



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M.G.M. Management Ltd
and [tenant name suped to protect privacy]

DECISION

Dispute Codes

For the tenants – CNR, MNR, MNDC, OLC, ERP, RP, PSF

For the landlord – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a Notice to End Tenancy for unpaid rent, for a Monetary Order for the cost of emergency repairs, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; For an Order for the landlord to comply with the *Act*; for an Order for the landlord to make emergency repairs; for an Order for the landlord to make repairs; for an Order for the landlord to provide services or facilities required by law. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; 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.

At the outset of the hearing the parties agreed that the tenants have moved from the rental unit. Therefore the landlord withdraws their application for an Order of Possession. The tenants also withdraw their application to cancel the notice and for an Order for the landlord to comply with the *Act*; for an Order for the landlord to make emergency repairs; for an Order for the landlord to make repairs; for an Order for the landlord to provide services or facilities required by law.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants had representation by an advocate and the landlord had representation by a lawyer. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2013 for a fixed term of one year. Rent for this unit was \$800.00 and was due on the first day of each month. The tenants paid a security deposit of \$400.00 on July 09, 2013. The landlord did not conduct a move in or move out inspections with the tenants at the start and end of the tenancy. The tenants provided a forwarding address in writing on October 14, 2013.

The tenants' application

The tenant CM testifies that at the start of the tenancy the landlord was not available to do the move in inspection of the unit with the tenants. A few days prior to the tenancy starting the landlord asked the tenant to pick up the keys but the tenant had meetings

scheduled that day so could not do an inspection with the landlord at that time. The tenant agrees that she had viewed the property in April when the previous tenant was living there but due to all the tenants belongings she could not fully see the property.

The tenant testifies that after moving into the unit they found that the furnace was not working. The tenant testifies that she complied with the *Act* and wrote to the landlord asking for the furnace to be repaired and gave the landlord a deadline to do this as the temperatures were dropping to three degrees at night. The landlord did not comply with this request by the next day's deadline so the tenant contacted a furnace and vent cleaning company and had the work done and deducted it from the rent. The tenant has provided a copy of the invoice from that company in which they have documented that the furnace could not be used. The company had to return again to finish cleaning the vents as they were all so filthy including the filters. The tenants have provided photographic evidence showing the bags of dust and dirt from the furnace and vents. The invoices show the work cost \$418.95 and \$80.00 to a total amount of \$498.95. The tenant testifies that as this was an emergency repair the tenants were entitled to deduct it from the rent.

The tenant testifies that the landlord wanted the tenants to sign an agreement to state that the landlord would not be responsible for any loss. The tenant testifies that she refused to sign this agreement. The tenant agrees she did initial the addendum to the agreement as the landlord would not allow the tenant a copy of the tenancy agreement unless they did so.

The tenant testifies that when they moved into the unit there was so much dirt and grunge that they first tried to wash the walls, bathroom, kitchen and window sills but had to use a paint scrapper to get dirt off and then a scrubbing brush. There was mould all around the bathtub, feces around the toilet as the drain was blocked and the kitchen was filthy. The tenant testifies that she thought the unit would be cleaned by the previous tenant but it looked as if it had not been cleaned at all. There was black mould in the basement walls and the carpet in the basement was saturated. The tenant has

provided photographic evidence taken of the home on the day they moved in and then a few days later. The tenant refers to her photographs which show a corner of the house bricks coming away making the wall unstable. This could not have been seen prior to moving in as there were bushes in this area and it was only brought to the tenants' attention when the man came to fit the cable system.

Then tenant testifies that the landlord agreed to compensate the tenants \$200.00 for cleaning and allowed the tenant to deduct this from their rent for September. However due to the excessive amount of cleaning required the tenants seek to recover further compensation. The tenants seek to recover the additional hours to clean the unit and the tenant testifies that they spent 10 hours a day for 14 days between September 01 and September 14, 2013. They have charged this at a minimum wage rate of \$10.25 per hour to a total sum of \$1,435.00. The landlord also agreed the tenants could hire a cleaning company to help clean the unit and the landlord paid that invoice.

