Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNR MNDC OLC ERP RP PSF RPP LRE RR O FF

Introduction

This hearing convened on November 13, 2013 for 75 minutes, January 22, 2014 for 84 minutes and March 18, 2014 for 91 minutes, during which both Landlords and both Tenants were present. This Decision should be read in conjunction with my interim Decisions of November 22, 2013 and January 22, 2014.

During the November 13, 2013, convening each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks as they related to the 1 Month Notice to end tenancy issued for Cause. The hearing time expired and the parties were scheduled to reconvene on January 22, 2014.

At the outset of the January 22, 2014 convening a review of the Tenants' Application for Dispute Resolution revealed that they had selected almost every item without having a clear understanding of what they were requesting. After a brief discussion the Tenants withdrew the following requests: Orders to have the Landlord make emergency repairs, reimburse the Tenants for the cost of emergency repairs; provide services or facilities required by law, and allow the Tenants reduced rent for services or facilities required by law but not provided.

The Tenants proceeded with the following requests: to obtain a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement; Order the Landlords to comply with the Act, regulation or tenancy agreement; make repairs to the rental property; return the Tenants' personal property; suspend or set conditions on the Landlords' right to enter the property; and recover the cost of the filing fee from the Landlords for this application.

During the January 22, 2014 convening the Tenants completed their submissions and just as the hearing time was about to expire a discussion took place regarding the breakdown of the landlord/tenant relationship and how the Tenants have been preventing the Landlords and their maintenance staff access to the rental unit. At the conclusion of the hearing I informed both parties that I would be issuing another Interim Decision with Orders regarding the Landlords' access to the unit and to Order the Tenants to submit a copy of their tenancy agreement.

The convening held March 18, 2013, was scheduled to hear the Landlords' response to the Tenants' submissions of their claim and closing remarks from both parties. A summary of the Tenants' relevant testimony from January 22, 2014 and the testimony heard March 18, 2014, is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants met the burden of proof to obtain a Monetary Order?
2. Should the Landlords be Ordered to comply with the Act, regulation or tenancy agreement?
3. What repairs, if any, should the Landlord be Ordered to complete?
4. Are the Landlords withholding the Tenants personal property?
5. Should the Landlords' access to the rental property be restricted?

Background and Evidence

The Tenants presented the merits of their claim during the January 22, 2014 convening and testified that although their total loss was over $8,000.00 they were only seeking $5,000.00 for compensation. This claim is comprised of items relating to repair requests that have not been completed, losses incurred during repairs after a flood, loss of quiet enjoyment, and compensation for a mattress that was removed from the rental unit during the flood remediation.

On August 28, 2013, a water pipe burst causing a flood in the rental unit while the Tenants were away on holidays. The security system was activated at the time of the flood and the Tenants were notified of the situation. The Tenants contacted the Landlords to inform them of the emergency and advised that they were away on vacation. The Landlords attended the rental property and could not gain access as their key did not work in the lock. A neighbour provided the Landlords with a key after which they were able to gain entry and began to attend to the flood situation.

The Tenants testified that the rental unit is a single family detached home with a walkout basement. The lower level consists of 3 bedrooms, full bath, living room, and furnace utility room. The upper level has the living room, family room / sitting area, dining room, kitchen, and bathroom.

The Tenants presented the merits of their claim, while referring to the volumes of evidence submitted by each party, and which is summarized as follows:

(1) $1,325.00 for rent abatement consisting of 15 days reduced rent because there were 15 loud fans running, blowing dust around, construction noises, and mildew smells around the house during the flood remediation. They were required to sleep upstairs during this time and lost the use of their bedroom, the spare bedroom and the office. The remediation involved, among other things, removal of the bottom two feet of drywall and drying of all affected areas. They had requested to be put up in a hotel but were

denied so they had no choice but to stay in the rental unit. They did not have tenant content insurance and argued that they were misled into believing they did not require it.

