(3) of the *Act* a tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The tenant agrees that they did not inform the landlord that the stove required repair and went ahead and had repairs done themselves. Consequently, the tenants are not entitled to recover the cost for these repairs and the tenants claim for \$40.00 is dismissed.

The tenants seek to recover the registered mail costs incurred in returning the keys to the landlord. The tenants could have left the keys at the unit for the landlord to collect at the end of the tenancy. There is no provision under the *Act* for costs for registered mail to be recovered by a party. Consequently, this section of the tenants' claim for \$10.92 is dismissed.

With regard to the tenants claim to recover the security deposit; As I have awarded the landlord the amount of \$134.46 from the security deposit the balance of \$465.54 must be returned to the tenants pursuant to s. 38(6)(b) of the *Act*.

Both parties seek to recover the \$50.00 filing fee. As both parties have only been partially successful with their respective claims I find both parties must bear the cost of filing their own applications and their claims to recover the filing fee are dismissed.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to retain the amount of **\$134.46** from the security deposit.

The remainder of the landlord's claim is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$465.54**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants' claim is dismissed 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: November 12, 2013

Residential Tenancy Branch