The tenant testifies that they paid rent for October less the amount paid to the furnace company. The landlord served the tenants with a 10 Day Notice to End Tenancy and the tenants vacated the rental unit on October 15, 2013. The tenants seek to recover the rent paid for October of \$301.25 and the \$498.95 paid to the furnace company in lieu of the rent.

The tenants seek to recover the cost for moving into the unit. The tenants have provided an invoice for this of \$1,027.00. The tenant testifies that the moving company refused to put their belongings in all the rooms as marked on the boxes due to the black mould present and the health risks to the movers. The tenants have provided a letter from the moving company to attest to this. All the tenants' belongings were piled into the living room which the tenants had to move but could not unpack due to the condition of the unit. The tenant testifies that she tried to work something out with the landlord about moving out if the landlord agreed to pay moving costs. The tenant testifies that she is on disability and cannot move heavy items. The tenant testifies that the landlord refused to substandard house.

The tenant testifies that they suffered hardship and stress however the tenants cannot have a price put on it and the tenants have requested an amount to be determined by the Arbitrator. The condition of the unit also affected the tenant's daughter who had to take medication. The tenant JM testifies that two weeks after vacating the unit she was able to stop taking the medication. The tenants have provided a letter from the tenant's doctor relating to her health issues and stating that this tenant had no prior health issues before moving into the unit.

The tenants seek to recover the cost for developing their photographic evidence of \$52.00.

The lawyer for the landlord states that the previous tenant had written to state that she had cleaned the unit and has provided letters from people who helped her do this work. The previous tenant also documented that in April this tenant came to the property uninvited to talk to the previous tenant. Later the previous tenant did show this tenant around the house and explained that it was very old and the landlord was likely to demolish it. The previous tenant also states that she did not burn incense or use perfume to mask odours in the house.

The landlord's lawyer agrees that there was some mould in the basement but the furnace was new five years ago and worked well according to the previous tenant. This tenant then started to come to see the landlord and told the landlord how much she wanted to live in this house. The tenant left a note for the landlord saying her lease was up but if she could rent this house then she would not renew her lease. The tenant had seen all the blemishes in the house when she viewed it with the previous tenant. The landlord agrees she was not present at this time.

The landlord has provided an e-mail sent by a friend of the landlord who was present at a time the tenant viewed the house and this person has stated that he was present when the previous tenant had shown this tenant the cracks in the bricks and foundation.

The landlord's lawyer states that this proves that the tenant knew about this damage to the wall and structure of the house prior to moving in.

The landlord's lawyer states that the tenant signed a short tenancy agreement in July, 2013 and then later signed a Residential Tenancy Agreement. An addendum was also drawn up and initialled by the tenant. This addendum shows that the rent was low to accommodate the age and condition of the house. The landlord has provided some pictures showing the house when the previous tenant lived there. The landlord agrees that she did not conduct a move out inspection with the previous tenant to determine that the house had been cleaned.

The landlord's lawyer states that the tenant agreed to paint the house at her own expense and the landlord purchased a new fridge and stove. On September 06, 2013 the landlord told the tenant that if she was unhappy with the house the landlord would cancel the contract as rent had not yet been paid and the tenant had not unpacked.

The landlord's lawyer states that the furnace did not need to be repaired and the tenants did not give the landlord a chance to respond to their letter asking for repairs as the tenants only gave the landlord one day to do this. At that time the temperatures were 16 degrees in the day.

The landlord's lawyer asks the tenant if the previous tenant left a clean filter for the tenant at the house. The tenant responds that there was so much garbage left around the house that if one was left there the tenant did not see it.

The landlord disputes the tenant's claim for moving costs. The landlord's lawyer states that this cost should not be recoverable. The landlord's lawyer states that the tenant moved into a substandard place knowingly and is now trying to use the *Act* to get out of the agreement and addendum. The landlord offered the tenants two months free rent if the tenant left before December 01, 2013 however the tenants would not agree to that.

The tenants dispute the landlord claim concerning the addendum. The tenant testifies that the landlord would not provide a copy of the lease agreement unless the tenant initialled the addendum. The tenant testifies that the addendum was contrary to the *Act* but had to initial it against her will. This addendum was not initialled until September 18, 2013 after the tenants had already moved in.