(2) $53.25 for the cost of electricity that was used during the remediation repairs and cleaning. They provide evidence of their hydro usage on page 80 of their evidence which shows the spike in usage caused by the fans and dehumidifiers used during the remediation.

(3) $241.50 reimbursement for air duct and furnace cleaning. The Tenants argued that C.K.G. has allergies to dirt and dust and requested that the Landlords have the ducts cleaned once the remediation was completed. They stated they made several requests to have the ducts cleaned but the Landlords refused. Specifically they requested cleaning in the e-mails of September 1, 2013 and September 3, 2013. They provided the receipt and proof of payment dated October 25, 2013, in support of their claim to recover the cost for furnace duct cleaning.

(4) $500.00 to compensate for the mattress that was removed from the rental property. The Tenants argued that their custom made bed frame was ruined during the flood and their mattress was soaked. The remediation company took the mattress to their shop, removing it from the property without the Tenants' permission. The Tenants confirmed that they refused to take the mattress back because they felt it would smell of mildew and would be a health hazard.

(5) $1,49.66 for loss of quiet enjoyment consisting of $83.33 for September 16, 2013, when workers came to the house to work on the outside of the house without proper notice, $83.33 for September 12, 2013, when a worker came to work on the basement without scheduling his attendance with the Tenants. The worker had made the schedule with the Landlords and just showed up so the Tenants requested that they re-schedule. An additional $1325.00 is claimed here which the Tenants confirmed was a duplicate of item # 1 above, for loss of quiet enjoyment for 15 days when the 15 fans were running.

(6) $1,590.00 which is based on 30% of a rent abatement for the lack of pest control. The Tenants argued that they had seen rats outside in the yard. They pointed to their evidence page 28 which included an e-mail from September 4, 2013, where they requested pest control and were denied. They said the Landlords told them it was only squirrels but they had actually seen the rats.

The Tenants stated that they first told the Landlords about all of these concerns on August 23, 2013 when they had a meeting with the Landlords at the rental unit. The Tenant argued that he has since killed seven rats by placing traps in the back yard, on the porch and in the front yard. No photos or receipts were provided to support this claim.

(7) $530.00 compensation for having to deal with the water gutter that fell off at the carport and has caused rain to pour down the side. The Tenants argued that they have

had to endure loud water pouring into the carport, down the side and into the dirt and over their car. They first told the Landlord about these concerns on September 4, 2013.

(8) $530.00 compensation for the bedroom, living room, and kitchen light fixtures that are not working properly. The Tenants submitted that these lights were fluorescent tube lights and that they were constantly flickering and often would not turn on. They requested an electrician repair the lights on September 25, 2013; and the Landlords told them to change the light bulbs to see if that resolved the issue. The Tenants said they had changed the bulbs but the problem still continued.

(9) $530.00 for yard services not provided. They stated that their tenancy agreement addendum provided that the Landlords would provide yard service two times a year. The Tenants argued that they have always taken care of the yard so they are seeking compensation as reimbursement for the service that was supposed to be provided by the Landlords. The first time they requested yard service was in September 2013.

(10) $530.00 compensation because the carport post is rotting and the Tenants said they are now fearful that the carport will come crashing down on their car so they have chosen not to park in the carport. They informed the Landlords of this request in their September 2013 e-mail communications.

(11) $1,060.00 as compensation for the Landlords trying to end their tenancy based on false claims.

The Tenants summarized their 97 page submission and stated that they had met with the Landlords on August 23, 2013, to discuss some of their issues and then left for vacation. While away, a flood occurred in the house on August 28, 2013, they contacted the Landlords and returned home two days later. The Tenants said that ever since the flood their relationship with their Landlords has deteriorated.

The Tenants argued that they did not have tenant content insurance and that they felt misled into thinking it was not required. The Landlords and their insurance company refused to compensate the Tenants for their losses suffered as a result of the flood.

The Tenants indicated that as of September 1, 2013, they began to put all their requests in written e-mails and then filed this application for compensation on October 3, 2013. They stated that their custom made bed, which was made by a close friend, was ruined in the flood and their mattress was soaked with water and taken out of the property without their permission. They refused to have the mattress returned because they did not know how it was treated and were fearful that it would be moldy or smell of mildew.