The landlord's application

The landlord testifies that that the previous tenant had rented the house for 14 years. When this previous tenant gave notice the landlord testifies that she had no intention of renting the house out again due to its condition. This house is 90 years old and due to its location close to rail tracks it has suffered with cracks to the foundations.

In April, 2013 this tenant heard that the previous tenant was moving out and the tenant approached the previous tenant directly saying that she had always loved the house and wanted to rent it. The landlord testifies that she was reluctant to re-rent the house as the plumbing and electrical work was very old. The landlord testifies that after the tenant started to visit the landlord asking to rent the house the landlord informed the tenant of all its problems and the issue with the cracks in the foundations were also discussed. The tenant still wanted to rent the house despite this and badgered the landlord into renting it to her and her daughter.

The landlord testifies that she has not seen the house properly for 14 years except to make any repairs requested by the previous tenant. This tenant agreed to do the painting and redo the floors. When the previous tenant moved out this tenant wanted to get in as soon as possible and received the keys on August 28, 2013. The tenant had already paid a deposit in July and she moved into the house on August 31, 2013. The landlord testifies that she was out of town at her daughter's wedding from August 29 to 30, 2013. As the previous tenant had informed the landlord that the house was left clean then the landlord did not do either a move out inspection with the previous tenant or a move in inspection with this tenant.

The landlord testifies that she returned from her daughter's wedding and arranged to meet the tenant at the house the next day. Suddenly there were now all these problems. The tenant was saying the house was not clean and there were other things she was unhappy about. The landlord testifies that she told the tenant then that if the tenants were unhappy the landlord would agree to cancel the contract but the tenant said she had paid \$1,400.00 to move in and could not afford to move out. The landlord agreed to pay the tenants \$200.00 to clean the house and agreed they could deduct this from their rent. The landlord disputes the tenants' claim that she agreed to pay a cleaning company to clean the property as well. However the tenant arranged this and then expected the landlord to pay for it. The landlord testifies that she did pay these cleaning company even though they did not provide proper invoices.

The landlord testifies that the tenant started working on the basement without permission from the landlord. The landlord agrees that there was mould in the basement and agrees she did pay the invoices for this work as the landlord was trying to be reasonable. The landlord testifies the tenant came over to the landlord's house and harangued the landlord about the condition of the house. The landlord testifies that the tenant knew what the condition of the house was prior to renting it.

The landlord testifies that the tenant gave the landlord a list of repairs to be done. The tenant wanted the furnace and vents dealt with within one day but this was not enough time as the landlord called a furnace company and was told she would have to wait a week for work to be done. The landlord suggests that the tenant must have already lined up workers to do this work prior to giving the landlord the worksheet. The landlord testifies that she called the furnace company who had previously fitted the furnace five years ago and they said the company the tenant used are not qualified to determine whether or not the furnace worked. The previous tenant said the furnace did work.

The landlord testifies that she paid out \$1,123.14 in cheques made out to the tenant's daughter even though she was not a tenant as the tenant did not want these payments to affect her disability. The landlord testifies that the work the tenant had done was a

waste of money for the landlord as the tenant knew she was going to be moving out. The landlord testifies that the tenant did not follow the correct procedures for having repairs done.

The landlord seeks to recover the following amounts:

Balance of rent owed for October that the tenant withheld for furnace and vent cleaning of \$498.95

Cost of the second hand fridge and stove the landlord paid to have put in of \$481.50

Cost to trim trees at \$110.00

Cost for new front steps to be fitted at \$605.42

Amount paid to the professional cleaners the tenant brought in at \$491.40

Cleaning credit given to the tenants at \$200.00

Cost of half the paint purchased by the tenants at \$293.97

Amount paid to remove basement walls at \$500.00

Amount paid for materials for basement repair at \$391.76

Costs for repair to the toilet at \$318.27

Registered mail costs for serving the tenant at \$9.69.

The landlord's lawyer asks the landlord if the landlord was aware of her requirements under the *Act* prior to renting to this tenant. The landlord responds that she has rented the house for 14 years to the same tenant and was not educated on the requirements under the *Act*.

The landlord's lawyer refers to a letter sent to the landlord from the tenant showing the tenants campaign to rent the house and the letter from the previous tenant and a friend of the landlords in which they discuss showing the tenant the house and the foundation being old and cracked. The landlord's lawyer states that the landlord's evidence shows the tenant was persistent in wanting to rent the house. The landlord's lawyer refers to the tenancy agreement signed by the tenant and the addendum to the tenancy agreement in which it states that the rent was lower due to the condition of the house and that the house is rented in an "as is" condition. The landlord's lawyer states that the

tenant did not seek approval from the landlord for any additional expenses even though the landlord did agree to pay some of these. The landlord did not authorise the tenant to get in a cleaning company, to do the basement repairs, to clean the vents or the furnace, did not agree to pay more than \$200.00 to the tenants for cleaning and did not agree to pay half of the costs for paint supplies. The landlord's lawyer states that none of these items paid out fall under the guise of emergency repairs and the tenants should not have deducted any sums from their rent.

The landlord's lawyer states that this property is 1,000 square feet on the main floor and half of this footage on the upper floor. How can the tenant charge the landlord over \$2,000.00 to clean such a small space also considering the previous tenants letters that stated that she had left the house clean. The landlord's lawyer refers to the tenants' photographic evidence showing the garage and states that the garage was not included in this rental.

The tenant disputes the landlords claim. The tenant testifies that she could not see the house properly when she first viewed it in April with the previous tenant, due to the previous tenant's pottery, shelving and belongings. When the tenants moved in and the house was empty they were able to see the condition of the house for the first time. The tenant refers to her photographic evidence showing how filthy the house was and disputes that it had been cleaned by the previous tenant. The tenant agrees that the landlord did offer to end the contract but the tenant reiterates that she could not afford to move out straight away as she had just paid the movers and paid a security deposit. The tenant agrees the landlord also offered the tenants to live in the house rent free for two months if they could move out by December 01, 2013. The tenant testifies that the house was unsafe and uninhabitable and made her daughter ill. The tenant testifies that they eventually borrowed money and had a team of helpers to help them move out in October.

The tenant disputes that she persistently badgered the landlord about renting the house. The tenant testifies that they were already living in rented accommodation and

could have extended their lease if the landlord did not want to rent this house to them. The landlord followed up on references from the tenants' previous landlords and the letter the tenant left for the landlord indicated that the house was in an ideal location for them but also informed the landlord that if she did not want to rent the house out then the tenant could renew her lease at her current home.

The tenant disputes the landlord's claim that the landlord did not give permission for professional cleaners to come in and help the tenants clean. The landlord also gave permission for someone to deal with the mould in the basement. The tenant testifies that the landlord paid these companies for their work why would she do this if she had not agreed to them doing the work. The tenant disputes the landlord's claim for the fridge and stove. The tenant testifies that the landlord agreed to replace these and asked the tenant to go and pick out what they wanted from the place recommended by the landlord. The steps and the tree cutting were done prior to the tenancy so the tenants dispute the landlord's claim that the tenants are responsible to pay these amounts.

The tenant disputes the landlord's claim concerning the painting. The tenant testifies that she had explained to the landlord that she used to be a painting contractor but due to her disability could no longer do this. However her daughter could paint and the landlord agreed to pay for half the paint. The tenant testifies that before any painting could be done the walls had to be cleaned and this involved scrapping off layers of dirt with a paint scrapper and scourer.

The tenant testifies that the landlord has stated that her daughter was not a tenant. The tenant refers to both tenancy agreements which name her daughter as a tenant. The tenant's daughter JM testifies that the landlord paid the cheques to her as she had taken the money out of her bank account to pay for the repairs the landlord said they could have done. The tenant paid it knowing the landlord said she would pay it back.

The tenant disputes the landlord's claim concerning the furnace cleaning. The tenant testifies that the only work done was the work that the furnace cleaning company said needed to be done. The furnace was not working due to the high level of dirt and debris. The other tenant moved out at the end of the summer and it is likely she would not have used the furnace through the summer so may not have been aware that it was not working when the tenants moved in.