In closing, the Tenants summarized their situation with their Landlords by stating “when the relationship severed we turned to contract requirements”.

At the outset of the March 18, 2014 convening, I confirmed that each party had received the additional evidence provided by the other. I then provided a brief summary of the Tenants’ testimony, as listed above before hearing the Landlords’ submissions.

The Landlords referenced the documentary evidence submitted by both parties during their testimony and argued their position as follows:

(1) $1,325.00 for rent abatement As per their evidence (page 2 and 13), the water pipe burst directly above the Tenants' bed and there were only 3 fans and 1 dehumidifier running for 4 days not 15 fans running for 15 days as indicated by the Tenants.

The Landlords argued that they attended and took immediate action to respond to this emergency by shutting off the water and turning off the air circulation / furnace system. They hired a professional remediation company who attended the next day, even though they still had not received the final approval from their insurance provider.

The Landlords stated that they did everything they could to resolve these issues and even checked with their insurance company to see if the Tenants could get any compensation or if they could stay in a hotel. Their requests were denied and they were told that those items would be covered by a tenants' content insurance coverage.

The flooded area was only 9% of the entire house which included the master bedroom, hallway and laundry/utility room. The Tenants were away on vacation and returned to the house for the last 2 days the fans were running. The Tenants had the other two bedrooms for their use while the work was being done.

The Landlords pointed to page 25 of their evidence which proves the Tenants gave them authorization to attend the rental unit and deal with the emergency. Then the Tenants began to put conditions on who could access the unit, and at times refused access to the emergency remediation company.

The Landlords argued that the flood occurred August 28, 2013, immediate action was taken to reduce further damage, repairs began August 29, 2013 and the Tenants returned August 30, 2013. The Tenants refused access on Sundays so the work continued as of Monday September 2nd, 2013. The work was finalized on September 10th or 11th and the contractor requested a final inspection for September 12, 2013. As per the Tenant's evidence, page 29, the Tenants cancelled the September 12, 2013 inspection and argued that there was work still to be done. When the contractor was allowed access the remaining work, which involved attaching a closet door, was completed.

(2) $53.25 for the cost of electricity that was used during the remediation repairs. The Landlords did not dispute the spike in electricity during the four days the fans were running. Their contractor had estimated the cost of electricity to be between $20.00 and $30.00. Although they could have added the electricity costs to their insurance claim, they did not.

(3) $241.50 reimbursement for air duct and furnace cleaning. The Landlords disputed this claim arguing that the furnace ducts did not require cleaning because

when they first attended the unit they immediately turned off the furnace system and the water. The drywall work was done when the Tenants were away and involved removal of approximately 12" to 18" of moist drywall cut around the floor in the bedroom. They argued that moist drywall does not emit dust.

The Landlords argued that drywall dust does not migrate up and in this case the drywall was moist so there was no dust. The work was performed in the basement bedroom, at ground level, and the heating vents are located in the ceiling. The heating system had been turned off so there was no air circulation at that time.

The Landlords pointed to the photos in evidence which show that the carpet had been removed from the floor and the drying fans were running under the carpets. The dehumidifier was also running which circulates the air through it to remove dust and moisture from the air.

The male Landlord stated that he is a certified environmental designer and both Landlords are certified architects. Both Landlords have been trained in the environmental effects of construction. They took action to ensure this remediation work was conducted in an environmentally safe manner and they took immediate action by turning off the water and turning off the heating/air circulation system.

The Landlords argued that the heating vent system did not need to be cleaned out as it was inspected in July 2011, before the Tenants occupied the house in September 2011.

(4) $500.00 to compensate for the mattress that was removed from the rental property and not returned. The Landlord's referenced the letter from the contractor at page 13 of their evidence which indicates the contractor made the decision to take the mattress off site where it could be treated with industrial equipment to minimize further loss or damage.