The tenants' advocate cross examines the landlord and asks the landlord when her pictures were taken. The landlord responds that the pictures were taken by the previous tenant. The tenants' advocate testifies that the previous tenant had obviously not cleaned the house and the advocate had witnessed this at the start of the tenancy. The advocate testifies that you could smell mould from outside the house. The house was dangerous and had not been maintained or inspected prior to the tenants moving in. The tenant JM became ill with asthma like symptoms which she did not have before and which went away after she left the house. The advocate testifies that there was debris in the yard, the kitchen needed to be scrapped clean and there were feces under the tiles in the bathroom. In the advocates opinion the house should not have been rented in this condition.

The landlord's lawyer cross examines the tenants' advocate and asks the advocate if she had any expertise in JM's symptoms. The advocate responds that she had seen her prior to moving in, when she was living there and now JM is out of the house. The landlord's lawyer asks the tenants' advocate if she has seen the letter from JM's doctor. The advocate responds that yes she has and the letter refers to JM not having a history of respiratory illness and her symptoms could be related to exposure to mould.

The landlord's lawyer states that the tenants have provided no evidence to show that they had verbal permission to make these repairs and has not mentioned any verbal permission being given by the landlord in their documentary evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s.5 of the Act which states:

5 *(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

With this in mind I also refer the parties to s. 32(1) of the Act which states:

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While I accept that this house was very old and in a poor condition I find it was not suitable for occupation due to the level of mould issues, the instability of the exterior walls and the high level of dirt and grime in many areas of the living space including the kitchen and bathroom. Consequently, the landlord should not have entered into a tenancy agreement with the tenants even if the tenants wanted to rent this property without first determining if the previous tenant had left the property in a reasonably clean condition and that the property was fit for occupation. Furthermore I find the landlord failed to do a move in condition inspection with the tenants at the start of the tenancy which may have highlighted the poor level of cleanliness in the property and the poor condition of the home with regards to repairs, mould and decoration. I find the

landlord has attempted to contract out of the *Act* by asking the tenant to sign an addendum stating that the tenant is accepting the unit in an "as is" condition.

I am satisfied that the landlord did make attempts to offer the tenants the opportunity to end the tenancy by December 01, 2013 without paying any further rent or to cancel the contract; however, the tenants could not take up these offers as they no longer had the money to move from the unit. Even if the tenants had stayed in the unit until December 01, 2013 without paying rent I accept that this was not reasonable as the level of mould, the unsafe condition of the exterior wall and with one of the tenants becoming ill made the tenants want to vacate as soon as possible.

Consequently, it is my decision that the tenants have established a claim to recover the cost paid to move into the unit of **\$1,027.00**. If the landlord had complied with s. 35 of the *Act* and inspected the unit when the previous tenant was vacating the landlord may have been able to remedy the cleaning issues and taken measures to ensure the rest of the house was safe and fit for occupation before allowing the tenants to move in.

With regard to the tenants' claim for cleaning costs of \$1,435.00; I am satisfied that the unit was not left in a clean condition by the previous tenant. Had the landlord conducted a move out condition inspection with that tenant as required under s. 35 of the *Act* the landlord would have been able to see that the unit was not clean for these tenants to move into. Furthermore no move in inspection was conducted between the parties at the start of the tenancy and again as this is the landlord's responsibility the landlord could have foreseen that the tenants would have to spend considerable time and effort cleaning the unit. I accept the landlord did pay an amount to professional cleaners and find it unlikely the landlord would have paid this had the landlord not given the tenants verbal permission for the tenants to engage the services of professional cleaners. Having reviewed the tenants' photographic evidence I find the place was in a filthy condition and required a significant amount of cleaning and scrubbing to make it habitable. I therefore uphold the tenants' claim less the amount of \$200.00 already

provided to the tenants by the landlord in the form of a rent rebate for cleaning. Consequently, I find the tenants are entitled to recover the sum of **\$1,235.00**.