The Landlords argued that they had informed the Tenants of the situation that occurred Wednesday August 28th and the Tenants responded saying they would return home the following Sunday and that they were restricting access to conduct the repairs to the Landlords' contractor N..... as provided on page 25 of their evidence.

The Landlords argued that the mattress drying off site was done as a benefit to the Tenants, within the scope of permission received from the Tenants, to conduct the repairs.

(5) $1,49.66 for loss of quiet enjoyment consisting of $83.33 for September 16, 2013, $83.33 for September 12, 2013, plus $1325.00 which is a duplicate of item # 1.

The Landlords argued that their contractor(s) attended the unit to respond to the Tenants' requests for repairs, as provided in their evidence. The Tenants cancelled these appointments last minute and the male Tenant became confrontational and yelled at the contractors before kicking them off the property.

The Landlords refuted the Tenants' allegations that their contractor was touching the Tenants' personal property. The incident involved the contractor touching a piece of outdoor furniture as he leaned over it to seal up the exterior of the house.

The Landlords referenced their communication with the female Tenant at page 35 of their evidence; where the Landlord asked if they should reschedule the contractor. The female Tenant said no they could attend because the male Tenant was at home at the time.

The Landlords testified regarding the August meeting they had had with the Tenants to discuss maintenance issues. The Tenants had requested that the Landlords seal up the house, even though there were no rats inside the house. The Landlords had agreed to have some of the maintenance requests completed and paid $320.00 to have the work done, as supported by page 15 of their evidence. All these issues were non-emergency items that were completed and paid for before the water damage occurred on August 28, 2013, and argued that this shows the Landlords gave consideration to the Tenants' requests.

(6) $1,590.00 which is based on 30% of a rent abatement for the lack of pest control. The Landlords submitted that this was not a litigated request. They did their own pest control inspection and there was no infestation found. Since engaging in these proceedings the Landlord had a licensed pest control company conduct an inspection on March 10, 2014. As per the report provided in their evidence there were a few rat droppings found, which is not beyond normal for the city in which the rental unit is located. The report confirms that there was no infestation.

The Landlords said they had spoken to each neighbour on either side of the Tenants, after the August 2013 meeting to address the rodent issue with them.

The Landlords disputed the Tenants' submission noting that the only evidence provided by the Tenants in support of this item was one picture of a rat dropping. There was no evidence that 7 rats were caught and no evidence of rat traps being purchased by the Tenants. The Landlords stated the lack of evidence made them question the claim considering the extent the Tenants have taken for other items claimed.

(7) $530.00 for water gutter that fell off at the carport The Landlord's referred to this item as being "petty". It only took a few sections to reattached the drain and screw it together. They see these claims as being filled with "accusations and extortion" to levels they had not seen before.

The Landlords argued that a carport is not a shelter and is not required to have eaves troughs and drainage as required by a house. They noted that when they first agreed to rent to these Tenants the Tenants requested that the carport be closed off at one end and having a garage overhead door installed. They agreed and spent $1,300.00 to have the work completed. The work was inspected and they were advised that two of the support columns had to be replaced. They paid an additional $180.00 to have the two columns replaced.

(8) $530.00 compensation for the bedroom, living room, and kitchen light fixtures that were allegedly not working properly. The Landlords stated that once they were given the Order to access the rental unit they had an electrician inspect all of the lights and confirmed they were not working. The light bulb tubes were removed and upon inspection it was obvious that they were the original old tubes as the ends were all black. The tubes were replaced with new bulbs and the lights worked properly.

The Landlords argued that the Tenants had testified under oath that they had installed new bulbs and the lights still did not work which is not true considering the condition of the bulbs that were present and considering all the lights worked fine once new bulbs were installed by the electrician. The Landlords stated that they suffered the cost of bringing in the electrician due to this mistruth. They also pointed out that the Tenants' original e-mail request for repairs did not mention the kitchen light.

(9) $530.00 for yard services not provided. The Landlords argued that the back yard was never in any condition to enable a landscaper access to perform trimming. They argued that the Tenants had moved the gravel from the side of the house into the back yard and had numerous items such as buckets, wood, and furniture stored and strewn all over the yard.

The Landlords clarified that the tenancy agreement addendum speaks to annual maintenance which was intended for spring and fall pruning, not weekly maintenance or grass cutting. They confirmed that this pruning has not been done because the Tenants altered the yard. They said the yard was not like that when they entered into the tenancy and a landscaper would not be able to access anything to do his work.

The Landlords pointed to their latest submission which included their inspection report and argued that the day they attended they found dog excrement everywhere and articles stored throughout. They argued that that yard condition was not appropriate for the neighbourhood.

(10) $530.00 for the carport post which is rotten. The Landlord reiterated their training as architects and argued that the carport structure is sound. The post in question is a middle post and is not considered weight bearing. The two weight bearing posts were changed as required back in 2011 when the overhead garage door was installed.

The Landlords pointed to their photos which support that the carport is not used for storage of the Tenants' car. Rather, it has always been used as the Tenants' woodworking workshop and used for storage.

(11).$1,060.00 for attempts to end their tenancy based on false claims. The Landlords dispute that they made any false claims and argued that the Orders issued to the Tenants to return the property to its original condition are proof that their claims were not false.

The Landlords argued that they sought guidance from the *Residential Tenancy Branch* and followed the instructions to issue the eviction notice. This action was taken due to the Tenants' actions of altering the property which compromised the structure of the house and put them and others at risk.

In closing, the Landlords stated that they had felt bad for the Tenants when the water pipe broke. They had always treated the Tenants in a courteous manner, especially when they first came to this country. They acted upon all of the Tenants' requests very quickly, even when things were not required to be done by a landlord. They even provided upgrading work such as installing the door on the carport.

The Landlords pointed out how they had taken immediate action when notified of the flood and how they began the remediation work the next day. They argued that the Tenants simply wanted money for their losses. When the Tenants realized they should have had tenant content insurance and were refused compensation from the Landlords' insurance, the Tenants responded by becoming confrontational.

The Landlords stated that they could not believe the level these Tenants have taken this situation to, by restricting their access, refusing their contractors access to the property, and by being aggressive towards anyone who attended the property. The Landlords argued that the Tenants' requests have become overboard.

The Landlords testified that they have spent over $1,037.00 since the water pipe broke on August 28, 2013, trying to appease these Tenants; only to find out that the repair requests were unnecessary and/or unsubstantiated. The Landlords argued that their evidence supports how flexible they were in accommodating the Tenants only to be faced with bullying language, name calling, insults, and aggressive behaviour from the male Tenant. The Landlords disputed any claims for loss of quiet enjoyment and argued that in fact it was the Landlords who suffered from the Tenants' false allegations and demands for unnecessary repairs.

The Tenants summarized their submissions confirming that the Landlords had been very cordial and friendly from the onset of their tenancy. They submitted that their relationship with the Landlords became unstable once the water damage occurred, which they attempted to resolve on their own.

The Tenants stated that others do not know what they have had to endure in their lives or with the building. Their requests for maintenance to the Landlords, prior to the flood, remain uncompleted. The Tenants argued that because they were never provided a copy of the rules, which they later clarified to mean copies of the *Residential Tenancy Act*, it caused them a lot of frustration. They clarified that they had had a lot of frustration before sending their requests in the written e-mails.

The Tenants submitted that they had no access to the basement for 15 plus days and they found if frustrating to live through the remediation. They felt the Landlords were not forthright which caused the Tenants to spend time and money which added to their frustration.

Analysis

I have carefully considered the foregoing and the volumes of evidence submitted by each party; and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act.*

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

Section 33 of the *Act* defines emergency repairs and stipulates that a landlord may take over completion of an emergency repair at any time.

Neither party disputes that a flood occurred August 28, 2013, while the Tenants were away on vacation; that emergency repairs were required and the Landlords attended the unit to enact the emergency repairs. As such, I make no findings on the matter of the necessity of the work.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building would deteriorate occupant comfort and the long term condition of the building.