With regard to the tenants' claim to recover rent paid for October, 2013. As the tenants paid \$301.25 in rent and \$498.95 for the furnace and vent cleaning the tenants seek to recover this amount from the landlord. I have considered the tenants' claim and find the tenants were entitled to deduct an amount from their rent under s. 33 of the *Act* concerning emergency repairs for the furnace. The landlord has provided evidence from the previous tenant saying the furnace worked however evidence provided by the tenant contradicts this. Had the landlord completed a move out inspection with the previous tenant the landlord would have been able to determine at that inspection whether or not the furnace was in good working order and then could have provided a copy of the inspection report in evidence. As this was not done by the landlord and the tenants have provided corroborating evidence to show the high level of dust and debris removed from the furnace and vents I find it likely on a balance of probabilities that the furnace would not work and required cleaning to enable it to work correctly. Consequently, as the tenancy ended due to the condition of the house I find the tenants are entitled to recover rent paid for October, 2013 of **\$301.25** and **\$498.95** paid for furnace and vent cleaning in lieu of rent

With regard to the tenants claim for an undisclosed amount for hardship and distress; having considered the tenants' evidence against that of the landlords I find the landlord did offer the tenants two options to end the tenancy when it came to light that the tenants were unhappy about the living conditions in the unit. Had the tenants been able to afford to move out straight away the tenants would not have experienced the level of hardship and suffering they encountered. However, it is not the landlord's fault that the tenants could not afford to move out and the tenants were paid for the work done to clean the house. Without further evidence to corroborate the level of hardship or suffering encountered by the tenants I am reluctant to award further compensation. Consequently, this section of the tenants' claim is dismissed.

With regard to the tenants' claim for the cost to develop photographic evidence; there is no provision under the *Act* for costs to be awarded of this nature and therefore this section of the tenants' claim is dismissed.

With regard to the landlord's claim for unpaid rent; as I have found the tenants were entitled to end the tenancy due to the landlord not complying with s. 32 of the *Act* I find the landlord is not entitled to recover any rent for October from the tenants and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for money owed or compensation for damage or loss; the landlord seeks to recover amounts paid for work done on the property as the landlord has testified that this work was unnecessary because the tenants did not fulfill the tenancy agreement of one year. As the property will not be re-rented this was a waste of money. The landlord also submits that much of this work was done without the landlord's approval or permission. By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. On this basis I find there is no evidence of what approvals were given for work by the landlord. However, I find it likely that the landlord would not pay for work to be done if the landlord had not given some kind of agreement for this work and by paying for it I find it is likely that the landlord had agreed the tenants could have some work done on the house.

The landlord has testified that the tenant was present when the landlord's friend and the previous tenant showed the tenant the crumbling exterior wall. However the landlord's witnesses have only provided a written statement stating they had informed the tenant of this. The tenant disputes this and testifies that she was only made aware of this wall after moving in when the cable man informed her. The landlord did not ask either witness to attend the hearing to give testimony under oath or submit to cross examination by the tenants. Consequently, I can place little weight on the landlords witnesses written statements especially when the tenant disputes it.

It has no bearing whether or not the tenants moved from the house and therefore any work done was wasted money as the landlord should have ensured the house was fit for occupation at the outset of the tenancy. Furthermore I find the tenants' testimony more credible that the landlord had the stairs replaced, the trees cut down prior to this tenancy commencing and therefore this was done at the landlords own request and not a request of the tenants. I also find the tenants' testimony that the landlord agreed to replace the fridge and stove more credible and if those items remain in the property then they belong to the landlord to do with as she chooses. I find the landlord's claim to recover the cost of the fridge and stove, cutting trees, new front steps, professional cleaning, the credit paid to the tenants for cleaning and half of the paint is dismissed.

I have considered the landlord's claim to recover the amounts paid for work done in the basement, additional expenses and plumbing for the toilet. The landlord paid for the plumbing work because the toilet was not functioning correctly. A toilet is an essential facility required by tenants; therefore the landlord is not entitled to recover this cost from the tenants irrespective of how long the tenancy continued for. The landlord agrees she was aware there was mould in the basement and therefore is responsible to have this remedied and the tenants are not responsible for this cost. Consequently, these sections of the landlords claim are dismissed. The landlord has also applied for the cost for sending registered mail to the tenants of \$9.69. There is no provision under the *Act* for costs associated with serving the other party and therefore this section of the landlord's claim is dismissed.

With regards to the landlord's claim to keep the security deposit of \$400.00 as the landlord's claim has been unsuccessful I find the landlord must return the security deposit of **\$400.00** to the tenants under s. 38(6)(b) of the *Act* and this amount has been included in the tenants' monetary award.

Conclusion

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 **\$3,462.20**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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

Dated: January 08, 2014

Residential Tenancy Branch