I accept the landlord's evidence and testimony that they took all reasonable steps to remediate the water emergency and that they took great efforts to mitigate any further loss, as evidenced by their willingness to begin the repairs prior to receiving formal approval from their insurance provider . I also acknowledge that given the Landlords' training and experience, they understood how to engage in an environmentally conscious remediation process and took actions to limit further losses by turning off the water and the air/heat circulation system.

Neither party disputed that once the flood occurred, and after the Tenants found out their losses were not going to be compensated because they did not have tenant

content insurance, their landlord/tenant relationship became adversarial and at times confrontational.

I can appreciate that it was stressful and confusing for the Tenants to move to a foreign country. However, stress or confusion does shift the responsibly of learning their rights and obligations to the other party, in this case the Landlords. The Tenants' argued that they were never provided with a copy of the rules or *Residential Tenancy Act* and therefore were left uninformed.

The evidence supports that the Tenants entered into and were provided a copy of a written tenancy agreement that was created and signed using the standard RTB tenancy agreement form #RTB-1 (2011/03). I note that the *Residential Tenancy Act* is referenced throughout this document. On page 6 of 6 of the tenancy agreement, is listed a wealth of information under the heading "General Information about Residential Tenancy Agreements" which includes telephone numbers and the website address for the *Residential Tenancy Branch.* Therefore, I find the Tenants' allegations that they were not informed of the *Residential Tenancy Act* to be unsubstantiated.

By their own submissions, the Tenants acknowledged that their claims were not initiated until after the flood when the landlord/tenant relationship was severed. They stated that they began to operate under the contractual obligations and put their requests for repairs to the Landlords in writing on September 1, 2013. They filed their claim for monetary compensation on October 3, 2013, when the repairs were not completed.

The evidence supports that despite the Tenants requesting repairs, they began refusing access to contractor(s) and the Landlords. The Tenants became argumentative and confrontational towards the Landlords and their agents who attended the property to complete the flood remediation work or who attended to conduct other repair or maintenance work. Access was made increasingly difficult until a month had passed and the Tenants filed their claim for monetary compensation. The Tenants confirmed they refused the return of their mattress and then made a claim for compensation of $500.00 for the loss of the mattress.

I have no doubt that the Landlords have taken steps above and beyond what is required by landlords for regular repairs and maintenance in their attempts to resolve the Tenants' concerns. The Tenants' monetary claim is undeniably driven by the fact that they were not financially compensated for the losses they incurred by the flood and due to the fact that they did not have tenant content insurance. There was no evidence before me that would suggest the Tenants were in any way misled to believe they did not require content insurance.

Notwithstanding the forgoing, the Residential Tenancy Policy Guideline 6 stipulates that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs.

From the evidence, I accept that the affected area was only 9% of the overall square footage of the house. The bulk of the remediation work, which involved removal of wet drywall, ceiling material, carpet removal, and drying with 3 fans and 1 dehumidifier, took place over the next couple of days, during which the Tenants were present for only two of the days, as they did not return home until Sunday September 1, 2013. The remainder of the work, except for the installation of a closet door, was completed over approximately the next ten days, after which the Landlords had scheduled a final inspection for September 12, 2013.

I accept that the Landlords took great efforts to minimize future loss by initiating the repairs immediately and I find it undeniable that the tenants suffered a loss of quiet enjoyment during the repair period from September 1st to September 11, 2012. While by no fault of the Landlords, the Tenants' quiet enjoyment was negatively affected by the loss of use of their bedroom and from the minimal inconveniences that were created by the repair work. That being said, I have no doubt that completion of the repairs was delayed and the Tenants' loss of quiet enjoyment was exacerbated by their own adversarial behaviors and refusal to allow the Landlords and contractors access to the property.

When considering compensation I must, for example, consider that a tenant who worked in a job that required them to be absent from the residential property every week day between the hours of 8:00 a.m. and 5:00 p.m. would be impacted by the repairs less than a tenant who was for some reason not able to leave the rental unit for any significant duration during weekdays.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In light of the above, and while considering that the Tenants had full use of the unaffected areas of the house, I hereby award the Tenants compensation for a loss of quiet enjoyment that reflects the Tenants' actions which ultimately delayed the repairs. The award is comprised of 9% of the daily rent of $87.12 for 5 days (9% of $87.12 x 5) for a total amount of **$39.20** for loss of quiet enjoyment.

The Tenants claim for increased hydro costs was not in dispute; however, the Landlords did suggest that the hydro usage was estimated at not more than $30.00. I accept the Tenant's submission that there was an increase of hydro usage which amounted to $53.25 during the operation of the fans and dehumidifier, as supported by their

documentary evidence. Accordingly, I award the Tenants for increased hydro costs in the amount of **$53.25.**

The Tenants have claimed reimbursement for the furnace and duct cleaning which occurred after they filed their initial Application for Dispute Resolution on October 3, 2013. Although they amended their application November 1, 2013, the amendment only dealt with their request to cancel the eviction notice. Notwithstanding the evidence provided by the Tenants, I accept the Landlords' assertion that this work was not required after the flood remediation; rather, it was another unnecessary maintenance request or expense the Tenants were now demanding. Accordingly, I dismiss the claim for reimbursement of furnace / duct cleaning, without leave to reapply.

I have no doubt that the flood and remediation repairs were stressful situations to go through. That being said, the flood occurred by no fault of either party, yet it was exacerbated by the Tenants' actions. I find the balance of the Tenants' monetary claims to be retaliatory, frivolous, and nothing more than an attempt to recoup or recover the losses suffered from the flood; and losses which the Tenants were not compensated for under insurance, as they neglected to acquire tenant content insurance. Accordingly, I dismiss the remainder of the Tenants' monetary claim, without leave to reapply.

As noted above, it was the Tenants who refused to accept the return of their mattress not the Landlord withholding their possessions. Upon review of the Landlords' submissions, I accept that the remediation staff took appropriate actions when taking the mattress to their facility in order to gain access to industrial machines to treat and dry the mattress to prevent further damage. Accordingly, I find the Tenants' claim to have their personal property returned to be without merit, as they have clearly indicated that they do not want the mattress returned. Therefore, the claim is dismissed, without leave to reapply.

The Landlords provided a comprehensive inspection report which was compiled after their inspection on March 10, 2014. I accept their submission that all required repairs and maintenance work has been completed and that several of the Tenants' requests were unfounded, untrue, or unnecessary. Specifically, they confirmed that the rotten post in the carport is not a support post and does not require repair or replacement; the Landlords incurred a cost to have the lights inspected only to find out the Tenants had not replaced burnt out light bulbs which they testified they had; the current condition of the shrubs and/or trees do not warrant the attendance of a landscaper; the Tenants have items strewn and stored all over the property and there is dog excrement throughout the yard which could attract a rodents; and there is no evidence of a rodent infestation.

The *Residential Tenancy Branch Policy Guideline # 1* clarifies the responsibilities of a landlord and tenant regarding property maintenance and provides that the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

Based on the above, I find the Landlords have complied with the Act, regulation and tenancy agreement.

After careful consideration of the foregoing and the information contained in my interim Decisions dated November 22, 2013 and January 22, 2014, I see no evidence to support the Tenants' requests to restrict the Landlords' access to the property, and their request is dismissed, without leave to reapply. The Tenants must comply with section 31(3) of the Act which stipulates 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.

After considering the circumstances relating to this claim, I decline to award recovery of the filing fee.

Conclusion

The Tenants have been granted a monetary award in the amount of **$92.45** ($39.20 + $53.25). The Tenants may deduct this one time award of $92.45 from their next rent payment as full compensation of this award.

The Orders granting the Landlords and their agents access to the rental property and their right to conduct inspections issued in my January 22, 2014 interim Decision remain in full force and effect for the duration of this tenancy.

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: March 31, 2014

Residential Tenancy Branch